

# Part I - Preliminary

The Preliminary section sets out the details about the commencement of the Code, the rules governing amendments to the Code, the general purpose of the Code, to whom it applies and our powers to waive its provisions.

101. The Eighth Edition of the Code was adopted by the Bar Council on 18 September 2004 and came into force on 31st October 2004.
102. This Code includes the Annexes.
103. Amendments and additions to this Code may be made by Resolution of the Bar Standards Board which shall be operative upon such date as the Resolution shall appoint or if no such date is appointed on the later of:
  - (a) the date of the Resolution; and
  - (b) the date when approval of the amendment or addition, if required, is given by the Legal Services Board under Schedule 4 of the Legal Services Act 2007.

Amendments and additions will be published from time to time in such manner as the Bar Standards Board may determine.

## General purpose of the Code

104. The general purpose of this Code is to provide the requirements for practice as a barrister and the rules and standards of conduct applicable to barristers which are appropriate in the interests of justice and in particular:
  - (a) in relation to self-employed barristers to provide common and enforceable rules and standards which require them:
    - (i) to be completely independent in conduct and in professional standing as sole practitioners;
    - (ii) to act only as consultants instructed by solicitors and other approved persons (save where instructions can be properly dispensed with);
    - (iii) to acknowledge a public obligation based on the paramount need for access to justice to act for any client in cases within their field of practice;
  - (b) to make appropriate provision for:
    - (i) barrister managers, employees and owners of Authorised Bodies ;  
and
    - (ii) employed barristers taking into account the fact that such barristers are employed to provide legal services to or on behalf of their employer.

## Application of the Code

105. A barrister must comply with this Code which (save as otherwise provided) applies to all barristers whenever called to the Bar.
- 105A. Part IV applies only to self-employed barristers.
- 105B. 2Section 1 of Part V applies only to employed barristers.
- 105C. 1 Only Parts I, II, III, Section 2 of Part V, rules 606.1, 607, 608, 701(a), 701(b)(i), 704, 705, 708, 708.1 and Parts VIII, IX, X and XI apply to barristers practising as managers or employees of Recognised Bodies regulated by another Approved Regulator when doing work of a sort that the body is permitted to do.
- 105C. 2 In so applying, rule 606.1 is to be read as if it referred to a barrister or the Authorised Body being retained rather than receiving instructions.
106. Subject to the International Practice Rules (reproduced in Annex A) this Code applies to International work and whether a barrister is practising in England and Wales or elsewhere.
107. A registered European lawyer must comply with this Code in the manner provided for by the Registered European Lawyers Rules (reproduced in Annex B).

#### **Waiver of the Code**

108. The Bar Standards Board shall have the power to waive the duty imposed on a barrister to comply with the provisions of this Code in such circumstances and to such extent as the Bar Standards Board may think fit and either conditionally or unconditionally.

## Part II - Practising requirements

The Practising Requirements section sets out the rules governing the circumstances in which individuals may practise as a barrister, exercise rights of audience and supply legal services to the public. Part II also contains the requirement to be insured and the prohibition on barristers practising in partnership.

### 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 an Authorised 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 practising certificate issued by the Bar Council (acting by the Bar Standards Board) pursuant to the Practising Certificate Rules (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 an Authorised Body the nature of his role and the name, address, email address, telephone number and name of the Authorised Body and of its Approved Regulator.

202A. 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 has been authorised to practise by another approved regulator 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. 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 an Authorised 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 an Authorised 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 an Authorised Body, the name, address, email address, telephone number and the name of the Authorised Body and its Approved Regulator
  - (ii) Unless he is employed only to offer services to his employer or to the Authorised Body of which he is an employee he (or, if he is supplying legal services to clients of his employer or a Authorised 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 Authorised 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.

### **Immigration advice and services**

206A A barrister who holds a practising certificate in force on 1 April 2011, or issued after that date, is authorised to provide immigration advice and services.

### **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 Authorised 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 Authorised Body and of instructions received by the barrister from the employer or Authorised 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 Authorised Body of) the interest to the client in writing before the barrister refers a client to the employer or Authorised Body or before accepting instructions from the employer or Authorised 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.



## Part III - Fundamental principles

The Fundamental Principles section includes the duty to not act dishonestly or bring the profession into disrepute, the duties to the court and to act in the best interest of the client. It also contains the duties to the Legal Services Commission, the duty to not discriminate on grounds of race, sex, age, disability etc. and the duty to maintain independence.

### Applicable to all barristers

301. A barrister must have regard to paragraph 104 and must not:
- (a) engage in conduct whether in pursuit of his profession or otherwise which is:
    - (i) dishonest or otherwise discreditable to a barrister;
    - (ii) prejudicial to the administration of justice; or
    - (iii) likely to diminish public confidence in the legal profession or the administration of justice or otherwise bring the legal profession into disrepute;
  - (b) engage directly or indirectly in any occupation if his association with that occupation may adversely affect the reputation of the Bar or in the case of a practising barrister prejudice his ability to attend properly to his practice.

### Applicable to practising barristers

302. A barrister has an overriding duty to the Court to act with independence in the interests of justice: he must assist the Court in the administration of justice and must not deceive or knowingly or recklessly mislead the Court.
303. A barrister:
- (a) must promote and protect fearlessly and by all proper and lawful means the lay client's best interests and do so without regard to his own interests or to any consequences to himself or to any other person (including any colleague, professional client or other intermediary or another barrister, the barrister's employer or any Authorised Body of which the barrister may be an owner or manager);
  - (b) owes his primary duty as between the lay client and any other person to the lay client and must not permit any other person to limit his discretion as to how the interests of the lay client can best be served;
  - (c) when supplying legal services funded by the Legal Services Commission as part of the Community Legal Service or the Criminal Defence Service owes his primary duty to the lay client subject only to compliance with paragraph 304.

304. A barrister who supplies legal services funded by the Legal Services Commission as part of the Community Legal Service or the Criminal Defence Service must in connection with the supply of such services comply with any duty imposed on him by or under the Access to Justice Act 1999 or any regulations or code in effect under that Act and in particular with the duties set out in Annex E.
- 305.1. A barrister must not, in his professional practice, discriminate unlawfully against, victimise or harass any other person on the grounds of race, colour, ethnic or national origin, nationality, citizenship, sex, gender re-assignment, sexual orientation, marital or civil partnership status, disability, age, religion or belief or pregnancy and maternity.
- 305.2. Deleted from 1st October 2005.
306. A barrister is individually and personally responsible for his own conduct and for his professional work: he must exercise his own personal judgement in all his professional activities.
307. A barrister must not:
- (a) permit his absolute independence integrity and freedom from external pressures to be compromised;
  - (b) do anything (for example accept a present) in such circumstances as may lead to any inference that his independence may be compromised;
  - (c) compromise his professional standards in order to please his client the Court or a third party, including any mediator ;
  - (d) give a commission or present (save for small promotional items ) or lend any money for any professional purpose to or (save as a remuneration in accordance with the provisions of this Code) accept any money by way of loan or otherwise from any client or any person entitled to instruct him as an intermediary;
  - (e) make any payment (other than a payment for advertising or publicity permitted by this Code or in the case of a self-employed barrister remuneration paid to any clerk or other employee or staff of his chambers) to any person for the purpose of procuring professional instructions;
- Provided that nothing in paragraph 307(d) or (e) shall prevent a barrister from paying a reasonable fee or fees required by an alternative dispute resolution body that appoints or recommends persons to provide mediation, arbitration or adjudication services, or from entering into a reasonable fee-sharing arrangement required by such a body, if the payment or arrangement is of a kind similar to that made by other persons who provide such services through the body;
- (f) Deleted from 26th March 2010.

## Part IV - Self-employed barristers

This section concerns self-employed barristers only. It provides for the circumstances in which they can accept instructions. This section also contains further rules governing insurance, the duties of barristers and heads of chambers to administer their practice efficiently, and the rules about fees.

### Instructions

- 401 A self-employed barrister whether or not he is acting for a fee:
- (a) may supply legal services only if appointed or instructed by a Court or if instructed:<sup>1</sup>
    - (i) by a professional client; or
    - (ii) by a licensed access client, in which case he must comply with the Licensed Access Rules (reproduced in Annex F1); or
    - (iii) subject to paragraph 204(c), by or on behalf of any other lay client, in which case he must comply with the Public Access Rules (reproduced in Annex F2); or
  - (b) must not in the course of his practice, except as permitted by the Public Access Rules:
    - (i) undertake the management administration or general conduct of a lay client's affairs;
    - (ii) conduct litigation (for example issuing any claim or process or instructing any expert witness or other person on behalf of his lay client or accepting personal liability for the payment of any such person) and must not conduct correspondence or other work involving other parties save as permitted by rule 401A below.
    - (iii) conduct a case in court if the barrister has previously investigated or collected evidence for that case unless the barrister reasonably believes that the investigation and collection of that evidence is unlikely to be challenged.
    - (iv) attend at a police station without the presence of a solicitor to advise a suspect or interviewee as to the handling and conduct of police interviews unless the barrister has complied with such training requirements as may be imposed by the Bar Standards Board in respect of such work.
    - (v) act as a supervisor for the purposes of section 84(2) of the Immigration and Asylum Act 1999.
    - (vi) Conduct in court any criminal proceedings in which the barrister has attended at a police station for any defendant in connection with those

proceedings or any associated proceedings unless the barrister reasonably believes that nothing said, done, heard or seen by the barrister at the police station might require him/her to give evidence in those proceedings.

### **Conduct of correspondence**

401A.1 If instructed to do so, a self-employed barrister may conduct correspondence with other parties (in the form of letters, faxes, emails or the like) provided that the barrister:

- (a) is satisfied that it is in the lay client's best interests that the barrister does so and that he has adequate systems, experience and resources for managing appropriately such correspondence; and;
- (b) has adequate insurance cover in the event that the lay client suffers any loss arising from the conduct of the correspondence for which the barrister is responsible.

401A.2 Where a barrister conducts such correspondence and is aware that another party has a solicitor or barrister representing that party, the barrister must not correspond directly with that party.

### **Insurance**

402.1 Every self-employed barrister (other than a pupil who is covered under his pupil supervisor's insurance) and a barrister called to the Bar under Part IV (E) of the Consolidated Regulations must be entered as a member with BMIF.

402.2 Every barrister entered as a member with BMIF shall:

- (a) pay immediately when due the appropriate insurance premium required by BMIF for the purpose of insurance against claims for professional negligence for such amount and upon such terms as may be approved by the Bar Council from time to time;
- (b) supply immediately upon being requested to do so such information as BMIF may from time to time require pursuant to its Rules.

### **Administration and conduct of self-employed practice**

403.1 Except as permitted in paragraphs 403.2 and 403.3, a self-employed barrister must not share office facilities or other premises and must not practise in any association with any person other than a self-employed barrister or any of the following:

- (a) a registered European lawyer;
- (b) subject to compliance with the Foreign Lawyers (Chambers) Rules (reproduced in Annex H) and with the consent of the Bar Standards Board a foreign lawyer;
- (c) a non-practising barrister
- (d) a person who is:

- (i) a lawyer from a jurisdiction other than England and Wales;
- (ii) a retired judge; or
- (iii) an employed barrister

to the extent that that person is practising as an arbitrator or mediator.

403.2 A self-employed barrister:

May share office facilities or other premises with any person or persons (not falling within 403.1 above) and will not be treated as thereby practising in breach of rule 403.1, provided that:

- (i) there is complete separation of the services provided by the barrister and the services provided by any person with whom the barrister shares the office facilities or premises;
- (ii) nothing is done that might reasonably create the impression that there is any sharing of work, income or profits of the businesses;
- (iii) the barrister has effective arrangements in place to protect the confidentiality of clients' affairs;
- (iv) there is no general referral arrangement or understanding between the barrister and the person or persons with whom the barrister is sharing; and
- (v) prior notification in writing of the sharing, identifying the premises in question and the names and occupations of the persons or body with whom the barrister is sharing, has been given to the Bar Standards Board by the barrister.

403.3 The restrictions in paragraphs (i), (ii) and (iv) in paragraph 403.2 shall not apply where barristers share premises with any entity which is controlled by them and used as permitted for the purposes of and ancillary to their practice as self-employed barristers.

403.4 Where a self-employed barrister shares premises with other persons under paragraph 403.2, the barrister must keep available for inspection by the Bar Standards Board a record of any work or clients referred to the barrister by any such persons or referred to any such persons by the barrister, and of the reasons for any referral made by the barrister.

403.5 A self-employed barrister:

- (a) must take all reasonable steps to ensure that:
  - (i) his practice is efficiently and properly administered having regard to the nature of his practice;
  - (ii) proper records are kept;
  - (iii) he complies with the Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988 as amended and in force from time to time (reproduced in Annex G1) and

with any Withdrawal of Credit Direction issued by the Chairman of the Bar pursuant thereto.

- (b) must have ready access to library facilities which are adequate having regard to the nature of his practice;
- (c) must have regard to any relevant guidance issued by the Bar Council and Bar Standards Board including guidance as to:
  - (i) the administration of chambers;
  - (ii) pupillage and further training; and
  - (iii) good equal opportunities practice.
- (d)
  - (i) must deal with all complaints made to him promptly, courteously and in a manner which addresses the issues raised; and
  - (ii) must have and comply with an effective written complaints procedure and make copies of the procedure available to a client on request; and
  - (iii) meet all the requirements set out in Annexe S to the Code.

### **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;
- (d) 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);

- (e) all barristers practising from his chambers comply with paragraph 403.5 (a)(iii);
- (f) 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.
- (g) 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);
- (h) 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.
- (i) every barrister practising from his chambers has a practising certificate issued by the Bar Council (acting by the Bar Standards Board) pursuant to the Practising Certificate Rules (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

### **Fees and remuneration**

405 Subject to paragraph 307 a self-employed barrister may charge for any work undertaken by him (whether or not it involves an appearance in Court) on any basis or by any method he thinks fit provided that such basis or method:

- (a) is permitted by law;
- (b) does not involve the payment of a wage or salary.

- 406.1 A self-employed barrister who receives fees in respect of work done by another barrister must himself and without delegating the responsibility to anyone else pay forthwith the whole of the fee in respect of that work to that other barrister.
- 406.2 Subject to paragraph 805 a self-employed barrister who arranges for another barrister to undertake work for him (other than a pupil or a person who has asked to do the work in order to increase his own skill or experience) must himself and without delegating the responsibility to anyone else:
- (a) pay proper financial remuneration for the work done;
  - (b) make payment within a reasonable time and in any event within three months after the work has been done unless otherwise agreed in advance with the other person.

### **Client money securities and other assets**

407. A self-employed barrister must not receive or handle client money securities or other assets other than by receiving payment of remuneration.

### **Equality and Diversity**

- 408 A self-employed barrister must take reasonable steps:
- 408.1 to ensure that in relation to their chambers:
- (a) there is in force a written statement of policy on equality and diversity; and
  - (b) there is in force a written plan implementing that policy.
- 408.2 to ensure that their chambers complies with the following requirements:

### **Equality and Diversity Officer**

- (a) Their chambers must have at least one Equality and Diversity Officer.

### **Training**

- (b) From 1 January 2013, the member with lead responsibility for any committee or panel responsible for the selection of members of chambers, pupils, clerks or assessed mini-pupils and at least one member of the selection panel, who may be the same person, must have received recent and appropriate training in fair recruitment and selection processes, except in unforeseen and exceptional circumstances.
- (c) From 1 July 2014, save in exceptional circumstances, every member of all selection panels involved in the recruitment of members, pupils, clerks and assessed mini-pupils must be trained in fair recruitment and selection processes.

### **Fair and Objective Criteria**

- (d) Their chambers' recruitment and selection processes must use objective and fair criteria.

### **Equality monitoring**



- (e) Their chambers must regularly review:
  - (i) the number and percentages of staff, barristers, pupils and assessed mini-pupils from different groups;
  - (ii) applications for assessed mini-pupillage, pupillage, staff and membership of chambers;
  - (iii) the allocation of unassigned work.

This review must include:

- (i) collecting and analysing data broken down by race, disability and gender;
- (ii) investigating the reasons for any disparities in that data; and
- (iii) taking appropriate remedial action.

#### Fair Access to work

- (f) The affairs of their chambers must be conducted in a manner which is fair and equitable for all members of chambers and pupils. This includes, but is not limited to, the fair distribution of work amongst pupils and members of chambers.

#### Harassment

- (g) Their chambers must have a written anti-harassment policy which must:
  - (i) state that harassment will not be tolerated or condoned and that employees, members of chambers, pupils and others temporarily in chambers such as mini-pupils have a right to complain if it occurs;
  - (ii) set out how the policy will be communicated;
  - (iii) set out the procedure for dealing with complaints of harassment.

#### Parental leave

- (h) Their chambers must have a parental and adoption leave policy which covers:
  - (i) The right of a member of chambers to return to chambers after a specified period (which must be at least one year) of parental or adoption leave;
  - (ii) The extent to which a member of chambers is or is not required to contribute to chambers' rent and expenses during parental leave. This includes, but is not limited to, the method of calculation of any waiver, reduction or reimbursement of chambers' rent and expenses during parental leave;
  - (iii) The procedure for dealing with grievances under the policy;
  - (iv) Chambers' commitment to review regularly the effectiveness of the policy.

## Rent

- (i) Where rent is paid on a flat rate basis, their chambers must offer members taking a period of parental leave, or leave following adoption, a minimum of 6 months free of chambers' rent.

## Flexible Working

- (j) Their chambers must have a flexible working policy which covers the right of a member of chambers to take a career break, to work part time, to work flexible hours or to work from home to enable them to manage their family responsibilities or disability and remain in practice.

## Reasonable Adjustments Policy

- (k) Their chambers must have a reasonable adjustments policy aimed at supporting disabled clients, barristers and visitors to chambers.

## Appointment of Diversity Data Officer

- (l) Their chambers must have a Diversity Data Officer (DDO).
- (m) Their chambers must provide the name and contact details of the DDO to the Bar Standards Board (BSB) and must notify the BSB of any change to the identity of the DDO, as soon as reasonably practicable.

## Responsibilities of Diversity Data Officer

- (n) The DDO shall comply with the requirements in relation to the collection, processing and publication of Diversity Data set out in the paragraphs (o) to (t) below.

## Collection and Publication of Diversity Data

- (o) The DDO shall, invite the Members of the Workforce to provide Diversity Data in respect of themselves to the DDO using the model questionnaire at Annex C of the BSB Guidance on these rules.
- (p) The DDO shall ensure that such data is anonymised and that an accurate and updated summary of it is published on chambers' website in the first instance by 31st December 2012 and thereafter every three years. If the chambers does not have a website, the DDO shall make such data available to the public on request.
- (q) The published summary of anonymised data shall:
  - (i) exclude Diversity Data relating to the characteristics of sexual orientation and religion or belief, unless there is consent from each of the Members of the Workforce; and
  - (ii) exclude Diversity Data in relation to any characteristic where there is a real risk that individuals could be identified, unless all affected individuals consent; and

- (iii) subject to the foregoing, include anonymised data in relation to each characteristic, categorised by reference to the job title and seniority of the Members of the Workforce.
  - (r) The DDO shall:
    - (i) ensure that chambers has in place a written policy statement on the collection, publication, retention and destruction of Diversity Data which shall include an explanation that the provision of Diversity Data is voluntary;
    - (ii) notify the Members of the Workforce of the contents of the written policy statement; and
    - (iii) obtain explicit consent from individual Members of the Workforce to the provision and processing of their Diversity Data in accordance with the written policy statement and these rules, in advance of collecting their Diversity Data.
  - (s) The DDO shall have effective systems and controls in place to ensure that any Diversity Data provided to the DDO is collected and held securely and in accordance with the Data Protection Act 1998.
  - (t) The DDO shall take all reasonable steps to ensure that the Diversity Data is not shared with any third parties except as permitted under these rules.
- 409 For the purposes of rule 408, the steps which it is reasonable for a barrister to take will depend on all the circumstances, which include, but are not limited to:
- (a) the arrangements in place in their chambers for the management of chambers; and
  - (b) any role which they play in those arrangements.

<sup>1</sup> paragraph 401(a) amended 25 January 2011

## Part V - Employed barristers

This section sets out the rules governing Employed Barristers.

### **Barristers employed other than by Authorised Bodies**

501. An employed barrister whilst acting in the course of his employment may supply legal services to his employer and to any of the following persons:
- (a) any employee, director or company secretary of the employer in a matter arising out of or relating to that person's employment;
  - (b) where the employer is a public authority (including the Crown or a Government department or agency or a local authority):
    - (i) another public authority on behalf of which the employer has made arrangements under statute or otherwise to supply any legal services or to perform any of that other public authority's functions as agent or otherwise;
    - (ii) in the case of a barrister employed by or in a Government department or agency, any Minister or Officer of the Crown;
  - (c) where the barrister is or is performing the functions of a justices' clerk, the justices whom he serves;
  - (d) where the barrister is employed by a trade association, any individual member of the association.
502. An employed barrister may supply legal services only to the persons referred to in paragraph 501 and must not supply legal services to any other person save that whilst acting in the course of his employment:
- (a) a barrister employed by the Legal Services Commission may supply legal services to members of the public;
  - (b) a barrister employed by or at a Legal Advice Centre may supply legal services to clients of the Legal Advice Centre;
  - (c) any employed barrister may supply legal services to members of the public free of charge (to any person).
503. A barrister employed to supply legal services under a contract for services may be treated as an employed barrister for the purpose of this Code provided that the contract is:
- (a) in writing;
  - (b) (subject to any provision for earlier termination on notice) for a determinate period;
  - (c) not a contract with an Authorised Body.

504. An employed barrister shall have a right to conduct litigation in relation to every Court and all proceedings before any Court and may exercise that right provided that he complies with the Employed Barristers (Conduct of Litigation) Rules (reproduced in Annex I).
505. An employed barrister must not receive or handle client money securities or other assets other than by receiving payment of remuneration or where the money or other asset belongs to his employer.

**Barristers employed by and/or managers of Authorised Bodies**

506. A barrister who is a manager of or employed by an Authorised Body shall have a right to conduct litigation in relation to every Court and to all proceedings before a Court and may exercise that right provided that the barrister complies with the Employed Barristers (Conduct of Litigation) Rules (reproduced in Annex I) and with the rules of the Approved Regulator of the Authorised Body.
507. A barrister who is employed by a Authorised Body but is not a manager of that body must not receive or handle client money securities or other assets other than by receiving payment of remuneration or where the money or other asset belongs to that body.
508. A barrister employed by an Authorised Body to supply legal services under a contract for services may be treated as an employee of an Authorised Body for the purposes of this Code provided that the contract is in writing.

## Part VI - Acceptance and return of instructions

This section deals with the occasion on which barristers are required to accept instructions (the "Cab Rank rule"), when they are required to refuse or withdraw from a case and when they may choose to refuse or withdraw from a case.

### Acceptance of instructions and the 'Cab-rank rule'

601. A barrister who supplies advocacy services must not withhold those services:
- (a) on the ground that the nature of the case is objectionable to him or to any section of the public;
  - (b) on the ground that the conduct opinions or beliefs of the prospective client are unacceptable to him or to any section of the public;
  - (c) on any ground relating to the source of any financial support which may properly be given to the prospective client for the proceedings in question (for example, on the ground that such support will be available as part of the Community Legal Service or Criminal Defence Service).
602. A self-employed barrister must comply with the 'Cab-rank rule' and accordingly except only as otherwise provided in paragraphs 603 604 605 and 606 he must in any field in which he professes to practise in relation to work appropriate to his experience and seniority and irrespective of whether his client is paying privately or is publicly funded:
- (a) accept any brief to appear before a Court in which he professes to practise;
  - (b) accept any instructions;
  - (c) act for any person on whose behalf he is instructed;
- and do so irrespective of (i) the party on whose behalf he is instructed (ii) the nature of the case and (iii) any belief or opinion which he may have formed as to the character reputation cause conduct guilt or innocence of that person.
603. A barrister must not accept any instructions if to do so would cause him to be professionally embarrassed and for this purpose a barrister will be professionally embarrassed:
- (a) if he lacks sufficient experience or competence to handle the matter;
  - (b) if having regard to his other professional commitments he will be unable to do or will not have adequate time and opportunity to prepare that which he is required to do;
  - (c) if the instructions seek to limit the ordinary authority or discretion of a barrister in the conduct of proceedings in Court or to require a barrister to act otherwise than in conformity with law or with the provisions of this Code;

- (d) if the matter is one in which he has reason to believe that he is likely to be a witness or in which whether by reason of any connection with the client or with the Court or a member of it or otherwise it will be difficult for him to maintain professional independence or the administration of justice might be or appear to be prejudiced;
- (e) if there is or appears to be a conflict or risk of conflict either between the interests of the barrister and some other person or between the interests of any one or more clients (unless all relevant persons consent to the barrister accepting the instructions);
- (f) if there is a significant risk that information confidential to another client or former client might be communicated to or used for the benefit of anyone other than that client or former client without their consent;
- (g) if he is a self-employed barrister where the instructions are delivered by a solicitor or firm of solicitors in respect of whom a Withdrawal of Credit Direction has been issued by the Chairman of the Bar pursuant to the Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988 as amended and in force from time to time (reproduced in Annex G1) unless his fees are to be paid directly by the Legal Services Commission or the instructions are accompanied by payment of an agreed fee or the barrister agrees in advance to accept no fee for such work or has obtained the consent of the Chairman of the Bar.
- (h) If the barrister is instructed by or on behalf of a lay client who has not also instructed a solicitor or other professional client, and if the barrister is satisfied that it is in the interests of the client or in the interests of justice for the lay client to instruct a solicitor or other professional client.

604. Subject to paragraph 601 a self-employed barrister is not obliged to accept instructions:

- (a) requiring him to do anything other than during the course of his ordinary working year;
- (b) other than at a fee which is proper having regard to:
  - (i) the complexity length and difficulty of the case;
  - (ii) his ability experience and seniority; and
  - (iii) the expenses which he will incur;

and any instructions in a matter funded by the Legal Services Commission as part of the Community Legal Service or the Criminal Defence Service for which the amount or rate of the barrister's remuneration is prescribed by regulation or subject to assessment shall for this purpose unless the Bar Council or the Bar in general meeting otherwise determines (either in a particular case or in any class or classes of case or generally) be deemed to be at a proper professional fee.<sup>12</sup> .

- (c) to do any work under a conditional fee agreement;
- (d) save in a matter funded by the Legal Services Commission as part of the Community Legal Service or the Criminal Defence Service:
  - (i) unless and until his fees are agreed;
  - (ii) if having required his fees to be paid before he accepts the instructions those fees are not paid;
- (e) from anyone other than a professional client who accepts liability for the barrister's fees;
- (f) in a matter where the lay client is also the professional client;<sup>3</sup>
- (g) to do any work under the Contractual Terms on which Barristers offer their Services to Solicitors 2001 as amended and in force from time to time (reproduced in Appendix G2) or on any other contractual terms,
- (h) where the potential liability for professional negligence in respect of the case could exceed the level of professional indemnity insurance which is reasonably available and likely to be available in the market for him to accept.<sup>4</sup>
- (i) to investigate or collect evidence (save for taking proofs of evidence or preparing witness statements urgently as part of the barrister's conduct of the case at court), to attend at a police station with or without a solicitor, or to conduct correspondence with other parties (save where reasonably necessary as part of the barrister's conduct of the case at court).<sup>5</sup>

605. A self-employed Queen's Counsel is not obliged to accept instructions:

- (a) to settle alone any document of a kind generally settled only by or in conjunction with a junior;
- (b) to act without a junior if he considers that the interests of the lay client require that a junior should also be instructed.

606.1 A barrister (whether he is instructed on his own or with another advocate) must in the case of all instructions consider whether consistently with the proper and efficient administration of justice and having regard to:

- (a) the circumstances (including in particular the gravity complexity and likely cost) of the case;
- (b) the nature of his practice;
- (c) his ability experience and seniority; and
- (d) his relationship with the client;

the best interests of the client would be served by instructing or continuing to instruct him in that matter.



- 606.2 Where a barrister is instructed in any matter with another advocate or advocates the barrister must in particular consider whether it would be in the best interests of the client to instruct only one advocate or fewer advocates.
- 606.3 A barrister who in any matter is instructed either directly by the lay client or by an intermediary who is not a solicitor or other authorised litigator should consider whether it would be in the interests of the lay client or the interests of justice to instruct a solicitor or other authorised litigator or other appropriate intermediary either together with or in place of the barrister.
- 606.4 In cases involving several parties, a barrister must on receipt of instructions and further in the event of any change of circumstances consider whether, having regard to all the circumstances including any actual or potential conflict of interest, any client ought to be separately represented or advised or whether it would be in the best interests of any client to be jointly represented or advised with another party.
607. If at any time in any matter a barrister considers that it would be in the best interests of any client to have different representation, he must immediately so advise the client.

#### **Withdrawal from a case and return of instructions**

608. A barrister must cease to act and if he is a self-employed barrister must return any instructions:
- (a) if continuing to act would cause him to be professionally embarrassed within the meaning of paragraph 603 provided that if he would be professionally embarrassed only because it appears to him that he is likely to be a witness on a material question of fact he may retire or withdraw only if he can do so without jeopardising the client's interests;
  - (b) if having accepted instructions on behalf of more than one client there is or appears to be:
    - (i) a conflict or risk of conflict between the interests of any one or more of such clients; or
    - (ii) risk of a breach of confidence;and the clients do not all consent to him continuing to act;
  - (c) if in any case funded by the Legal Services Commission as part of the Community Legal Service or Criminal Defence Service it has become apparent to him that such funding has been wrongly obtained by false or inaccurate information and action to remedy the situation is not immediately taken by the client;
  - (d) if the client refuses to authorise him to make some disclosure to the Court which his duty to the Court requires him to make;
  - (e) if having become aware during the course of a case of the existence of a document which should have been but has not been disclosed on discovery the client fails forthwith to disclose it;

- (f) if having come into possession of a document belonging to another party by some means other than the normal and proper channels and having read it before he realises that it ought to have been returned unread to the person entitled to possession of it he would thereby be embarrassed in the discharge of his duties by his knowledge of the contents of the document provided that he may retire or withdraw only if he can do so without jeopardising the client's interests.
609. Subject to paragraph 610 a barrister may withdraw from a case where he is satisfied that:
- (a) his instructions have been withdrawn;
  - (b) his professional conduct is being impugned;
  - (c) advice which he has given in accordance with paragraph 607 or 703 has not been heeded; or
  - (d) there is some other substantial reason for so doing.
610. A barrister must not:
- (a) cease to act or return instructions without having first explained to the client his reasons for doing so;
  - (b) return instructions to another barrister without the consent of the client;
  - (c) return a brief which he has accepted and for which a fixed date has been obtained or (except with the consent of the lay client and where appropriate the Court) break any other engagement to supply legal services in the course of his practice so as to enable him to attend or fulfil an engagement (including a social or non-professional engagement) of any other kind;
  - (d) except as provided in paragraph 608 return any instructions or withdraw from a case in such a way or in such circumstances that the client may be unable to find other legal assistance in time to prevent prejudice being suffered by the client.

<sup>1</sup> On the 30 April 2001 the Bar Council decided that, with effect from 1 May 2001, all cases subject to family graduated fees are no longer deemed to be at a proper professional fee for the purposes of paragraph 604(b).

<sup>2</sup> On the 15th November 2003 the Bar Council decided that, effective immediately, all cases subject to criminal graduated fees are no longer deemed to be at a proper professional fee for the purposes of paragraph 604(b)

<sup>3</sup> Amended 1st September 2005

<sup>4</sup> Amended 1st March 2007

<sup>5</sup> Effective from 31st March 2010

## Part VII - Conduct of work by practising barristers

This section contains the duties of barristers when conducting work, including the general duties to act courteously and promptly, the duty of confidentiality, duties where there is a conflict between clients, duties when drafting documents and appearing in court, the rules concerning contact with witnesses and media comment and advertising.

### General

701. A barrister:

- (a) must in all his professional activities be courteous and act promptly conscientiously diligently and with reasonable competence and take all reasonable and practicable steps to avoid unnecessary expense or waste of the Court's time and to ensure that professional engagements are fulfilled;
- (b) must not undertake any task which:
  - (i) he knows or ought to know he is not competent to handle;
  - (ii) he does not have adequate time and opportunity to prepare for or perform; or
  - (iii) he cannot discharge within the time requested or otherwise within a reasonable time having regard to the pressure of other work;
- (c) must read all instructions delivered to him expeditiously;
- (d) must have regard to any relevant Written Standards for the conduct of Professional Work issued by the Bar Council;
- (e) must inform his client forthwith and subject to paragraph 610 return the instructions to the client or to another barrister acceptable to the client:
  - (i) if it becomes apparent to him that he will not be able to do the work within the time requested or within a reasonable time after receipt of instructions;
  - (ii) if there is an appreciable risk that he may not be able to undertake a brief or fulfil any other professional engagement which he has accepted.
- (f) must ensure that adequate records supporting the fees charged or claimed in a case are kept at least until the last of the following: his fees have been paid, any taxation or determination or assessment of costs in the case has been completed, or the time for lodging an appeal against assessment or the determination of that appeal, has expired, and must provide his professional client or licensed access client or other intermediary or lay client with such records or details of the work done as may reasonably be required.

## **Confidentiality**

702. Whether or not the relation of counsel and client continues a barrister must preserve the confidentiality of the lay client's affairs and must not without the prior consent of the lay client or as permitted by law lend or reveal the contents of the papers in any instructions to or communicate to any third person (other than another barrister, a pupil, in the case of a Registered European Lawyer, the person with whom he is acting in conjunction for the purposes of paragraph 5(3) of the Registered European Lawyers Rules or any other person who needs to know it for the performance of their duties) information which has been entrusted to him in confidence or use such information to the lay client's detriment or to his own or another client's advantage.

## **Conflicts between lay clients and intermediaries**

703. If a self-employed barrister forms the view that there is a conflict of interest between his lay client and a professional client or other intermediary (for example because he considers that the intermediary may have been negligent) he must consider whether it would be in the lay client's interest to instruct another professional adviser or representative and, if he considers that it would be, the barrister must so advise and take such steps as he considers necessary to ensure that his advice is communicated to the lay client (if necessary by sending a copy of his advice in writing directly to the lay client as well as to the intermediary).

## **Drafting documents**

704. A barrister must not devise facts which will assist in advancing the lay client's case and must not draft any statement of case, witness statement, affidavit, notice of appeal or other document containing:
- (a) any statement of fact or contention which is not supported by the lay client or by his instructions;
  - (b) any contention which he does not consider to be properly arguable;
  - (c) any allegation of fraud unless he has clear instructions to make such allegation and has before him reasonably credible material which as it stands establishes a prima facie case of fraud;
  - (d) in the case of a witness statement or affidavit any statement of fact other than the evidence which in substance according to his instructions the barrister reasonably believes the witness would give if the evidence contained in the witness statement or affidavit were being given in oral examination;

provided that nothing in this paragraph shall prevent a barrister drafting a document containing specific factual statements or contentions included by the barrister subject to confirmation of their accuracy by the lay client or witness.

## **Contact with witnesses**

705. A barrister must not:
- (a) rehearse practise or coach a witness in relation to his evidence;

- (b) encourage a witness to give evidence which is untruthful or which is not the whole truth;
- (c) except with the consent of the representative for the opposing side or of the Court, communicate directly or indirectly about a case with any witness, whether or not the witness is his lay client, once that witness has begun to give evidence until the evidence of that witness has been concluded.

### **Attendance of professional client**

706. A self-employed barrister who is instructed by a professional client should not conduct a case in Court in the absence of his professional client or a representative of his professional client unless the Court rules that it is appropriate or he is satisfied that the interests of the lay client and the interests of justice will not be prejudiced.
707. A self-employed barrister who attends Court in order to conduct a case in circumstances where no professional client or representative of a professional client is present may if necessary interview witnesses and take proofs of evidence.

### **Conduct in Court**

708. A barrister when conducting proceedings in Court:
- (a) is personally responsible for the conduct and presentation of his case and must exercise personal judgement upon the substance and purpose of statements made and questions asked;
  - (b) must not unless invited to do so by the Court or when appearing before a tribunal where it is his duty to do so assert a personal opinion of the facts or the law;
  - (c) must ensure that the Court is informed of all relevant decisions and legislative provisions of which he is aware whether the effect is favourable or unfavourable towards the contention for which he argues;
  - (d) must bring any procedural irregularity to the attention of the Court during the hearing and not reserve such matter to be raised on appeal;
  - (e) must not adduce evidence obtained otherwise than from or through the client or devise facts which will assist in advancing the lay client's case;
  - (f) must not make a submission which he does not consider to be properly arguable;
  - (g) must not make statements or ask questions which are merely scandalous or intended or calculated only to vilify insult or annoy either a witness or some other person;
  - (h) must if possible avoid the naming in open Court of third parties whose character would thereby be impugned;
  - (i) must not by assertion in a speech impugn a witness whom he has had an opportunity to cross-examine unless in cross-examination he has given the witness an opportunity to answer the allegation;

- (j) must not suggest that a victim, witness or other person is guilty of crime, fraud or misconduct or make any defamatory aspersion on the conduct of any other person or attribute to another person the crime or conduct of which his lay client is accused unless such allegations go to a matter in issue (including the credibility of the witness) which is material to the lay client's case and appear to him to be supported by reasonable grounds.

### **Conduct in Mediation<sup>1</sup>**

708.1 A barrister instructed in a mediation must not knowingly or recklessly mislead the mediator or any party or their representative.

### **Media comment**

709.1 A barrister must not in relation to any anticipated or current proceedings or mediation<sup>1</sup> in which he is briefed or expects to appear or has appeared as an advocate express a personal opinion to the press or other media or in any other public statement upon the facts or issues arising in the proceedings.

709.2 Paragraph 709.1 shall not prevent the expression of such an opinion on an issue in an educational or academic context.

### **Advertising and publicity**

710.1 Subject to paragraph 710.2 a barrister may engage in any advertising or promotion in connection with his practice which conforms to the British Codes of Advertising and Sales Promotion and such advertising or promotion may include:

- (a) photographs or other illustrations of the barrister;
- (b) statements of rates and methods of charging;
- (c) statements about the nature and extent of the barrister's services;
- (d) information about any case in which the barrister has appeared (including the name of any client for whom the barrister acted) where such information has already become publicly available or, where it has not already become publicly available, with the express prior written consent of the lay client.

710.2 Advertising or promotion must not:

- (a) be inaccurate or likely to mislead;
- (b) be likely to diminish public confidence in the legal profession or the administration of justice or otherwise bring the legal profession into disrepute;
- (c) make direct comparisons in terms of quality with or criticisms of other identifiable persons (whether they be barristers or members of any other profession);
- (d) include statements about the barrister's success rate;
- (e) indicate or imply any willingness to accept instructions or any intention to restrict the persons from whom instructions may be accepted otherwise than in accordance with this Code;

- (f) be so frequent or obtrusive as to cause annoyance to those to whom it is directed.

<sup>1</sup>Amended 23rd March 2005

## Part VIII - Miscellaneous

This section sets out miscellaneous provisions concerning pupillage, working at a Legal Advice Centre, dual qualification and relationships with foreign lawyers.

### Pupils

801. A barrister who is a pupil must:

- (a) comply with Part V of the Bar Training Regulations ;
- (b) apply himself full time to his pupillage save that a pupil may with the permission of his pupil-supervisor or head of chambers take part time work which does not in their opinion materially interfere with his pupillage;
- (c) to the extent that paragraph 702 applies to his pupil supervisor or to any person whom he accompanies to court or whose papers he sees, preserve the confidentiality of the affairs of that person's client in accordance with paragraph 702

802. A barrister who is a pupil may supply legal services as a barrister and exercise a right of audience which he has by reason of being a barrister provided that:

- (a) he has completed or been exempted from the non-practising six months of pupillage; and
- (b) he has the permission of his pupil-supervisor or head of chambers;

provided that such a barrister may during the non-practising six months of pupillage with the permission of his pupil-supervisor or head of chambers accept a noting brief.

803.1 So long as he is a pupil a self-employed barrister may not become or hold himself out as a member of chambers or permit his name to appear anywhere as such a member.

803.2 A barrister who is a pupil of an employed barrister or of a barrister who is a manager or employee of an Authorised Body, or who pursuant to Regulation 42 of the Bar Training Regulations<sup>1</sup> spends any period of external training with such a barrister or with a solicitor shall be treated for the purpose of the Code as if he were during that period employed by the barrister's employer or by the Authorised Body or by the solicitor's firm as the case may be.

### Pupil-supervisors

804. A barrister who is a pupil-supervisor must:

- (a) comply with Part V and Schedule C of the Bar Training Regulations ;
- (b) take all reasonable steps to provide his pupil with adequate tuition supervision and experience;
- (c) have regard to the pupillage guidelines issued from time to time by the Bar Standards Board and to the Equality Code for the Bar.



805. Except where a pupil is in receipt of an award or remuneration which is paid on terms that it is in lieu of payment for any individual item of work, a barrister must pay any pupil (or in the case of an employed barrister ensure that a pupil is paid) for any work done for him which because of its value to him warrants payment.

### **Legal Advice Centres**

806. A barrister may supply legal services at a Legal Advice Centre on a voluntary or part time basis and, if he does so, shall in connection with the supply of those services be treated for the purpose of this Code as if he were employed by the Legal Advice Centre.

807. A barrister who is employed by a Legal Advice Centre:

- (a) must not in any circumstances receive either directly or indirectly any fee or reward for the supply of any legal services to any client of the Legal Advice Centre other than a salary paid by the Legal Advice Centre;
  - (b) must ensure that any fees in respect of legal services supplied by him to any client of the Legal Advice Centre accrue and are paid to the Legal Advice Centre; or to the Access to Justice Foundation or other such charity as prescribed by order made by the Lord Chancellor under s194(8) of the Legal Services Act 2007;
  - (c) must not have any financial interest in the Legal Advice Centre.
- Dual qualification

- 808.1 A barrister who is authorised to practise by another approved regulator and currently entitled to practise as such shall not practise as a barrister.

- 808.2 A barrister who becomes authorised to practise by another approved regulator shall forthwith inform the Bar Standards Board and the Inn(s) of Court of which he is a member in writing of that fact.

- 808.3 A barrister who:

- (a) has had his name struck off the roll of solicitors or been excluded from practise by another approved regulator; or
- (b) has at any time been found guilty of any professional misconduct or is the subject of any continuing disciplinary proceedings in relation to his professional conduct by another approved regulator
- (c) has at any time been refused a practising certificate as a solicitor or had his practising certificate suspended or made subject to a condition

shall not practise as a barrister until the Complaints Committee has considered his case and, if it decides to refer the case to a Disciplinary Tribunal, until the case is finally determined.

- 808.4 A barrister who is authorised to practise by another approved regulator shall not be deemed to be practising as a barrister if he holds himself out as a barrister provided that before supplying legal services to any person or employer, 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 services he may render.

### **Foreign lawyers**

- 809 A barrister called to the Bar under Regulation 78 of the Bar Training Regulations (temporary membership of the Bar) may not practise as a barrister other than to conduct the case or cases specified in the certificate referred to in Regulation 78. They must either be insured with BMIF or be covered by insurance against claims for professional negligence arising out of the supply of his services in England and Wales in such amount and upon such terms as are currently required by the Bar Council and have delivered to the Bar Council a copy of the current insurance policy or the current certificate of insurance issued by the insurer.

## Part IX - Compliance

This section sets out the duty to inform the Bar Standards Board in the event of criminal convictions, bankruptcy etc and the duties concerning the complaints procedure.

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, 408, 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 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.

901.2 Any failure by a barrister to pay a financial penalty within the time prescribed by the Regulations or stipulated by the Bar Standards Board (or any extension thereof) shall constitute professional misconduct.

901.3 In the event that a barrister is given a written warning by the Bar Standards Board, or a financial penalty is imposed upon him for an infringement of the aforementioned provisions of the Code, the barrister shall have a right of appeal to a panel under the provisions of paragraph 23 (3) and (4) of the Disciplinary Rules. The time for bringing such an appeal shall be 28 days from the date upon which the written warning or notice seeking payment of the penalty is deemed to have been received by the Barrister. However, unless the Bar Standards Board agrees or the appeal panel otherwise rules, an appeal shall not operate as a suspension of the requirement to pay the financial penalty or an extension of the time for so doing.

901.4 Any failure by a barrister to comply with the provisions of paragraph 202 of the Code shall constitute professional misconduct if the barrister concerned has failed take the necessary action to cure any relevant non-compliance with the preconditions to practise set out therein, or has failed to pay any financial penalty imposed on him within any time limit prescribed by the relevant Regulations or specified by the Bar Standards Board (or any extension thereof).

901.5<sup>4</sup>

- (1) Any serious failure to comply with the provisions of the Code referred to in paragraph 901.1 above shall constitute professional misconduct.
- (2) A failure to comply with those provisions may be a serious failure:
  - a. due to the nature of the failure; or
  - b. due to the extent of the failure; or

- c. because the failure in question is combined with a failure to comply with any other provision of the Code (whether or not that provision is mentioned in paragraph 901.1); ord. if the barrister has previously failed to comply with the same or any other provision of the Code (whether or not that provision is mentioned in paragraph 901.1).

901.6 If a barrister is given two or more separate written warnings by the Bar Standards Board in a period of three years for infringement of any of the provisions of the Code referred to in paragraph 901.1, or is subjected to an automatic financial penalty for any failure to comply with any such provision of the Code on two separate occasions within a period of three years, then any further failure by him to comply with the provisions of the Code within a period of two years after the later of the written warnings or financial penalties shall constitute professional misconduct even if that failure, taken by itself, would not otherwise be regarded as professional misconduct.

901.7 Any failure by a barrister to comply with any provision of this Code other than those referred to in paragraph 901.1 above shall constitute professional misconduct.

901.8<sup>5</sup> It shall be misconduct under this Code for a barrister to be convicted of misconduct under the rules of another Approved Regulator and the barrister shall be liable to disciplinary action by the Bar Standards Board accordingly.

902. If the declaration made by a barrister on Call to the Bar is found to have been false in any material respect or if the barrister is found to have engaged before Call in conduct which is dishonest or otherwise discreditable to a barrister and which was not, before Call, fairly disclosed in writing to the Benchers of the Inn calling him or if any undertaking given by a barrister on Call to the Bar is breached in any material respect that shall constitute professional misconduct.

903. A barrister is subject to:

- a. the Complaints Rules (reproduced in Annex J);
- b. the Disciplinary Tribunals Regulations (reproduced in Annex K);
- c. the Summary Procedure Rules (reproduced in Annex L);
- d. the Hearings before the Visitors Rules (reproduced in Annex M);
- e. the Interim Suspension Rules (reproduced at Annex N);
- f. the Fitness to Practise Rules (reproduced at Annex O);
- g. the Adjudication Panel and Appeals Rules (reproduced at Annex P) which are concerned with inadequate professional service.

904. Pursuant to the Rules referred to in paragraph 903 a barrister may be directed to provide redress to a lay client for inadequate professional service whether or not such inadequate professional service also constitutes professional misconduct.

905. A barrister must:

- a. if he is practising, or the Bar Council or Bar Standards Board<sup>1</sup> has reason to believe may be practising, as a barrister:

- i. respond promptly to any requirement from the Bar Council or Bar Standards Board<sup>1</sup> for comments on or documents relating to the arrangements made for administering his practice and chambers or office whether or not any complaint has been received or raised arising out of those arrangements;
  - ii. permit the Bar Council or Bar Standards Board<sup>1</sup> or any agent appointed by them to inspect forthwith and on request and at any time which is reasonable having regard to the circumstances and the urgency of the matter any premises from which he practises or is believed to practise as a barrister the arrangements made for administering his practice and chambers or office, and any records relating to such practice and to the administration of his chambers or office.
  - iii.<sup>5</sup> give the Legal Ombudsman all such reasonable assistance requested of them, in connection with the investigation, consideration and determination of complaints under the Ombudsman scheme.
- b. report promptly to the Bar Standards Board<sup>1</sup> if:
  - i. he is a manager of a Recognised Body which is the subject of an intervention by the Approved Regulator of that body;<sup>6</sup>
  - ii. he is charged with an indictable<sup>7</sup> offence;
  - iii. he is convicted of any relevant criminal offence; or
  - iv. he is charged with a disciplinary offence by another Approved Regulator or professional body; or<sup>6</sup>
  - v. he is convicted of a disciplinary offence by another professional body;
- c. report promptly to the Bar Standards Board if;
  - i. bankruptcy proceedings are initiated in respect of or against him;
  - ii. directors disqualification proceedings are initiated against him;
  - iii. a bankruptcy order or directors disqualification order is made against him; or
  - iv. if he enters into an individual voluntary arrangement with his creditors;
- d. where a complaint about a barrister has been made to or by the Bar Standards Board, or where the Bar Standards Board has reasonable grounds for believing that a breach of this Code may have occurred or is about to occur, or where a circumstance referred to in subparagraph (b) or (c) above has been reported to the Bar Standards

Board, respond promptly to any request from the Bar Standards Board for comments or information on the matter whether it relates to him or to another barrister;

- e. respond promptly to any letter of notification sent to him or attend before any tribunal panel body or person when so required pursuant to the rules referred to in paragraph 903;
- f. comply in due time with any sentence or suspension imposed or direction made or undertaking accepted by a tribunal panel body or person pursuant to the rules referred to in paragraph 903.

provided for the avoidance of doubt that nothing in this paragraph shall require a barrister to disclose or produce any document or information protected by law or in circumstances to which paragraph 702, or the equivalent rule of another Approved Regulator to which he is subject<sup>6</sup>, applies.

<sup>1</sup>Amended 26th March 2010

<sup>2</sup>Bar Training Regulations effective from 1st September 2009

<sup>3</sup>Amended 11th November 2010

<sup>4</sup>Amended 18th March 2008

<sup>5</sup>Effective from 6th October 2010

<sup>6</sup>Effective from 26th March 2010

<sup>7</sup>Effective from 20th June 2008

## Part X - Definitions

This section contains the definition of terms used in the Code.

1001. In this Code except where otherwise indicated:

"the Act" means the Courts and Legal Services Act 1990 and where the context permits includes any orders or regulations made pursuant to powers conferred thereby;

"the Act of 1985" means the Administration of Justice Act 1985;

"the Act of 2007" means the Legal Services Act 2007;

"Adjudication Panel" means an adjudication panel constituted under the Adjudication and Appeals Rules (reproduced in Annex P);

"advocacy services" means advocacy services as defined in Section 119 of the Act;

"allocation of unassigned work" for the purposes of rule 408.2(e), includes, but is not limited to work allocated to:

- Pupils;
- Barristers of fewer than four years' standing; and
- Barristers returning from parental leave.

"Appointments Board" means the Board established by the Bar Council to make appointments to the Bar Standards Board and its regulatory committees;

"Approved Regulator" has the same meaning as in section 20(2) of the Act of 2007; 1

"authorised body" means a body that has been authorised by an approved regulator to practise as a licensed body or recognised body;

"authorised litigator" means an authorised litigator as defined in Section 119 of the Act;

"bankruptcy order" includes a bankruptcy order made pursuant to the Insolvency Act 1986 and any similar order made in any jurisdiction in the world;

"Bar" means the Bar of England and Wales;

"Bar Council" means The General Council of the Bar as constituted from time to time or a Committee thereof;

"barrister" means an individual who has been called to the Bar by one of the Inns of Court and who has not ceased to be a member of the Bar; and in Parts III (other than paragraph 301), VI, VII and VIII of this Code means a practising barrister;

"Bar Standards Board" means the Board established to exercise and oversee the regulatory functions of the Bar Council;

"Bar Training Regulations" means the Consolidated Regulations in respect of anything arising before 1st September 2009 and the Bar Training Regulations in respect of anything arising on or after 1st September 2009;

"BMIF" means Bar Mutual Indemnity Fund Limited;

"brief" means instructions to a barrister to appear as an advocate before a Court;

"Call" means Call to the Bar in accordance with the Bar Training Regulations;4

"chambers" means a place at or from which one or more self-employed barristers carry on their practices and also refers where the context so requires to all the barristers (excluding pupils) who for the time being carry on their practices at or from that place;

"client" means lay client or intermediary;

"Company" means a company regulated by an Approved Regulator;

"complaint" means an allegation by any person or by the Bar Standards Board of its own motion of professional misconduct or of inadequate professional service and includes a legal aid complaint;

"Complaints Commissioner" means the person appointed as such under Regulation 17A of the Bar Council Constitution;

"the Complaints Committee" means the Complaints Committee of the Bar Standards Board or its successor; 5

"conditional fee agreement" means a conditional fee agreement as defined in Section 58 of the Act;

"Consolidated Regulations" means the Consolidated Regulations of the Inns of Court;

"Court" includes any court or tribunal or any other person or body whether sitting in public or in private before whom a barrister appears or may appear as an advocate;

"Director" means a director of a company, and includes the director of an Authorised Body which is a company, and in relation to a *societas Europaea* includes:

(a) in a two-tier system, a member of the management organ and a member of the supervisory organ; and

(b) in a one-tier system, a member of the administrative organ;

"Disciplinary Tribunal" means a disciplinary tribunal constituted under the Disciplinary Tribunals Regulations (reproduced in Annex K);

"diversity data" means information relating to the following characteristics in respect of an individual:

- Age;
- Gender;
- Disability;



- Ethnic group;
- Religion or belief;
- Sexual orientation;
- Socio-economic background; and
- Caring responsibilities.

"employed barrister" means a practising barrister who is employed other than by an Authorised Body 6 either under a contract of employment or by virtue of an office under the Crown or in the institutions of the European Communities and who supplies legal services as a barrister in the course of his employment;

"employer" means a person by whom an employed barrister is employed as such and any holding subsidiary or associated company corporate body or firm of that person;

"English law" includes international law and the law of the European Communities;

"Establishment Directive" means Directive 98/5/EC of the European Parliament and of the Council of February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained;

"European lawyer" means a person who is a national of a Member State and who is authorised in any Member State to pursue professional activities under any of the professional titles appearing in article 2(2) of the European Communities (Lawyer's Practice) Order 1999, but who is not any of the following:

- (a) a solicitor or barrister of England and Wales or Northern Ireland; or
- (b) a solicitor or advocate under the law of Scotland.

"family responsibilities", for the purposes of rule 408.2(j), includes caring responsibilities for older, young, or disabled dependants or relatives;

"foreign lawyer" means a person (other than a registered European lawyer or a practising barrister of the bar of England and Wales) who is authorised by a competent professional body to practise in a system of law other than English law;

"harassment" means any form of unwanted conduct in relation to a relevant protected characteristic which has the effect or purpose of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. A single incident may constitute harassment if it is sufficiently serious. The motive or intention of the perpetrator may be (but is not invariably) relevant.

"Hearings before the Visitors" means an appeal hearing constituted under the Hearings before the Visitors Rules 2005 (reproduced in Annex M);

"home professional body" means the body in a Member State which authorises a European lawyer to pursue professional activities under any of the professional titles appearing in article 2(2) of the European Communities (Lawyer's Practice) Order

1999 and, if he is authorised in more than one Member States, it shall mean any such body;

"home professional title" means, in relation to a European lawyer, the professional title or any of the professional titles specified in relation to his home State in article 2(2) of the European Communities (Lawyer's Practice) Order 1999 under which he is authorised in his home State to pursue professional activities;

"home State" means the Member State in which a European lawyer acquired the authorisation to pursue professional activities under his home professional title and, if he is authorised in more than one Member State, it shall mean any such Member State;

"inadequate professional service" means such conduct towards a lay client or performance of professional services for that client which falls significantly short of that which is to be reasonably expected of a barrister in all the circumstances;

"incorporated solicitors' practice" means a body recognised under section 9 of the Act of 1985;

"indictable offence" carries the definition set out in the Serious Organised Crime and Police Act 2005 as defined in Schedule 1 of the Interpretation Act 1978 as "an offence which, if committed by an adult is triable on indictment whether it is exclusively so triable or triable either way";

"Informal Hearing Panel" means an informal hearing panel constituted under paragraph 43 of the Complaints Rules (reproduced in Annex J);

"instructions" means instructions or directions in whatever form (including a brief) given to a practising barrister to supply legal services whether in a contentious or in a non-contentious matter and "instructed" shall have a corresponding meaning;

"Interim Suspension Panel" means a panel constituted under the Interim Suspension Rules (reproduced in Annex N);

"intermediary" means any person by whom a self-employed barrister is instructed on behalf of a lay client and includes a professional client who is not also the lay client;

"International work" shall have the meaning set out in the International Practice Rules (reproduced in Annex A);

"investigating" for the purposes of rule 408.2(e) means considering the reasons for disparities in data such as:

- Under- or over-representation of particular groups, e.g. men, women, different ethnic groups or disabled people;
- Absence or particular groups, e.g. men, women, different ethnic groups or disabled people;
- Success rates of particular groups;

- Over- or under-allocation of unassigned work to particular groups.

"JRC" means the Joint Regulations Committee of the Bar Council or any successor body exercising the same responsibilities by whatever name called;

"lay client" means the person on whose behalf a practising barrister (or where appropriate in the case of an employed barrister his employer) is instructed;

"lay member" means a lay person appointed by the Appointments Board to be a member of the Bar Standards Board or one of its regulatory committees;<sup>8</sup>

"lay representative" means either

(a) a lay person appointed by the President of the Council of the Inns of Court to serve on Disciplinary Tribunals, Summary Procedure Panels, Informal Hearings Panels, Interim Suspension Panels and Appeal Panels therefrom, Adjudication Panels, Adjudication Appeal Panels and Medical Panels and Review Panels therefrom; or

(b) a lay person appointed by the Lord Chief Justice to serve on Hearings before the Visitors

save that no person may be appointed as a lay representative:

(i) if they are a member of the Complaints Committee or of the Bar Standards Board or any of its other Committees; or

(ii) if they were a member of the Complaints Committee at any time when the matter which the Tribunal or panel is dealing with was considered by the Complaints Committee.<sup>9</sup>

"legal aid complaint" shall mean a complaint so described in section 40 of the Act of 1985 as amended by the Access to Justice Act 1999;

"Legal Advice Centre" means a centre operated by a charitable or similar non-commercial organisation at which legal services are habitually provided to members of the public without charge (or for a nominal charge) to the client and:

(a) which employs or has the services of one or more solicitors pursuant to rules 13.04 and 13.09 of the Solicitors Code of Conduct 2007 or for whom the Solicitors Regulation Authority has granted a waiver, or

(b) which has been and remains designated by the Bar Standards Board as suitable for the employment or attendance of barristers subject to such conditions as may be imposed by the Bar Council or Bar Standards Board in relation to insurance or any other matter whatsoever;

"legal services" includes legal advice representation and drafting or settling any statement of case witness statement affidavit or other legal document but does not include:

(a) sitting as a judge or arbitrator or acting as a mediator;

- (b) lecturing in or teaching law or writing or editing law books articles or reports;
- (c) examining newspapers, periodicals, books, scripts and other publications for libel, breach of copyright, contempt of court and the like;
- (d) communicating to or in the press or other media;
- (e) exercising the powers of a commissioner for oaths;
- (f) giving advice on legal matters free to a friend or relative or acting as unpaid or honorary legal adviser to any charitable benevolent or philanthropic institution;
- (g) in relation to a barrister who is a non-executive director of a company or a trustee or governor of a charitable benevolent or philanthropic institution or a trustee of any private trust, giving to the other directors trustees or governors the benefit of his learning and experience on matters of general legal principle applicable to the affairs of the company institution or trust;

"Legal Services Commission" means a body established by or under Section 1 or Section 2 of the Access to Justice Act 1999 and includes any body established and maintained by such a body;

"Licensed Access client" means a person or organisation approved as such by the Bar Standards Board in accordance with the Licensed Access Recognition Regulations (reproduced in Annex F);

'licensed body' means a body licensed by a licensing authority, other than the Bar Standards Board, under Part 5 of the LSA.

"litigation services" means litigation services as defined in Section 119 of the Act;

"LLP" means a limited liability partnership formed by being incorporated under the Limited Liability Partnerships Act 2000;

"Manager" means a barrister who is: 10

- (a) a partner in a partnership;
- (b) a member of an LLP; or
- (c) a director of a company

which is an Authorised Body;

"Mediation" mediation is a process whereby the parties to a dispute appoint a neutral person (mediator) to assist them in the resolution of their dispute;

"Medical Panel" means a panel constituted under the Fitness to Practise Rules (reproduced in Annex O);

"Member State" means a state which is a member of the European Communities;

"members of the workforce" in respect of a chambers will include barristers, pupils, clerks and staff;

"non-practising barrister" means a barrister who is not a practising barrister;

"the Professional Conduct and Complaints Committee" or "PCC" means the Professional Conduct and Complaints Committee of the Bar Council or any successor body exercising the same responsibilities by whatever name called;

"owner" in relation to a body means a person with any ownership interest in that body;

parental leave" means leave taken by the main carer of a child preceding or following birth or adoption. This could be the mother, father or adoptive parent of either sex;

"partner" means a person who is or is held out as a partner in an unincorporated firm;<sup>13</sup>

"partnership" means an unincorporated partnership, and includes any unincorporated firm in which persons are or are held out as partners, but does not include an LLP;<sup>13</sup>

"practising barrister" means a barrister who is practising as such within the meaning of paragraph 201;

"the President" means the President of the Council of the Inns of Court;

"professional client" means a solicitor with a current practising certificate or other professional person by whom a self-employed barrister is instructed that is to say:

(a) solicitors' firm, LLP or company, Authorised Body regulated by the Solicitors Regulation Authority<sup>13</sup> or othr approved regulator, authorised litigator, Parliamentary agent, patent agent, European Patent Attorney, trade mark agent, Notary or a European lawyer registered with the Law Society of England and Wales;

(b) a licensed conveyancer in a matter in which the licensed conveyancer is providing conveyancing services;

(c) an employed barrister or registered European lawyer;

(d) any practising barrister or registered European lawyer acting on his own behalf;

(e) a foreign lawyer in a matter which does not involve the barrister supplying advocacy services;

(f) a Scottish or Northern Irish Solicitor

(g) the representative of any body (such as a Legal Advice Centre or Pro Bono or Free Representation Unit) which arranges for the supply of legal services to the public without a fee, and which has been and remains designated by the Bar Standards Board (subject to such conditions as may be imposed by the Bar Council or Bar Standards Board in relation to insurance or any other matter whatsoever) as suitable for the instruction of barristers, and which instructs a barrister to supply legal services without a fee;

"professional misconduct" shall bear the meaning given in paragraphs 901 and 902;

"the public" includes any lay client of a practising barrister (or in the case of an employed barrister of the barrister's employer) other than any of the persons referred to in Paragraph 501;

"public access instructions" means instructions given to a barrister by or on behalf of a lay client pursuant to paragraph 401(a)(iii);

"the Qualifications Committee" means the Qualifications Committee of the Bar Standards Board or its successor;

"the Quality Assurance Committee" means the Quality Assurance Committee of the Bar Standards Board or its successor;

"Recognised Body" means a partnership, LLP, company or sole principal authorised to provide reserved legal services by an Approved Regulator other than the Bar Standards Board other than a licensable body as defined in s.72 of the Act of 2007 but does not include a body which is deemed to be authorised by reason of s.18(3) of the Act of 2007;

"registered European lawyer" means a European lawyer registered as such by the Bar Council and by an Inn in accordance with Annexe B;

"regular review" for the purposes of rule 408.2 (e) means as often as is necessary in order to ensure effective monitoring and review takes place. In respect of data on pupils it is likely to be considered reasonable that "regularly" should mean annually. In respect of tenants, due to the static nature of the numbers, it is likely to be considered reasonable that "regularly" should mean every three years;

"relevant criminal offence" means any criminal offence committed in any part of the world except:

(a) an offence committed in the United Kingdom which is a fixed penalty offence for the purposes of the Road Traffic Offenders Act 1988 or any statutory modification or replacement thereof for the time being in force;

(b) an offence committed in the United Kingdom or abroad which is dealt with by a procedure substantially similar to that applicable to such a fixed penalty offence; and

(c) an offence whose main ingredient is the unlawful parking of a motor vehicle;

"remedial action" for the purposes of rule 408.2 (e) means any action aimed at removing or reducing the disadvantage experienced by particular groups;

"right of audience" means a right of audience as defined in Section 119 of the Act;

"right to conduct litigation" means a right to conduct litigation as defined in Section 119 of the Act;

"selection panel" for the purposes of rule 408.2 (b) and (c) means any panel formally tasked with the final decision on recruitment or selection of pupils, clerks, mini-pupils or tenants;

"self-employed barrister" means a practising barrister other than :-

- (a) a barrister who is a manager or employee of a Authorised Body; and
- (b) an employed barrister acting in the course of his employment;

"solicitor" means a solicitor of the Supreme Court of England and Wales;

"the Standards Committee" means the Standards Committee of the Bar Standards Board or its successor; 8

"Summary Procedure Panel" means a panel constituted under the Summary Procedure Rules (reproduced in Annex L);

"trade association" means a body of persons (whether incorporated or not) which is formed for the purpose of furthering the trade interests of its members or of persons represented by its members, and does not include any association formed primarily for the purpose of securing legal assistance for its members;

"training" for the purposes of rule 408.2 (b) and (c) means any course of study covering all the following areas:

- Fair and effective selection & unconscious bias;
- Selection criteria and assessment methods;
- Attraction and advertising;
- Application processes;
- Shortlisting skills;
- Interviewing skills;
- Assessment and making a selection decision;
- Monitoring and evaluation.

Training may be undertaken in any of the following ways:

- Classroom sessions;
- Online sessions;
- Private study of relevant materials such as the BSB Fair Recruitment Guide for the Bar;..
- Completion of CPD covering fair recruitment and selection processes

any reference to the masculine shall be deemed to include the feminine and any reference to the singular shall include the plural.

## Part XI - Transitional provisions

**This section contains the transitional arrangements affecting people who were barristers before this edition of the Code came into force.**

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.



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