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SRA Code of Conduct 2011

Introduction to the SRA Code of Conduct

Overview

Outcomes-focused regulation concentrates on providing positive outcomes which when achieved will benefit and protect *clients* and the public. The SRA Code of Conduct (the Code) sets out our outcomes-focused conduct requirements so that you can consider how best to achieve the right outcomes for your *clients* taking into account the way that your *firm* works and its *client* base. The Code is underpinned by effective, risk-based supervision and enforcement.

Those involved in providing legal advice and representation have long held the role of trusted adviser. There are fiduciary duties arising from this role and obligations owed to others, especially the *court*. No code can foresee or address every issue or ethical dilemma which may arise. You must strive to uphold the intention of the Code as well as its letter.

The Principles

The Code forms part of the Handbook, in which the 10 mandatory *Principles* are all-pervasive. They apply to all those we regulate and to all aspects of *practice*. They define the fundamental ethical and professional standards that we expect of all *firms* and individuals (including owners who may not be *lawyers*) when providing legal services. You should always have regard to the *Principles* and use them as your starting point when faced with an ethical dilemma.

Where two or more *Principles* come into conflict the one which takes precedence is the one which best serves the public interest in the particular circumstances, especially the public interest in the proper administration of justice. Compliance with the *Principles* is also subject to any overriding legal obligations.

You must:

1. uphold the rule of law and the proper administration of justice;
2. act with integrity;
3. not allow your independence to be compromised;
4. act in the best interests of each *client*;
5. provide a proper standard of service to your *clients*;
6. behave in a way that maintains the trust the public places in you and in the provision of legal services;
7. comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and co-operative manner;
8. run your business or carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles;
9. run your business or carry out your role in the business in a way that encourages equality of opportunity and respect for diversity; and
10. protect *client* money and *assets*.

Structure of the Code

The Code is divided into 5 sections:

- You and your client
- You and your business

- You and your regulator
- You and others
- Application, waivers and interpretation

Each section is divided into chapters dealing with particular regulatory issues, for example, client care, *conflicts of interests*, and *publicity*.

These chapters show how the *Principles* apply in certain contexts through mandatory and non-mandatory provisions.

Mandatory provisions

The following provisions are mandatory:

- the outcomes;
- the application and waivers provisions in Chapter 13;
- the interpretations; and
- the transitional provisions in Chapter 15.

The outcomes describe what *firms* and individuals are expected to achieve in order to comply with the relevant *Principles* in the context of the relevant chapter. In the case of *in-house* and *overseas practice*, we have set out at the end of each chapter which outcomes apply and in some cases have specified different outcomes.

In respect of *in-house practice*, different outcomes may apply depending on whether you are acting for your employer or for a *client* other than your employer as permitted by rules 4.1 to 4.10 of the *SRA Practice Framework Rules*.

The outcomes contained in each chapter are not an exhaustive list of the application of all the *Principles*. We have tried to make them as helpful as possible.

Non-mandatory provisions

The following provisions are non-mandatory:

- indicative behaviours;
- notes.

The outcomes are supplemented by indicative behaviours. The indicative behaviours specify, but do not constitute an exhaustive list of, the kind of behaviour which may establish compliance with, or contravention of the *Principles*. These are not mandatory but they may help us to decide whether an outcome has been achieved in compliance with the *Principles*.

We recognise that there may be other ways of achieving the outcomes. Where you have chosen a different method from those we have described as indicative behaviours, we might require you to demonstrate how you have nevertheless achieved the outcome. We encourage *firms* to consider how they can best achieve the outcomes, taking into account the nature of the *firm*, the particular circumstances of the matter and, crucially, the needs of their particular *clients*.

Waivers

Due to the flexibility of approach this structure allows, we do not anticipate receiving many applications for waivers from the mandatory outcomes. The *SRA*, nonetheless, reserves power to waive a provision in exceptional circumstances.

Interpretation

Words shown in italics are defined in the *Glossary*.

Sources of help

You can access the Code and other elements of the Handbook and find information on particular issues on the *SRA* website. You can also seek guidance on professional conduct from our Professional Ethics Guidance Team.

List of contents of the Code

1st section: You and your client

Chapter 1 Client care

Chapter 2 Equality and diversity

Chapter 3 Conflicts of interests

Chapter 4 Confidentiality and disclosure

Chapter 5 Your client and the court

Chapter 6 Your client and introductions to third parties

2nd section: You and your business

Chapter 7 Management of your business

Chapter 8 Publicity

Chapter 9 Fee sharing and referrals

3rd section: You and your regulator

Chapter 10 You and your regulator

4th section: You and others

Chapter 11 Relations with third parties

Chapter 12 Separate businesses

5th section: Application, waivers and interpretation

Chapter 13 Application and waivers provisions

Chapter 14 Interpretation

Chapter 15 Transitional provisions

Preamble

The SRA Code of Conduct dated 17 June 2011 commencing 6 October 2011 made by the Solicitors Regulation Authority Board under sections 31, 79 and 80 of the Solicitors Act 1974, sections 9 and 9A of the Administration of Justice Act 1985 and section 83 of the Legal Services Act 2007, with the approval of the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007, regulating the conduct of solicitors and their employees, registered European lawyers and their employees, registered foreign lawyers, recognised bodies and their managers and employees and licensed bodies and their managers and employees.

1st Section: You and your client

Chapter 1: Client care

This chapter is about providing a proper standard of service, which takes into account the individual needs and circumstances of each *client*. This includes providing *clients* with the information they need to make informed decisions about the services they need, how these will be delivered and how much they will cost. This will enable you and your *client* to understand each other's expectations and responsibilities. This chapter is also about ensuring that if *clients* are not happy with the service they have received they know how to make a *complaint* and that all *complaints* are dealt with promptly and fairly.

Your relationship with your *client* is a contractual one which carries with it legal, as well as conduct, obligations. This chapter focuses on your obligations in conduct.

You are generally free to decide whether or not to accept instructions in any matter, provided you do not discriminate unlawfully (see Chapter 2).

The outcomes in this chapter show how the *Principles* apply in the context of client care.

Outcomes

You must achieve these outcomes:

- O(1.1) you treat your *clients* fairly;
- O(1.2) you provide services to your *clients* in a manner which protects their interests in their matter, subject to the proper administration of justice;
- O(1.3) when deciding whether to act, or terminate your instructions, you comply with the law and the Code;
- O(1.4) you have the resources, skills and procedures to carry out your *clients'* instructions;
- O(1.5) the service you provide to *clients* is competent, delivered in a timely manner and takes account of your *clients'* needs and circumstances;
- O(1.6) you only enter into fee agreements with your *clients* that are legal, and which you consider are suitable for the *client's* needs and take account of the *client's* best interests;
- O(1.7) you inform *clients* whether and how the services you provide are regulated and how this affects the protections available to the *client*;
- O(1.8) *clients* have the benefit of your *compulsory professional indemnity insurance* and you do not exclude or attempt to exclude liability below the minimum level of cover required by the *SRA Indemnity Insurance Rules*;
- O(1.9) *clients* are informed in writing at the outset of their matter of their right to complain and how *complaints* can be made;
- O(1.10) *clients* are informed in writing, both at the time of engagement and at the conclusion of your *complaints* procedure, of their right to complain to the *Legal Ombudsman*, the time frame for doing so and full details of how to contact the *Legal Ombudsman*;
- O(1.11) *clients'* *complaints* are dealt with promptly, fairly, openly and effectively;
- O(1.12) *clients* are in a position to make informed decisions about the services they need, how their matter will be handled and the options available to them;
- O(1.13) *clients* receive the best possible information, both at the time of engagement and when appropriate as their matter progresses, about the likely overall cost of their matter;
- O(1.14) *clients* are informed of their right to challenge or complain about your bill and the circumstances in which they may be liable to pay interest on an unpaid bill;
- O(1.15) you properly account to *clients* for any *financial benefit* you receive as a result of your instructions;
- O(1.16) you inform current *clients* if you discover any act or omission which could give rise to a claim by them against you.

Indicative behaviours

Acting in the following way(s) may tend to show that you have achieved these outcomes and therefore complied with the *Principles*:

Dealing with the client's matter

- IB(1.1) agreeing an appropriate level of service with your *client*, for example the type and frequency of communications;
- IB(1.2) explaining your responsibilities and those of the *client*;
- IB(1.3) ensuring that the *client* is told, in writing, the name and status of the person(s) dealing with the matter and

the name and status of the person responsible for its overall supervision;

- IB(1.4) explaining any arrangements, such as fee sharing or *referral arrangements*, which are relevant to the *client's* instructions;
- IB(1.5) explaining any limitations or conditions on what you can do for the *client*, for example, because of the way the *client's* matter is funded;
- IB(1.6) in taking instructions and during the course of the retainer, having proper regard to your *client's* mental capacity or other vulnerability, such as incapacity or duress;
- IB(1.7) considering whether you should decline to act or cease to act because you cannot act in the *client's* best interests;
- IB(1.8) if you seek to limit your liability to your *client* to a level above the minimum required by the *SRA Indemnity Insurance Rules*, ensuring that this limitation is in writing and is brought to the *client's* attention;
- IB(1.9) refusing to act where your *client* proposes to make a gift of significant value to you or a member of your family, or a member of your *firm* or their family, unless the *client* takes independent legal advice;
- IB(1.10) if you have to cease acting for a *client*, explaining to the *client* their possible options for pursuing their matter;
- IB(1.11) you inform *clients* if they are not entitled to the protections of the SRA Compensation Fund;
- IB(1.12) considering whether a *conflict of interests* has arisen or whether the *client* should be advised to obtain independent advice where the *client* notifies you of their intention to make a claim or if you discover an act or omission which might give rise to a claim;

Fee arrangements with your client

- IB(1.13) discussing whether the potential outcomes of the *client's* matter are likely to justify the expense or risk involved, including any risk of having to pay someone else's legal fees;
- IB(1.14) clearly explaining your fees and if and when they are likely to change;
- IB(1.15) warning about any other payments for which the *client* may be responsible;
- IB(1.16) discussing how the *client* will pay, including whether public funding may be available, whether the *client* has insurance that might cover the fees, and whether the fees may be paid by someone else such as a trade union;
- IB(1.17) where you are acting for a *client* under a fee arrangement governed by statute, such as a conditional fee agreement, giving the *client* all relevant information relating to that arrangement;
- IB(1.18) where you are acting for a publicly funded *client*, explaining how their publicly funded status affects the costs;
- IB(1.19) providing the information in a clear and accessible form which is appropriate to the needs and circumstances of the *client*;
- IB(1.20) where you receive a *financial benefit* as a result of acting for a *client*, either:
 - (a) paying it to the *client*;
 - (b) offsetting it against your fees; or
 - (c) keeping it only where you can justify keeping it, you have told the *client* the amount of the benefit (or an approximation if you do not know the exact amount) and the *client* has agreed that you can keep it;
- IB(1.21) ensuring that *disbursements* included in your bill reflect the actual amount spent or to be spent on behalf of the *client*;

Complaints handling

- IB(1.22) having a written *complaints* procedure which:

- (a) is brought to *clients'* attention at the outset of the matter;
- (b) is easy for *clients* to use and understand, allowing for *complaints* to be made by any reasonable means;
- (c) is responsive to the needs of individual *clients*, especially those who are vulnerable;
- (d) enables *complaints* to be dealt with promptly and fairly, with decisions based on a sufficient investigation of the circumstances;
- (e) provides for appropriate remedies; and
- (f) does not involve any charges to *clients* for handling their *complaints*;

IB(1.23) providing the *client* with a copy of the *firm's complaints* procedure on request;

IB(1.24) in the event that a *client* makes a *complaint*, providing them with all necessary information concerning the handling of the *complaint*.

Acting in the following way(s) may tend to show that you have not achieved these outcomes and therefore not complied with the *Principles*:

Accepting and refusing instructions

IB(1.25) acting for a *client* when instructions are given by someone else, or by only one *client* when you act jointly for others unless you are satisfied that the *person* providing the instructions has the authority to do so on behalf of all of the *clients*;

IB(1.26) ceasing to act for a *client* without good reason and without providing reasonable notice;

IB(1.27) entering into unlawful fee arrangements such as an unlawful contingency fee;

IB(1.28) acting for a *client* when there are reasonable grounds for believing that the instructions are affected by duress or undue influence without satisfying yourself that they represent the *client's* wishes.

In-house practice

Outcomes 1.1 to 1.5, 1.7, 1.15 and 1.16 apply to your *in-house practice*.

Outcomes 1.6 and 1.9 to 1.14 apply to your *in-house practice* where you act for someone other than your employer unless it is clear that the outcome is not relevant to your particular circumstances.

IHP(1.1) Instead of Outcome 1.8 you comply with the *SRA Practice Framework Rules* in relation to professional indemnity insurance.

Overseas practice

The outcomes in this chapter do not apply to your *overseas practice*. Instead you must achieve the following outcomes:

OP(1.1) you properly account to your *clients* for any *financial benefit* you receive as a result of your instructions unless it is the prevailing custom of your local jurisdiction to deal with *financial benefits* in a different way;

OP(1.2) *clients* have the benefit of insurance or other indemnity in relation to professional liabilities which takes account of:

- (a) the nature and extent of the risks you incur in your *overseas practice*;
- (b) the local conditions in the jurisdiction in which you are *practising*; and
- (c) the terms upon which insurance is available;

and you have not attempted to exclude liability below the minimum level required for practice in the local jurisdiction;

OP(1.3) you do not enter into unlawful contingency fee arrangements.

Notes

- (i) The information you give to *clients* will vary according to the needs and circumstances of the individual *client* and the type of work you are doing for them, for example an individual instructing you on a conveyancing matter is unlikely to need the same information as a sophisticated commercial *client* who instructs you on a regular basis.
- (ii) Information about the *Legal Ombudsman*, including the scheme rules, contact details and time limits, can be found at www.legalombudsman.org.uk.

Chapter 2: Equality and diversity

This chapter is about encouraging equality of opportunity and respect for diversity, and preventing unlawful discrimination, in your relationship with your *clients* and others. The requirements apply in relation to age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

Everyone needs to contribute to compliance with these requirements, for example by treating each other, and *clients*, fairly and with respect, by embedding such values in the workplace and by challenging inappropriate behaviour and processes. Your role in embedding these values will vary depending on your role.

As a matter of general law you must comply with requirements set out in legislation - including the Equality Act 2010 - as well as the conduct duties contained in this chapter.

The outcomes in this chapter show how the *Principles* apply in the context of equality and diversity.

Outcomes

You must achieve these outcomes:

- O(2.1)** you do not discriminate unlawfully, or victimise or harass anyone, in the course of your professional dealings;
- O(2.2)** you provide services to *clients* in a way that respects diversity;
- O(2.3)** you make reasonable adjustments to ensure that disabled *clients*, *employees* or *managers* are not placed at a substantial disadvantage compared to those who are not disabled, and you do not pass on the costs of these adjustments to these disabled *clients*, *employees* or *managers*;
- O(2.4)** your approach to recruitment and employment encourages equality of opportunity and respect for diversity;
- O(2.5)** *complaints* of discrimination are dealt with promptly, fairly, openly, and effectively.

Indicative behaviours

Acting in the following way(s) may tend to show that you have achieved these outcomes and therefore complied with the *Principles*:

- IB(2.1)** having a written equality and diversity policy which is appropriate to the size and nature of the *firm* and includes the following features:
 - (a) a commitment to the principles of equality and diversity and legislative requirements;
 - (b) a requirement that all *employees* and *managers* comply with the outcomes;
 - (c) provisions to encompass your recruitment and interview processes;
 - (d) details of how the *firm* will implement, monitor, evaluate and update the policy;
 - (e) details of how the *firm* will ensure equality in relation to the treatment of *employees*, *managers*, *clients* and third parties instructed in connection with *client* matters;
 - (f) details of how *complaints* and disciplinary issues are to be dealt with;
 - (g) details of the *firm's* arrangements for workforce diversity monitoring; and

(h) details of how the firm will communicate the policy to employees, managers and clients;

IB(2.2) providing employees and managers with training and information about complying with equality and diversity requirements;

IB(2.3) monitoring and responding to issues identified by your policy and reviewing and updating your policy.

Acting in the following way(s) may tend to show that you have not achieved these outcomes and therefore not complied with the Principles:

IB(2.4) being subject to any decision of a court or tribunal of the UK, that you have committed, or are to be treated as having committed, an unlawful act of discrimination;

IB(2.5) discriminating unlawfully when accepting or refusing instructions to act for a client.

In-house practice

Outcomes 2.1 and 2.2 apply to all in-house practice.

Instead of outcomes 2.3 to 2.5 you must achieve the following outcome:

IHP(2.1) if you have management responsibilities you take all reasonable steps to encourage equality of opportunity and respect for diversity in your workplace.

Overseas practice

The outcomes in this chapter do not apply to your overseas practice. Instead you must achieve the following outcome:

OP(2.1) you do not discriminate unlawfully according to the jurisdiction in which you are practising.

Notes

- (i) The obligations in this chapter closely mirror your legal obligations. You can obtain further information from the Equality and Human Rights Commission, www.equalityhumanrights.com.
- (ii) See also Chapter 1 (Client care) for the handling of client complaints.
- (iii) See also Chapter 7 (Management of your business) for your obligation to have in place appropriate systems and controls for complying with the outcomes in this chapter.

Chapter 3: Conflicts of interests

This chapter deals with the proper handling of conflicts of interests, which is a critical public protection. It is important to have in place systems that enable you to identify and deal with potential conflicts.

Conflicts of interests can arise between:

1. you and current clients ("own interest conflict"); and
2. two or more current clients ("client conflict").

You can never act where there is a conflict, or a significant risk of conflict, between you and your client.

If there is a conflict, or a significant risk of a conflict, between two or more current clients, you must not act for all or both of them unless the matter falls within the scope of the limited exceptions set out at Outcomes 3.6 or 3.7. In deciding whether to act in these limited circumstances, the overriding consideration will be the best interests of each of the clients concerned and, in particular, whether the benefits to the clients of you acting for all or both of the clients outweigh the risks.

You should also bear in mind that conflicts of interests may affect your duties of confidentiality and disclosure which are dealt with in Chapter 4.

The outcomes in this chapter show how the Principles apply in the context of conflicts of interests.

Outcomes

You must achieve these outcomes:

Systems

- O(3.1)** you have effective systems and controls in place to enable you to identify and assess potential conflicts of interests;
- O(3.2)** your systems and controls for identifying own interest conflicts are appropriate to the size and complexity of the firm and the nature of the work undertaken, and enable you to assess all the relevant circumstances, including whether your ability as an individual, or that of anyone within your firm, to act in the best interests of the client(s), is impaired by:
- (a) any financial interest;
 - (b) a personal relationship;
 - (c) the appointment of you, or a member of your firm or family, to public office;
 - (d) commercial relationships; or
 - (e) your employment;
- O(3.3)** your systems and controls for identifying client conflicts are appropriate to the size and complexity of the firm and the nature of the work undertaken, and enable you to assess all relevant circumstances, including whether:
- (a) the clients' interests are different;
 - (b) your ability to give independent advice to the clients may be fettered;
 - (c) there is a need to negotiate between the clients;
 - (d) there is an imbalance in bargaining power between the clients; or
 - (e) any client is vulnerable;

Prohibition on acting in conflict situations

- O(3.4)** you do not act if there is an own interest conflict or a significant risk of an own interest conflict;
- O(3.5)** you do not act if there is a client conflict, or a significant risk of a client conflict, unless the circumstances set out in Outcomes 3.6 or 3.7 apply;

Exceptions where you may act, with appropriate safeguards, where there is a client conflict

- O(3.6)** where there is a client conflict and the clients have a substantially common interest in relation to a matter or a particular aspect of it, you only act if:
- (a) you have explained the relevant issues and risks to the clients and you have a reasonable belief that they understand those issues and risks;
 - (b) all the clients have given informed consent in writing to you acting;
 - (c) you are satisfied that it is reasonable for you to act for all the clients and that it is in their best interests; and
 - (d) you are satisfied that the benefits to the clients of you doing so outweigh the risks;
- O(3.7)** where there is a client conflict and the clients are competing for the same objective, you only act if:
- (a) you have explained the relevant issues and risks to the clients and you have a reasonable belief that they understand those issues and risks;
 - (b) the clients have confirmed in writing that they want you to act, in the knowledge that you act, or may act, for one or more other clients who are competing for the same objective;

- (c) there is no other client conflict in relation to that matter;
- (d) unless the clients specifically agree, no individual acts for, or is responsible for the supervision of work done for, more than one of the clients in that matter; and
- (e) you are satisfied that it is reasonable for you to act for all the clients and that the benefits to the clients of you doing so outweigh the risks.

Indicative behaviours

Acting in the following way(s) may tend to show that you have achieved these outcomes and therefore complied with the Principles:

- IB(3.1) training employees and managers to identify and assess potential conflicts of interests;
- IB(3.2) declining to act for clients whose interests are in direct conflict, for example claimant and defendant in litigation;
- IB(3.3) declining to act for clients where you may need to negotiate on matters of substance on their behalf, for example negotiating on price between a buyer and seller of a property;
- IB(3.4) declining to act where there is unequal bargaining power between the clients, for example acting for a seller and buyer where a builder is selling to a non-commercial client;
- IB(3.5) declining to act for clients under Outcome 3.6 (substantially common interest) or Outcome 3.7 (competing for the same objective) where the clients cannot be represented even-handedly, or will be prejudiced by lack of separate representation;
- IB(3.6) acting for clients under Outcome 3.7 (competing for the same objective) only where the clients are sophisticated users of legal services;
- IB(3.7) acting for clients who are the lender and borrower on the grant of a mortgage of land only where:
 - (a) the mortgage is a standard mortgage (i.e. one provided in the normal course of the lender's activities, where a significant part of the lender's activities consists of lending and the mortgage is on standard terms) of property to be used as the borrower's private residence;
 - (b) you are satisfied that it is reasonable and in the clients' best interests for you to act; and
 - (c) the certificate of title required by the lender is in the form approved by the Society and the Council of Mortgage Lenders.

Acting in the following way(s) may tend to show that you have not achieved these outcomes and therefore not complied with the Principles:

- IB(3.8) in a personal capacity, selling to or buying from, lending to or borrowing from a client, unless the client has obtained independent legal advice;
- IB(3.9) advising a client to invest in a business, in which you have an interest which affects your ability to provide impartial advice;
- IB(3.10) where you hold a power of attorney for a client, using that power to gain a benefit for yourself which in your professional capacity you would not have been prepared to allow to a third party;
- IB(3.11) acting for two or more clients in a conflict of interests under Outcome 3.6 (substantially common interest) where the clients' interests in the end result are not the same, for example one partner buying out the interest of the other partner in their joint business or a seller transferring a property to a buyer;
- IB(3.12) acting for two or more clients in a conflict of interests under Outcome 3.6 (substantially common interest) where it is unreasonable to act because there is unequal bargaining power;
- IB(3.13) acting for two buyers where there is a conflict of interests under Outcome 3.7 (competing for the same objective), for example where two buyers are competing for a residential property;
- IB(3.14) acting for a buyer (including a lessee) and seller (including a lessor) in a transaction relating to the transfer of land for value, the grant or assignment of a lease or some other interest in land for value.

In-house practice

Outcomes 3.4 to 3.7 apply to your *in-house practice*.

Outcomes 3.1 to 3.3 apply if you have management responsibilities.

Overseas practice

The outcomes in this chapter apply to your *overseas practice*.

Chapter 4: Confidentiality and disclosure

This chapter is about the protection of *clients'* confidential information and the disclosure of material information to *clients*.

Protection of confidential information is a fundamental feature of your relationship with *clients*. It exists as a concept both as a matter of law and as a matter of conduct. This duty continues despite the end of the retainer and even after the death of the *client*.

It is important to distinguish the conduct duties from the concept of law known as legal professional privilege.

Bear in mind that all members of the *firm* or *in-house practice*, including support staff, consultants and locums, owe a duty of confidentiality to your *clients*.

The duty of confidentiality to all *clients* must be reconciled with the duty of disclosure to *clients*. This duty of disclosure is limited to information of which you are aware which is material to your *client's* matter. Where you cannot reconcile these two duties, then the protection of confidential information is paramount. You should not continue to act for a *client* for whom you cannot disclose material information, except in very limited circumstances, where safeguards are in place. Such situations often also give rise to a *conflict of interests* which is discussed in Chapter 3.

The outcomes in this chapter show how the *Principles* apply in the context of confidentiality and disclosure.

Outcomes

You must achieve these outcomes:

- O(4.1)** you keep the affairs of *clients* confidential unless disclosure is required or permitted by law or the *client* consents;
- O(4.2)** any individual who is advising a *client* makes that *client* aware of all information material to that retainer of which the individual has personal knowledge;
- O(4.3)** you ensure that where your duty of confidentiality to one *client* comes into conflict with your duty of disclosure to another *client*, your duty of confidentiality takes precedence;
- O(4.4)** you do not act for A in a matter where A has an interest adverse to B, and B is a *client* for whom you hold confidential information which is material to A in that matter, unless the confidential information can be protected by the use of safeguards, and:
 - (a)** you reasonably believe that A is aware of, and understands, the relevant issues and gives informed consent;
 - (b)** either:
 - (i)** B gives informed consent and you agree with B the safeguards to protect B's information; or
 - (ii)** where this is not possible, you put in place effective safeguards including information barriers which comply with the common law; and
 - (c)** it is reasonable in all the circumstances to act for A with such safeguards in place;
- O(4.5)** you have effective systems and controls in place to enable you to identify risks to *client* confidentiality and to mitigate those risks.

Indicative behaviours

Acting in the following way(s) may tend to show that you have achieved these outcomes and therefore complied with the *Principles*:

- IB(4.1)** your systems and controls for identifying risks to *client* confidentiality are appropriate to the size and complexity of the *firm* or *in-house practice* and the nature of the work undertaken, and enable you to assess all the relevant circumstances;
- IB(4.2)** you comply with the law in respect of your fiduciary duties in relation to confidentiality and disclosure;
- IB(4.3)** you only outsource services when you are satisfied that the provider has taken all appropriate steps to ensure that your *clients'* confidential information will be protected;
- IB(4.4)** where you are an individual who has responsibility for acting for a *client* or supervising a *client's* matter, you disclose to the *client* all information material to the *client's* matter of which you are personally aware, except when:
- (a)** the *client* gives specific informed consent to non-disclosure or a different standard of disclosure arises;
 - (b)** there is evidence that serious physical or mental injury will be caused to a person(s) if the information is disclosed to the *client*;
 - (c)** legal restrictions effectively prohibit you from passing the information to the *client*, such as the provisions in the money-laundering and anti-terrorism legislation;
 - (d)** it is obvious that privileged documents have been mistakenly disclosed to you;
 - (e)** you come into possession of information relating to state security or intelligence matters to which the Official Secrets Act 1989 applies;
- IB(4.5)** not acting for A where B is a *client* for whom you hold confidential information which is material to A unless the confidential information can be protected.

Acting in the following way(s) may tend to show that you have not achieved these outcomes and therefore not complied with the *Principles*:

- IB(4.6)** disclosing the content of a will on the death of a *client* unless consent has been provided by the personal representatives for the content to be released;
- IB(4.7)** disclosing details of bills sent to *clients* to third parties, such as debt factoring companies in relation to the collection of book debts, unless the *client* has consented.

In-house practice

The outcomes listed above apply to your *in-house practice*.

Overseas practice

The outcomes listed above apply to your *overseas practice*.

Notes

- (i)** The protection of confidential information may be at particular risk where:
 - (a)** two or more *firms* merge;
 - (b)** when you leave one *firm* and join another, such as if you join a *firm* acting against one of your former *clients*.
- (ii)** The following circumstances may make it difficult to implement effective safeguards and information barriers:
 - (a)** you are a small *firm*;
 - (b)** the physical structure or layout of the *firm* means that it will be difficult to

preserve confidentiality; or

(c) the clients are not sophisticated users of legal services.

Chapter 5: Your client and the court

This chapter is about your duties to your client and to the court if you are exercising a right to conduct litigation or acting as an advocate. The outcomes apply to both litigation and advocacy but there are some indicative behaviours which may be relevant only when you are acting as an advocate.

The outcomes in this chapter show how the Principles apply in the context of your client and the court.

Outcomes

You must achieve these outcomes:

- O(5.1) you do not attempt to deceive or knowingly or recklessly mislead the court;
- O(5.2) you are not complicit in another person deceiving or misleading the court;
- O(5.3) you comply with court orders which place obligations on you;
- O(5.4) you do not place yourself in contempt of court;
- O(5.5) where relevant, clients are informed of the circumstances in which your duties to the court outweigh your obligations to your client;
- O(5.6) you comply with your duties to the court;
- O(5.7) you ensure that evidence relating to sensitive issues is not misused;
- O(5.8) you do not make or offer to make payments to witnesses dependent upon their evidence or the outcome of the case.

Indicative behaviours

Acting in the following way(s) may tend to show that you have achieved these outcomes and therefore complied with the Principles:

- IB(5.1) advising your clients to comply with court orders made against them, and advising them of the consequences of failing to comply;
- IB(5.2) drawing the court's attention to relevant cases and statutory provisions, and any material procedural irregularity;
- IB(5.3) ensuring child witness evidence is kept securely and not released to clients or third parties;
- IB(5.4) immediately informing the court, with your client's consent, if during the course of proceedings you become aware that you have inadvertently misled the court, or ceasing to act if the client does not consent to you informing the court;
- IB(5.5) refusing to continue acting for a client if you become aware they have committed perjury or misled the court, or attempted to mislead the court, in any material matter unless the client agrees to disclose the truth to the court;
- IB(5.6) not appearing as an advocate, or acting in litigation, if it is clear that you, or anyone within your firm, will be called as a witness in the matter unless you are satisfied that this will not prejudice your independence as an advocate, or litigator, or the interests of your clients or the interests of justice.

Acting in the following way(s) may tend to show that you have not achieved these outcomes and therefore not complied with the Principles:

- IB(5.7) constructing facts supporting your client's case or drafting any documents relating to any proceedings containing:
 - (a) any contention which you do not consider to be properly arguable; or

(b) any allegation of fraud, unless you are instructed to do so and you have material which you reasonably believe shows, on the face of it, a case of fraud;

IB(5.8) suggesting that any *person* is guilty of a crime, fraud or misconduct unless such allegations:

(a) go to a matter in issue which is material to your own *client's* case; and

(b) appear to you to be supported by reasonable grounds;

IB(5.9) calling a witness whose evidence you know is untrue;

IB(5.10) attempting to influence a witness, when taking a statement from that witness, with regard to the contents of their statement;

IB(5.11) tampering with evidence or seeking to persuade a witness to change their evidence;

IB(5.12) when acting as an advocate, naming in open *court* any third party whose character would thereby be called into question, unless it is necessary for the proper conduct of the case;

IB(5.13) when acting as an advocate, calling into question the character of a witness you have cross-examined unless the witness has had the opportunity to answer the allegations during cross-examination.

In-house practice

The outcomes in this chapter apply to your *in-house practice*.

Overseas practice

The outcomes in this chapter apply to your *overseas practice* in relation to litigation or advocacy conducted before a court, tribunal or enquiry in England and Wales or a British court martial.

Notes

(i) If you are a litigator or an advocate there may be occasions when your obligation to act in the best interests of a *client* may conflict with your duty to the *court*. In such situations you may need to consider whether the public interest is best served by the proper administration of justice and should take precedence over the interests of your *client*.

Chapter 6: Your client and introductions to third parties

There may be circumstances in which you wish to refer your *clients* to third parties, perhaps to another *lawyer* or a financial services provider. This chapter describes the conduct duties which arise in respect of such introductions. It is important that you retain your independence when recommending third parties to your *client* and that you act in the *client's* best interests.

The outcomes in this chapter show how the *Principles* apply in the context of your *client* and introductions to third parties.

Outcomes

You must achieve these outcomes:

O(6.1) whenever you recommend that a *client* uses a particular *person* or business, your recommendation is in the best interests of the *client* and does not compromise your independence;

O(6.2) *clients* are fully informed of any financial or other interest which you have in referring the *client* to another *person* or business;

O(6.3) *clients* are in a position to make informed decisions about how to pursue their matter.

Indicative behaviours

Acting in the following way(s) may tend to show that you have achieved these outcomes and therefore complied with the

Principles:

- IB(6.1)** any *arrangement* you enter into in respect of *regulated mortgage contracts*, *general insurance contracts* (including after the event insurance) or *pure protection contracts*, provides that referrals will only be made where this is in the best interests of the particular *client* and the contract is suitable for the needs of that *client*;
- IB(6.2)** any referral to a third party that can only offer products from one source is made only after the *client* has been informed of this limitation.

Acting in the following way(s) may tend to show that you have not achieved these outcomes and therefore not complied with the *Principles*:

- IB(6.3)** entering into any *arrangement* which restricts your freedom to recommend any particular business, except in respect of *regulated mortgage contracts*, *general insurance contracts* or *pure protection contracts*;
- IB(6.4)** being an *appointed representative*.

In-house practice

The outcomes in this chapter apply to your *in-house practice*.

Overseas practice

The outcomes in this chapter apply to your *overseas practice*.

Notes

- (i)** See Outcome 1.15, in relation to *financial benefits* that you may receive in respect of introductions to third parties.
- (ii)** If the introduction is in connection with the provision of financial services, and your *firm* is not authorised by the Financial Services Authority, you will need to comply with the SRA Financial Services (Scope) Rules 2001 and the SRA Financial Services (Conduct of Business) Rules 2001. Where an introduction is not a *regulated activity* because you can rely on an exclusion in the *Regulated Activities Order*, you will need nevertheless to consider Outcome 1.15.
- (iii)** This chapter should be read in conjunction with Chapter 12 (Separate businesses).

2nd Section: You and your business

Chapter 7: Management of your business

This chapter is about the management and supervision of your *firm* or *in-house practice*.

Everyone has a role to play in the efficient running of a business, although of course that role will depend on the individual's position within the organisation. However, overarching responsibility for the management of the business in the broadest sense rests with the *manager(s)*. The *manager(s)* should determine what arrangements are appropriate to meet the outcomes. Factors to be taken into account will include the size and complexity of the business; the number, experience and qualifications of the *employees*; the number of offices; and the nature of the work undertaken.

Where you are using a third party to provide services that you could provide, (often described as "outsourcing"), this chapter sets out the outcomes you need to achieve.

The outcomes in this chapter show how the *Principles* apply in the context of the management of your business.

Outcomes

You must achieve these outcomes:

- O(7.1)** you have a clear and effective governance structure and reporting lines;

- O(7.2) you have effective systems and controls in place to achieve and comply with all the Principles, rules and outcomes and other requirements of the Handbook, where applicable;
- O(7.3) you identify, monitor and manage risks to compliance with all the Principles, rules and outcomes and other requirements of the Handbook, if applicable to you, and take steps to address issues identified;
- O(7.4) you maintain systems and controls for monitoring the financial stability of your firm and risks to money and assets entrusted to you by clients and others, and you take steps to address issues identified;
- O(7.5) you comply with legislation applicable to your business, including anti-money laundering and data protection legislation;
- O(7.6) you train individuals working in the firm to maintain a level of competence appropriate to their work and level of responsibility;
- O(7.7) you comply with the statutory requirements for the direction and supervision of reserved legal activities and immigration work;
- O(7.8) you have a system for supervising clients' matters, to include the regular checking of the quality of work by suitably competent and experienced people;
- O(7.9) you do not outsource reserved legal activities to a person who is not authorised to conduct such activities;
- O(7.10) subject to Outcome 7.9, where you outsource legal activities or any operational functions that are critical to the delivery of any legal activities, you ensure such outsourcing:
 - (a) does not adversely affect your ability to comply with, or the SRA's ability to monitor your compliance with, your obligations in the Handbook;
 - (b) is subject to contractual arrangements that enable the SRA or its agent to obtain information from, inspect the records (including electronic records) of, or enter the premises of, the third party, in relation to the outsourced activities or functions;
 - (c) does not alter your obligations towards your clients; and
 - (d) does not cause you to breach the conditions with which you must comply in order to be authorised and to remain so.

Indicative behaviours

Acting in the following way(s) may tend to show that you have achieved these outcomes and therefore complied with the Principles:

- IB(7.1) safekeeping of documents and assets entrusted to the firm;
- IB(7.2) controlling budgets, expenditure and cash flow;
- IB(7.3) identifying and monitoring financial, operational and business continuity risks including complaints, credit risks and exposure, claims under legislation relating to matters such as data protection, IT failures and abuses, and damage to offices;
- IB(7.4) making arrangements for the continuation of your firm in the event of absences and emergencies, for example holiday or sick leave, with the minimum interruption to clients' business.

In-house practice

Outcomes 7.5 and 7.7 apply to your in-house practice.

Outcomes 7.1 to 7.3, and 7.6 and 7.8 to 7.10 apply to you if you have management responsibilities.

Overseas practice

The outcomes in this chapter apply to your overseas practice.

- (i) All of the chapters in the Code will be relevant to the management of your business, in particular those which require you to have systems and controls in place.
- (ii) This chapter should also be read with the *SRA Authorisation Rules*, the SRA Financial Services (Conduct of Business) Rules 2001 and the *SRA Indemnity Insurance Rules*.

Chapter 8: Publicity

This chapter is about the manner in which you publicise your *firm* or *in-house practice* or any other businesses. The overriding concern is that *publicity* is not misleading and is sufficiently informative to ensure that *clients* and others can make informed choices.

In your *publicity*, you must comply with statutory requirements and have regard to voluntary codes.

The outcomes in this chapter show how the *Principles* apply in the context of *publicity*.

Outcomes

You must achieve these outcomes:

- O(8.1)** your *publicity* in relation to your *firm* or *in-house practice* or for any other business is accurate and not misleading, and is not likely to diminish the trust the public places in you and in the provision of legal services;
- O(8.2)** your *publicity* relating to charges is clearly expressed and identifies whether VAT and *disbursements* are included;
- O(8.3)** you do not make unsolicited approaches in person or by telephone to *members of the public* in order to publicise your *firm* or *in-house practice* or another business;
- O(8.4)** *clients* and the public have appropriate information about you, your *firm* and how you are regulated;
- O(8.5)** your letterhead, website and e-mails show the words "authorised and regulated by the Solicitors Regulation Authority" and either the *firm's* registered name and number if it is an *LLP* or *company* or, if the *firm* is a *partnership* or *sole practitioner*, the name under which it is licensed/authorised by the *SRA* and the number allocated to it by the *SRA*.

Indicative behaviours

Acting in the following way(s) may tend to show that you have achieved these outcomes and therefore complied with the *Principles*:

- IB(8.1)** where you conduct other regulated activities your *publicity* discloses the manner in which you are regulated in relation to those activities;
- IB(8.2)** where your *firm* is an *MDP*, any *publicity* in relation to that *practice* makes clear which services are regulated legal services and which are not;
- IB(8.3)** any *publicity* intended for a jurisdiction outside England and Wales complies with the *Principles*, voluntary codes and the rules in force in that jurisdiction concerning *publicity*;
- IB(8.4)** where you and another business jointly market services, the nature of the services provided by each business is clear.

Acting in the following way(s) may tend to show that you have not achieved these outcomes and therefore not complied with the *Principles*:

- IB(8.5)** approaching people in the street, at ports of entry, in hospital or at the scene of an accident; including approaching people to conduct a survey which involves collecting contact details of potential *clients*, or otherwise promotes your *firm* or *in-house practice*;
- IB(8.6)** allowing any other *person* to conduct *publicity* for your *firm* or *in-house practice* in a way that would breach the *Principles*;
- IB(8.7)** advertising an estimated fee which is pitched at an unrealistically low level;

- IB(8.8)** describing overheads of your *firm* (such a normal postage, telephone calls and charges arising in respect of *client* due diligence under the Money Laundering Regulations 2007) as disbursements in your advertisements;
- IB(8.9)** advertising an estimated or fixed fee without making it clear that additional charges may be payable, if that is the case;
- IB(8.10)** using a name or description of your *firm* or *in-house practice* that includes the word "solicitor(s)" if none of the *managers* are *solicitors*;
- IB(8.11)** advertising your *firm* or *in-house practice* in a way that suggests that services provided by another business are provided by your *firm* or *in-house practice*;
- IB(8.12)** producing misleading information concerning the professional status of any *manager* or *employee* of your *firm* or *in-house practice*.

In-house practice

Outcomes 8.1 to 8.4 apply to your *in-house practice* unless it is clear from the context that the outcome is not relevant in your particular circumstances.

Overseas practice

Outcomes 8.1 and 8.4 apply to your *overseas practice*. In addition you must comply with the following outcome:

- OP(8.1)** *publicity* intended for a jurisdiction outside England and Wales must comply with any applicable law or rules regarding *lawyers' publicity* in the jurisdiction in which your office is based and the jurisdiction for which the *publicity* is intended.

Notes

- (i) This chapter should be read in conjunction with Chapters 1 and 9.

Chapter 9: Fee sharing and referrals

This chapter is about protecting *clients'* interests where you have *arrangements* with third parties who introduce business to you and/or with whom you share your fees. The relationship between *clients* and *firms* should be built on trust, and any such *arrangement* should not jeopardise that trust by, for example, compromising your independence or professional judgement.

The outcomes in this chapter show how the *Principles* apply in the context of fee sharing and *referrals*.

Outcomes

You must achieve these outcomes:

- O(9.1)** your independence and your professional judgement are not prejudiced by virtue of any *arrangement* with another *person*;
- O(9.2)** your *clients'* interests are protected regardless of the interests of an *introducer* or *fee sharer* or your interest in receiving *referrals*;
- O(9.3)** *clients* are in a position to make informed decisions about how to pursue their matter;
- O(9.4)** *clients* are informed of any financial or other interest which an *introducer* has in referring the *client* to you;
- O(9.5)** *clients* are informed of any fee sharing *arrangement* that is relevant to their matter;
- O(9.6)** you do not make payments to an *introducer* in respect of *clients* who are the subject of criminal proceedings or who have the benefit of public funding;
- O(9.7)** where you enter into a financial *arrangement* with an *introducer* you ensure that the agreement is in writing.

Indicative behaviours

Acting in the following way(s) may tend to show that you have achieved these outcomes and therefore complied with the Principles:

- IB(9.1)** only entering into arrangements with reputable third parties and monitoring the outcome of those arrangements to ensure that clients are treated fairly;
- IB(9.2)** in any case where a client has entered into, or is proposing to enter into, an arrangement with an introducer in connection with their matter, which is not in their best interests, advising the client that this is the case;
- IB(9.3)** terminating any arrangement with an introducer or fee sharer which is causing you to breach the Principles or any requirements of the Code;
- IB(9.4)** being satisfied that any client referred by an introducer has not been acquired as a result of marketing or other activities which, if done by a person regulated by the SRA, would be contrary to the Principles or any requirements of the Code;
- IB(9.5)** drawing the client's attention to any payments you make, or other consideration you provide, in connection with any referral;
- IB(9.6)** where information needs to be given to a client, ensuring the information is clear and in writing or in a form appropriate to the client's needs.

Acting in the following way(s) may tend to show that you have not achieved these outcomes and therefore not complied with the Principles:

- IB(9.7)** entering into any type of business relationship with a third party, such as an unauthorised partnership, which places you in breach of the SRA Authorisation Rules or any other regulatory requirements in the Handbook;
- IB(9.8)** allowing an introducer or fee sharer to influence the advice you give to clients;
- IB(9.9)** accepting referrals where you have reason to believe that clients have been pressurised or misled into instructing you.

In-house practice

Outcomes 9.1 to 9.3 apply to your in-house practice.

Outcomes 9.4 to 9.7 apply unless it is clear from the context that the outcome is not relevant to your particular circumstances.

Overseas practice

The outcomes in this chapter apply to your overseas practice, except where they conflict with the SRA European Cross-Border Practice Rules which will prevail in any conflict.

Notes

- (i)** This chapter should be read in conjunction with:
 - (a)** Chapter 1 (Client care)
 - (b)** Chapter 4 (Confidentiality and disclosure)
 - (c)** Chapter 8 (Publicity)
- The SRA Authorisation Rules
- The SRA European Cross-Border Practice Rules

3rd Section: You and your regulator

Chapter 10: You and your regulator

This chapter is about co-operation with your regulators and ombudsmen, primarily the SRA and the Legal Ombudsman.

The information which we request from you will help us understand any risks to clients, and the public interest more generally.

The outcomes in this chapter show how the Principles apply in the context of you and your regulator.

Outcomes

You must achieve these outcomes:

- O(10.1)** you ensure that you comply with all the reporting and notification requirements in the Handbook that apply to you;
- O(10.2)** you provide the SRA with information to enable the SRA to decide upon any application you make, such as for a practising certificate, registration, recognition or a licence and whether any conditions should apply;
- O(10.3)** you notify the SRA promptly of any material changes to relevant information about you including serious financial difficulty, action taken against you by another regulator and serious failure to comply with or achieve the Principles, rules, outcomes and other requirements of the Handbook;
- O(10.4)** you report to the SRA promptly, serious misconduct by any person or firm authorised by the SRA, or any employee, manager or owner of any such firm (taking into account, where necessary, your duty of confidentiality to your client);
- O(10.5)** you ensure that the SRA is in a position to assess whether any persons requiring prior approval are fit and proper at the point of approval and remain so;
- O(10.6)** you co-operate fully with the SRA and the Legal Ombudsman at all times including in relation to any investigation about a claim for redress against you;
- O(10.7)** you do not attempt to prevent anyone from providing information to the SRA or the Legal Ombudsman;
- O(10.8)** you comply promptly with any written notice from the SRA;
- O(10.9)** pursuant to a notice under Outcome 10.8, you:
 - (a)** produce for inspection by the SRA documents held by you, or held under your control;
 - (b)** provide all information and explanations requested; and
 - (c)** comply with all requests from the SRA as to the form in which you produce any documents you hold electronically, and for photocopies of any documents to take away;in connection with your practice or in connection with any trust of which you are, or formerly were, a trustee;
- O(10.10)** you provide any necessary permissions for information to be given, so as to enable the SRA to:
 - (a)** prepare a report on any documents produced; and
 - (b)** seek verification from clients, staff and the banks, building societies or other financial institutions used by you;
- O(10.11)** when required by the SRA in relation to a matter specified by the SRA, you:
 - (a)** act promptly to investigate whether any person may have a claim for redress against you;
 - (b)** provide the SRA with a report on the outcome of such an investigation, identifying persons who may have such a claim;
 - (c)** notify persons that they may have a right of redress against you, providing them with information as to the nature of the possible claim, about the firm's complaints procedure and about the Legal Ombudsman; and

- (d) ensure, where you have identified a *person* who may have a *claim for redress*, that the matter is dealt with under the *firm's complaints* procedure as if that *person* had made a *complaint*;
- O(10.12) you do not attempt to abrogate to any third party your regulatory responsibilities in the Handbook, including the role of Compliance Officer for Legal Practice (*COLP*) or Compliance Officer for Finance and Administration (*COFA*);
- O(10.13) once you are aware that your *firm* will cease to *practise*, you effect the orderly and transparent wind-down of activities, including informing the *SRA* before the *firm* closes.

Indicative behaviours

Acting in the following way(s) may tend to show that you have achieved these outcomes and therefore complied with the *Principles*:

- IB(10.1) actively monitoring your achievement of the outcomes in order to improve standards and identify non-achievement of the outcomes;
- IB(10.2) actively monitoring your financial stability and viability in order to identify and mitigate any risks to the public;
- IB(10.3) notifying the *SRA* promptly of any indicators of serious financial difficulty, such as inability to pay your professional indemnity insurance premium, or rent or salaries, or breach of bank covenants;
- IB(10.4) notifying the *SRA* promptly when you become aware that your business may not be financially viable to continue trading as a going concern, for example because of difficult trading conditions, poor cash flow, increasing overheads, loss of *managers* or *employees* and/or loss of sources of revenue;
- IB(10.5) notifying the *SRA* of any serious issues identified as a result of monitoring referred to in IB10.1 and IB10.2 above, and producing a plan for remedying issues that have been identified;
- IB(10.6) responding appropriately to any serious issues identified concerning competence and fitness and propriety of your *employees*, *managers* and *owners*;
- IB(10.7) reporting disciplinary action taken against you by another regulator;
- IB(10.8) informing the *SRA* promptly when you become aware of a significant change to your *firm*, for example:
 - (a) key personnel, such as a *manager*, *COLP* or *COFA*, joining or leaving the *firm*;
 - (b) a merger with, or an acquisition by or of, another *firm*;
- IB(10.9) having appropriate arrangements for the orderly transfer of *clients'* property to another *authorised body* if your *firm* closes;
- IB(10.10) having a "whistle-blowing" policy.

Acting in the following way(s) may tend to show that you have not achieved these outcomes and therefore not complied with the *Principles*:

- IB(10.11) entering into an agreement which would attempt to preclude the *SRA* or the *Legal Ombudsman* from investigating any actual or potential *complaint* or allegation of professional misconduct;
- IB(10.12) unless you can properly allege malice, issuing defamation proceedings in respect of a *complaint* to the *SRA*.

In-house practice

The outcomes in this chapter apply to your *in-house practice*.

Overseas practice

The outcomes in this chapter apply to your *overseas practice*.

Notes

- (i) A notice under this chapter is deemed to be duly served:

- (a) on the date on which it is delivered to or left at your last notified *practising* address;
 - (b) on the date on which it is sent electronically to your e-mail or fax address; or
 - (c) seven days after it has been sent by post or document exchange to your last notified *practising* address.
- (ii) The outcomes in this chapter should be considered in conjunction with the following:
- (a) Chapter 7 (Management of your business) - requirements for risk management procedures; and
 - (b) note (xv) to Rule 8 of the *SRA Authorisation Rules*.

4th Section: You and others

Chapter 11: Relations with third parties

This chapter is about ensuring you do not take unfair advantage of those you deal with and that you act in a manner which promotes the proper operation of the legal system.

This includes your conduct in relation to *undertakings*; there is no obligation to give or receive an *undertaking* on behalf of a *client* but, if you do, you must ensure that you achieve the outcomes listed in this chapter.

The conduct requirements in this area extend beyond professional and business matters. They apply in any circumstances in which you may use your professional title to advance your personal interests.

The outcomes in this chapter show how the *Principles* apply in the context of your relations with third parties.

Outcomes

You must achieve these outcomes:

- O(11.1)** you do not take unfair advantage of third parties in either your professional or personal capacity;
- O(11.2)** you perform all *undertakings* given by you within an agreed timescale or within a reasonable amount of time;
- O(11.3)** where you act for a seller of land, you inform all buyers immediately of the seller's intention to deal with more than one buyer;
- O(11.4)** you properly administer oaths, affirmations or declarations where you are authorised to do so.

Indicative behaviours

Acting in the following way(s) may tend to show that you have achieved these outcomes and therefore complied with the *Principles*:

- IB(11.1)** providing sufficient time and information to enable the costs in any matter to be agreed;
- IB(11.2)** returning documents or money sent subject to an express condition if you are unable to comply with that condition;
- IB(11.3)** returning documents or money on demand if they are sent on condition that they are held to the sender's order;
- IB(11.4)** ensuring that you do not communicate with another party when you are aware that the other party has retained a *lawyer* in a matter, except:
 - (a) to request the name and address of the other party's *lawyer*; or
 - (b) the other party's *lawyer* consents to you communicating with the *client*; or

(c) where there are exceptional circumstances;

IB(11.5) maintaining an effective system which records when undertakings have been given and when they have been discharged;

IB(11.6) where an undertaking is given which is dependent upon the happening of a future event and it becomes apparent the future event will not occur, notifying the recipient of this.

Acting in the following way(s) may tend to show that you have not achieved these outcomes and therefore not complied with the Principles:

IB(11.7) taking unfair advantage of an opposing party's lack of legal knowledge where they have not instructed a lawyer;

IB(11.8) demanding anything for yourself or on behalf of your client, that is not legally recoverable, such as when you are instructed to collect a simple debt, demanding from the debtor the cost of the letter of claim since it cannot be said at that stage that such a cost is legally recoverable;

IB(11.9) using your professional status or qualification to take unfair advantage of another person in order to advance your personal interests;

IB(11.10) taking unfair advantage of a public office held by you, or a member of your family, or a member of your firm or their family.

In-house practice

The outcomes in this chapter apply to your in-house practice.

Overseas practice

The outcomes in this chapter apply to your overseas practice, except that Outcome 11.3 only applies if the land in question is situated in England and Wales.

Notes

- (i) This chapter should be read in conjunction with Chapter 7 (Management of your business) in relation to the system you will need to have in place to control undertakings.

Chapter 12: Separate businesses

The purpose of this chapter is to ensure clients are protected when they obtain mainstream legal services from a firm regulated by the SRA. This is accomplished by restricting the services that can be provided through a separate business that is not authorised by the SRA or another approved regulator.

This chapter addresses two kinds of services:

1. those which you cannot offer through a separate business ("prohibited separate business activities"). These are "mainstream" legal services which members of the public would expect you to offer as a lawyer regulated by the SRA or another approved regulator; and
2. those which you can offer either through a separate business ("a permitted separate business"), or through an authorised body. These are the kind of services a member of the public would not necessarily expect to be provided only by a lawyer regulated by the SRA or another approved regulator, but which are "solicitor-like" services.

Clients of a permitted separate business will not have the same statutory protections as clients of an authorised body and it is important that this is clear to clients of the separate business, particularly where they are being referred from one business to the other.

The outcomes in this chapter show how the Principles apply in the context of separate businesses.

Outcomes

You must achieve these outcomes:

O(12.1) you do not:

- (a) own; or
- (b) actively participate in,

a separate business which conducts prohibited separate business activities;

O(12.2) if you are a firm:

- (a) you are not owned by; or
- (b) connected with,

a separate business which conducts prohibited separate business activities;

O(12.3) where you:

- (a) actively participate in;
- (b) own; or
- (c) are a firm and owned by or connected with,

a permitted separate business, you have safeguards in place to ensure that clients are not misled about the extent to which the services that you and the separate business offer are regulated;

O(12.4) you do not represent any permitted separate business as being regulated by the SRA or any of its activities as being provided by an individual who is regulated by the SRA;

O(12.5) you are only connected with reputable separate businesses;

O(12.6) you are only connected with a permitted separate business which is an appointed representative if it is an appointed representative of an independent financial adviser.

Indicative behaviours

Acting in the following way(s) may tend to show that you have achieved these outcomes and therefore complied with the Principles:

IB(12.1) ensuring that client information and records are not disclosed to the permitted separate business, without the express consent of the client;

IB(12.2) complying with the SRA Accounts Rules and not allowing the client account to be used to hold money for the permitted separate business;

IB(12.3) where you are referring a client to a permitted separate business, informing the client of your interest in the separate business;

IB(12.4) terminating any connection with a permitted separate business where you have reason to doubt the integrity or competence of that separate business.

In-house practice

Outcomes 12.1 and 12.3 to 12.6 in this chapter apply to your in-house practice.

Overseas practice

If you practise from an office outside England and Wales and you have a separate business, Outcomes 12.3 to 12.6 in this chapter apply to you.

Notes

- (i) It is important that clients are not misled or confused about the regulatory status of a permitted separate business, the services it provides and the people working within it. Particular care needs to be taken regarding:

- (a) the name or branding of the separate business;
 - (b) misleading publicity; and
 - (c) the proximity of the permitted separate business to your firm, particularly if you share premises.
- (ii) This chapter should be read in conjunction with:
- (a) Chapter 3 (Conflicts of interests)
 - (b) Chapter 6 (Your client and introductions to third parties); and
 - (c) Chapter 8 (Publicity).

5th Section: Application, waivers and interpretation

Chapter 13: Application and waivers provisions

The SRA Code of Conduct applies to you in the following circumstances (and "you" must be construed accordingly):

Application of the SRA Code of Conduct in England and Wales

- 13.1 Subject to paragraphs 2 to 10 below and any other provisions in this Code, this Code applies to you, in relation to your activities carried out from an office in England and Wales, if you are:
- (a) a solicitor, REL or RFL, and you are practising as such, whether or not the entity through which you practise is subject to this Code;
 - (b) a solicitor, REL or RFL who is:
 - (i) a manager, employee or owner of a body which should be a recognised body, but has not been recognised by the SRA;
 - (ii) a manager, employee or owner of a body that is a manager or owner of a body that should be a recognised body, but has not been recognised by the SRA;
 - an employee of a sole practitioner who should be a recognised sole practitioner, but has not been recognised by the SRA;
 - (iv) an owner of an authorised body or a body which should be a recognised body but has not been recognised by the SRA, even if you undertake no work for the body's clients; or
 - (v) a manager or employee of an authorised non-SRA firm, or a manager of a body which is a manager of an authorised non-SRA firm, when doing work of a sort authorised by the SRA, for that firm;
 - (c) an authorised body, or a body which should be a recognised body but has not been recognised by the SRA;
 - (d) any other person who is a manager or employee of an authorised body, or of a body which should be a recognised body but has not been recognised by the SRA;
 - any other person who is an employee of a recognised sole practitioner, or of a sole practitioner who should be a recognised sole practitioner but has not been recognised by the SRA;

and "you" includes "your" as appropriate.

13.2 Chapters 10, 12, 13, 14 and 15 of the Code apply to you if you are a solicitor, REL or RFL and you are:

- (a) practising as a manager or employee of an authorised non-SRA firm when doing work of a sort authorised by the authorised non-SRA firm's approved regulator; or

- (b) an owner of an authorised non-SRA firm even if you undertake no work for the body's clients.

Application of the SRA Code of Conduct in relation to practice from an office outside England and Wales

13.3 Subject to 13.5 and 13.6 below, the Code applies to you, in relation to practice from an office in Scotland or Northern Ireland, if you are:

- (a) a solicitor or an REL practising as such, whether or not your firm or employer is subject to this Code;
- (b) a lawyer-controlled body;
- (c) an REL-controlled body;
- (d) any other person who is a manager of an authorised body; or
a solicitor who was formerly an REL, when practising as a lawyer of an Establishment Directive profession.

13.4 Subject to 13.5 and 13.6 below, the Code applies to you, in relation to practice from an office outside the UK, if you are:

- (a) a solicitor practising as such, whether or not your firm or employer is subject to this Code;
- (b) a lawyer-controlled body; or
- (c) any other person who is a manager of an authorised body.

13.5 If any outcome in the Code does not apply to your overseas practice, you may disregard that outcome in relation to your overseas practice, but you must comply with any alternative provision substituted for overseas practice.

13.6 If compliance with any outcome in the Code would result in your breaching local law, or regulations, you may disregard that outcome to the extent necessary to comply with that local law or regulation.

Application of the SRA Code of Conduct outside practice

13.7 In relation to activities which fall outside practice, whether undertaken as a lawyer or in some other business or private capacity, the following apply to you if you are a solicitor, or REL:

- (a) Outcome 11.1; and
- (b) Outcome 11.2.

General Provisions

13.8 The extent to which you are expected to implement the requirements of the Code will depend on your role in the firm, or your way of practising. For example, those who are managing the business will be expected to have more influence on how the firm or business is run than those practising in-house but not managing a legal department, or those practising as employees of a firm.

13.9 You must deliver all outcomes which are relevant to you and your situation.

13.10 Where in accordance with this chapter, the requirements of the Code apply to a licensed body, this extends to the reserved legal activities, and other activities regulated by the SRA, carried on by the body.

Waivers

In any particular case or cases the SRA Board shall have the power, in exceptional circumstances, to waive in writing the provisions of these outcomes for a particular purpose or purposes expressed in such waiver, to place conditions on and to revoke such a waiver.

Chapter 14: Interpretation

14.1 The SRA Handbook Glossary 2012 shall apply and, unless the context otherwise requires:

- (a) all italicised terms shall be defined; and
 - (b) all terms shall be interpreted,
- in accordance with the Glossary.

Chapter 15: Transitional provisions

- 15.1 For the avoidance of doubt, where a breach of any provision of the Solicitors' Code of Conduct 2007 comes to the attention of the SRA after 6 October 2011, this shall be subject to action by the SRA notwithstanding any repeal of the relevant provision.
- 15.2 The SRA Code of Conduct shall not apply to licensed bodies until such time as the Society is designated as a licensing authority under Part 1 of Schedule 10 to the LSA and all definitions shall be construed accordingly.
- 15.3 References:
- (a) in the preamble, to:
 - (i) the Code being made under section 83 of the Legal Services Act 2007, and
 - (ii) licensed bodies and their managers and employees, and
 - (b) in Chapter 10, to:
 - (i) an application for a licence (O(10.2)), and
 - (ii) the role of COLP and COFA (O(10.12) and IB (10.8)),
- shall have no effect until such time as the Society is designated as a licensing authority under Part 1 to Schedule 10 of the LSA.
- 15.4 In Chapter 8, the provision in IB(8.2) relating to multi-disciplinary practices, shall have no effect until such time as the Society is designated as a licensing authority under Part 1 of Schedule 10 to the LSA.