

## CODE OF CONDUCT AMENDMENTS

### PART II - Practising Requirements

#### General

201. For the purposes of this Code a barrister practises as a barrister if:
- (a) he supplies legal services and in connection with the supply of such services:
    - (i) he holds himself out or allows himself to be held out as a barrister; or
    - (ii) he exercises a right which he has by reason of being a barrister; or
  - (b) he acts as a manager of a Recognised Body and as such is required by the rules of that body's Approved Regulator to hold a practising certificate issued by the Bar Council;
  - (c) and any reference to the supply of legal services includes an offer to supply such services.
202. Subject to the provisions of this Code a barrister may practise as a barrister provided that:
- (a) he has complied with any applicable training requirements imposed by the Bar Training Regulations which were in force at the date of his Call to the Bar;
  - (b) he has complied with any applicable requirements of the Continuing Professional Development Regulations (reproduced in Annex C);
  - (c) he has a current practising certificate issued by the Bar Council (acting by the Bar Standards Board) pursuant to the Practising Certificate Rules in accordance with the Practising Certificate Regulations (reproduced in Annex D);
  - (d) he has provided in writing to the Bar Council details of the current address(es) with telephone number(s) of the chambers or office from which he supplies legal services and:-
    - (i) if he is an employed barrister, the name, address, telephone number and nature of the business of his employer;
    - (ii) if he is a manager or employee or owner of a Recognised Body the nature of his role and the name, address, email address, telephone number and name of the Recognised Body and of its Approved Regulator.<sup>1</sup>

202 A. A barrister must not carry on any reserved legal activity unless he is authorised to do so by a practising certificate issued pursuant to the Practising Certificate Rules (reproduced in Annex D).

## Rights of audience

203.1 A barrister may exercise any right of audience which he has by reason of being a barrister provided that:

- (a) he is entitled to practise as a barrister in accordance with paragraph 202; and
- (b) if he is of less than three years' standing his principal place of practice (or, if he is practising in a dual capacity, each of his principal places of practice) is either
  - (i) a chambers or annexe of chambers which is also the principal place of practice of a qualified person who is readily available to provide guidance to the barrister; or
  - (ii) an office of an organisation of which an employee, partner, manager or director is a qualified person who is readily available to provide guidance to the barrister.

203.2 For the purpose of paragraphs 203.1(b) and 204(c)(i) a barrister shall be treated as being of a particular number of years' standing if he:

- (a) has been entitled to practise and has practised as a barrister (other than as a pupil who has not completed pupillage in accordance with the Bar Training Regulations) or as a member of another authorised body;
- (b) has made such practice his primary occupation; and
- (c) has been entitled to exercise a right of audience before every Court in relation to all proceedings for a period (which need not be continuous and need not have been as a member of the same authorised body) of at least that number of years.

203.3 A person shall be a qualified person for the purpose of paragraph 203.1(b) if he:

- (a) has been entitled to practise and has practised as a barrister (other than as a pupil who has not completed pupillage in accordance with the Bar Training Regulations) or as a member of another authorised body for a period (which need not have been as a member of the same authorised body) of at least six years in the previous eight years;
- (b) for the previous two years
  - (i) has made such practice his primary occupation, and
  - (ii) has been entitled to exercise a right of audience before every Court in relation to all proceedings;
- (c) is not acting as a qualified person in relation to more than two other people; and
- (d) has not been designated by the Bar Council or Bar Standards Board as unsuitable to be a qualified person.

203.4 This paragraph 203 is subject to the transitional provisions at paragraphs 1102 to 1105.

### **Supply of legal services to the public**

204. <sup>2</sup>A practising barrister may supply legal services to the public provided that:

- (a) he is practising in a way permitted by rule 205
- (b) he complies with the requirements of paragraph 203.1;
- (c) he is covered by insurance against claims for professional negligence arising out of the supply of his services in such amount and upon such terms as are currently required by the Bar Council or alternatively (in the case of:
  - (i) an employed barrister; or
  - (ii) a barrister practising as a manager or employee of a Recognised Body)

his employer or the body, as the case may be, is covered by such insurance in such amount and upon such terms as are required by the Approved Regulator of the employer or body (or if none, in such amount and on such terms as are currently required by the Bar Council); and

- (d) In the case of legal services supplied pursuant to paragraph 401(a)(iii):
  - (i) he is more than three years' standing
  - (ii) he has complied with such training requirements as may be imposed by the Bar Council or Bar Standards Board; and
  - (iii) he has notified the Bar Council that he holds himself out as willing to accept instructions from lay clients.

205. A practising barrister may supply legal services to the public as:-

- (a) a self-employed barrister;
- (b) a manager or employee of a Recognised Body, subject to the rules of the Approved Regulator of that body;
- (c) an employed barrister to the extent permitted by paragraph 502.

206.1 A barrister called before 31 July 2000 who is deemed to be practising only by virtue of paragraph 201(a)(i) in England and Wales and who does not and is not required either by the Bar Standards Board or by any other Approved Regulator to hold a practising certificate under this Code shall not be subject to the rules in this Code applying only to practising barristers provided that:

- (a) If he supplies any legal services to any person:-

- (i) He provides in writing to the Bar Council details of the current address(es) with telephone number(s) of the office or premises from which he does so, and:-
  - (1) if he is employed, the name, address, telephone number and nature of the business of his employer;
  - (2) if he is an employee or owner or manager of a Recognised Body, the name, address, email address, telephone number and the name of the Recognised Body and its Approved Regulator
- (ii) Unless he is employed only to offer services to his employer or to the Recognised Body of which he is an employee he (or, if he is supplying legal services to clients of his employer or a Recognised Body of which he is an employee) that employer or body is currently insured by insurers authorised to conduct such business against any and all claims in respect of civil liability for professional negligence arising out of or in connection with the supply of legal services for at least the first £250,000 of each and every claim, with an excess not exceeding £500.

(b) As to the information required by sub-paragraph (a)(i) above: (1) he first provided that information on or before 31 March 2012; and (2) he provided a current version of that information in March of each succeeding year.

(c) Before supplying legal services to any person, employer or Recognised Body, and when first dealing with any third party in the course of supplying legal services, he informs them fully and comprehensibly in writing (a) of his status and the fact that he does not hold a practising certificate under this Code, (b) of the relevant limitations under this Code on the legal services he may undertake, (c) that he is not fully regulated by the Bar Standards Board, and (d) of the absence of available compensatory powers for any inadequate professional service he may render.

206.2 A barrister whenever called who is deemed to be practising only by virtue of paragraph 201(a)(i) outside England and Wales, who does not and is not required either by the Bar Standards Board or by any Approved Regulator to hold a valid practising certificate under this Code and who is not subject to paragraph 4(e) of the International Practice Rules shall not be subject to the rules in this Code applying only to practising barristers provided that he complies with the provisions of paragraph 206.1.

### **Acting in a dual capacity**

207. A barrister may practice or be involved with the supply of legal services in more than one capacity only in the following circumstances:

- (a) in accordance with rule 806; or
- (b) after:-

- (i) having notified the Bar Standards Board in writing of an intention so to do and after supplying the Bar Standards Board with such information as the Bar Standards Board requires in relation thereto; and
  - (ii) having agreed with each employer or Recognised Body with which the barrister is involved a protocol that enables the barrister to avoid or resolve any conflict of interests or duties arising from practice and/or involvement in those capacities.
208. A barrister who practices or is involved with the supply of legal services in more than one capacity pursuant to paragraph 207(b) above must:-
- (a) provide a copy of each protocol required by paragraph 207(b)(ii) to the Bar Standards Board on request; and
  - (b) maintain (and make available to the Bar Standards Board on request) a record of referrals by the barrister to the employer or Recognised Body and of instructions received by the barrister from the employer or Recognised Body.
  - (c) refuse to accept instructions in any case where so acting gives rise to a potential conflict of interest.
  - (d) not work in more than one capacity in relation to the same case or issue for the same client at the same time.
  - (e) disclose (or procure the disclosure by the Recognised Body of) the interest to the client in writing before the barrister refers a client to the employer or Recognised Body or before accepting instructions from the employer or Recognised Body.

### **Ownership of Interests in Recognised Bodies**

209. If a barrister directly or indirectly has an ownership interest in a Recognised Body and is in practice other than as a manager or employee of that Recognised Body, the barrister must:-
- (a) notify the Bar Standards Board in writing of the ownership interest, at or as soon as reasonably practicable after, the time at which that interest is acquired or the barrister starts practising other than as a manager or employee of that Recognised Body, whichever is the later;
  - (b) disclose (or procure the disclosure by the Recognised Body of) the interest to:-
    - (i) any client of the Recognised Body who instructs the barrister. If the barrister has the ownership interest at the time that instructions are received by him, disclosure to the client must be made prior to the barrister accepting the instructions. If the ownership interest is acquired after instructions have already been accepted, the ownership interest must be communicated at the time of, or as soon as

reasonably practicable after, the barrister's acquisition of that interest and the client must be advised of their right to instruct another barrister.

- (ii) any person that the barrister refers to the Recognised Body. If the barrister has the ownership interest at the time that the referral is made, disclosure to the client must be made prior to the barrister making the referral. If the ownership interest is acquired after the referral has already been made, the ownership interest must be communicated at the time of, or as soon as reasonably practicable after, the barrister's acquisition of that interest.
- (c) maintain (and make available to the Bar Standards Board on request) a record of referrals by the barrister to the Recognised Body and of instructions received by the barrister from the Recognised Body.

<sup>1</sup> paragraph 202(e) removed 11th September 2006

<sup>2</sup> paragraph 203(1)(b) amended 25th January 2011

<sup>3</sup> amended 6th August 2010

**PART IV - Self-Employed Barristers (relevant extract)****Heads of chambers**

404.1 The obligations in this paragraph apply to the following members of chambers:

- (a) any barrister who is head of chambers;
- (b) any barrister who is responsible in whole or in part for the administration of chambers;
- (c) if there is no one within (a) and (b) above, all the members of the chambers.

404.2 Any person referred to in paragraph 404.1 must take all reasonable steps to ensure that:

- (a) his chambers are administered competently and efficiently and are properly staffed;
- (b) the affairs of his chambers are conducted in a manner which is fair and equitable for all barristers and pupils;
- (c) proper arrangements are made in his chambers for dealing with pupils and pupillage and, in particular,
  - (i) that all pupillage vacancies are advertised in the manner prescribed by the Bar Council;
  - (ii) that such arrangements are made for the funding of pupils by chambers as the Bar Standards Board may by resolution from time to time require;
  - (iii) that in making arrangements for pupillage, regard is had to the pupillage guidelines issued from time to time by the Bar Council and Bar Standards Board and to the Equality and Diversity Code for the Bar;
- (d) Proper arrangements are made in chambers for dealing with equal opportunity issues and in particular,
  - (i) that Chambers appoint at least one Equal Opportunities Officer
  - (ii) that Chambers shall have a written Equal Opportunities Policy made available to all members of Chambers and Staff and to the Bar Council and Bar Standards Board when required, which shall set out Diversity Code for the Bar and shall have regard to the recommendations in the Code.
  - (iii) that no barrister shall take pupils until the steps set out in (i) and (ii) above have been complied with.
- (e) all barristers practising from his chambers whether they are members of the chambers or not are entered as members with BMIF and have effected

insurance in accordance with paragraph 402 (other than any pupil who is covered under his pupil-master's insurance);

- (f) all barristers practising from his chambers comply with paragraph 403.5 (a)(iii);
- (g) all employees and staff in his chambers (i) are competent to carry out their duties, (ii) carry out their duties in a correct and efficient manner, (iii) are made clearly aware of such provisions of this Code as may affect or be relevant to the performance of their duties and (iv) all complaints against them are dealt with in the manner set out in paragraph 403.5(d) above;
- (h) all registered European lawyers and all foreign lawyers in his chambers comply with this Code to the extent required by the Registered European Lawyers Rules (reproduced in Annex B) and the Foreign Lawyers (Chambers) Rules (reproduced in Annex H);
- (i) fee notes in respect of all work undertaken by all members of chambers and pupils and (unless expressly agreed with the individual) former members and pupils of chambers are sent expeditiously to clients and in the event of non-payment within a reasonable time, pursued efficiently.
- (j) every barrister practising from his chambers has a current practising certificate issued by the Bar Council (acting by the Bar Standards Board) pursuant to the Practising Certificate Rules (reproduced in Annex D). ~~in accordance with paragraph 202(c) of the Code of Conduct and the Practising Certificate Regulations (reproduced in Annex D).~~

404.3 In carrying out the obligations referred to in paragraph 404.2 any person referred to in paragraph 404.1 must have regard to any relevant guidance issued by the Bar Council and Bar Standards Board including guidance as to:

- (a) the administration of chambers;
- (b) pupillage and further training; and
- (c) good equal opportunities practice in chambers in the form of the Equality and Diversity Code for the Bar

### **Part IX - Compliance (relevant extract)**

901.1 Any failure by a barrister to comply with the provisions of paragraph 202 (a) to (d), 203(1)(a), 204(b), 402, 403.5(b)(c) and (d), 404, 405, 406, 701, 709, 801(a), 804 or 905(a)(i), (d) or (e) of this Code (to the extent that the rule or rules in question apply to him, as to which see paragraphs 105A and 105C above<sup>1</sup>) or with the training requirements imposed by the Bar Training Regulations<sup>2</sup> in force at the date of his Call to the Bar or with the Continuing Professional Development Regulations or the Practising Certificate Rules ~~Practising Certificate Regulations~~ (other than paragraph 8 thereof)<sup>3</sup> shall render him liable to a written warning from the Bar Standards

Board and/or the imposition of a fixed financial penalty of £300 (or such other sum as may be prescribed by the Bar Standards Board from time to time) or any financial penalty prescribed by the said Regulations for non-compliance therewith.  
Liability under this paragraph is strict.

### Part XI - Transitional Provisions

1101. In respect of anything done or omitted to be done or otherwise arising before 31 October 2004:

- (a) this Code shall not apply;
- (b) the Code of Conduct in force at the relevant time shall notwithstanding paragraph 101 apply as if this Code had not been adopted by the Bar Council.

1102. Any barrister called to the Bar before 1 January 2002 but who has not completed or been exempted from 12 months' pupillage in accordance with the Bar Training Regulations<sup>1</sup> in force at the relevant time may practise as a barrister notwithstanding paragraph 202(a) of this Code provided that such a barrister shall not be entitled to exercise a right of audience under paragraph 203.1 unless he:

- (a) has notified the Bar Council in writing by 31 March 2012 of his wish to do so;  
and
- (b) either (i) has complied with any conditions as to further training which the Bar Council or Bar Standards Board may require or (ii) has been informed by the Bar Council or Bar Standards Board that he is not required to comply with any such conditions.

1103. Any barrister who on 31 July 2000 was entitled to exercise any right of audience which he had by reason of being a barrister shall notwithstanding paragraph 203 of this Code remain entitled to exercise that right of audience.

1104. Any barrister who during any period before 31 July 2000 was entitled to exercise a right of audience as an employed barrister may for the purpose of paragraph 203.2(c) of this Code count that period as if he had been entitled during that period to exercise a right of audience before every Court in relation to all proceedings provided that he:

- (a) has notified the Bar Council in writing by 31 March 2012 of his wish to do so;  
and
- (b) either (i) has complied with any conditions (including any conditions as to further training) which the Bar Council or Bar Standards Board may require or (ii) has been informed by the Bar Council or Bar Standards Board that he is not required to comply with any such conditions.

~~1105. Any person who was entitled on 31 July 2000 or becomes entitled before 31 July 2002 to exercise a right of audience before every Court in relation to all proceedings~~

~~\_\_\_\_\_ shall be a qualified person without having satisfied paragraph 203.3(b)(ii) of this Code if he:~~

~~\_\_\_\_\_ (a) \_\_\_\_\_ has satisfied the other requirements of paragraph 203.3;~~

~~\_\_\_\_\_ (b) \_\_\_\_\_ has notified the Bar Council in writing of his wish to act as a qualified person; \_\_\_\_\_ and~~

~~\_\_\_\_\_ (c) \_\_\_\_\_ has been designated by the Bar Council as suitable so to act.~~

~~1106. Any barrister who before 31 July 2000 had delivered to the Bar Council the notification and information referred to in paragraph 212(b)(ii) of the Sixth Edition of the Code of Conduct or was exempted by waiver from that requirement shall until 31 July 2005 remain entitled to supply legal services to the public on condition that he complies with those requirements of paragraph 212(b)-(e) of the Sixth Edition of the Code of Conduct which on 31 July 2000 applied to him and provided that he shall not thereby be entitled to exercise any right of audience which he has by reason of being a barrister.~~

<sup>1</sup>Bar Training Regulations effective from 1st September 2009