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# Legal Complaints and Regulation Bill

Committee Stage - Written Submissions

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## Introduction

This briefing paper has been prepared to assist the members of the Finance and Personnel Committee in their consideration of the Legal Complaints and Regulation Bill 2015.

The Bar Council is the representative body of the Bar of Northern Ireland. Members of the Bar specialise in the provision of expert independent legal advice and courtroom advocacy. Access to training, experience, continual professional development, research technology and modern facilities within the Bar Library enhance the expertise of individual barristers and ensure the highest quality of service to clients and the court. The Bar Council is continually expanding the range of services offered to the community through negotiation, tribunal advocacy and alternative dispute resolution.

The Bar Council welcomes the opportunity to submit written evidence and is keen to engage and work constructively with the Committee as the Bill progresses through the legislative process.

## Context

The Bar Council believes that regulation is of fundamental importance to ensure that the justice system works in the public interest and to retain public confidence in the professionals with responsibility for delivering legal services. It is also vitally important that regulation is transparent, effective, proportionate but also cost effective.

The Bar Council currently discharges its regulatory functions through a separate committee known as the Professional Conduct Committee (PCC) which consists of two lay members and a cross section of 12 independent practising barristers. No member of the Bar Council can sit as a member of the PCC to ensure a complete separation of powers. Under the present structure, all complaints are investigated by the PCC. Depending on the type and seriousness of the complaint, the PCC may deal with matters itself or it may refer charges to a Summary Panel or Disciplinary Committee, as appropriate.

A Summary Panel deals with more straightforward matters involving less serious complaints. A Summary Panel consists of a senior barrister, a junior barrister and a lay person. For more serious complaints, a Disciplinary Committee is constituted which is chaired by a High Court Judge or a Lord Justice of Appeal. The Disciplinary Committee comprises two lay representatives and members of the profession representing different levels of seniority and experience at the Bar.

Appeals from a Disciplinary Committee are heard by a Disciplinary Appeals Committee, comprising of three Benchers of the Inn of Court of Northern Ireland and one lay member. The Lord Chief Justice nominates the Chairman, a judge of no less standing than a Lord Justice of Appeal.

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Members should be aware that these Committees have extensive powers to admonish, reprimand, censure, fine, order repayment of fees, suspend or expel from membership of the Bar Library, disbar or suspend from practice, impose conditions on practice or deal with the barrister in such other manner as may appear appropriate. All Disciplinary Committee and Disciplinary Appeal hearings take place in public as comparable with other judicial proceedings. (Further information can be found in the consultation response contained in Appendix One).

## The Bain Review

In terms of background to the development of the Bill, the Bar Council welcomed the opportunity afforded to it by the Review Group under the Chairmanship of Sir George Bain to respond to the Government's consultation paper on the Regulation of Legal Services in Northern Ireland. The process was particularly worthwhile as it enabled the Bar to examine the services being provided, consider improvements, our role in the administration of justice and how best to deliver value for money, quality legal services for all.

On the matter of regulation, the Bar largely agreed with the recommendations contained within the Bain Review, namely that:

- a. The legal profession should continue to discharge regulatory functions, subject to oversight by an independent Legal Services Commissioner;
- b. Lay persons should have an increased involvement in relation to general regulatory matters;
- c. Responsibility for the complaints-handling function should transfer from the Bar Council to the Benchers to achieve functional separation between regulation and representation.

## Draft Legal Complaints and Regulation Bill 2015

The Bar Council submitted a detailed response to the consultation on the draft Bill to the Department of Finance and Personnel in February 2014. The full consultation response is contained in Appendix One. Our position on the main clauses contained in the Bill can be found below.

### Part One: Legal Services Oversight Commissioner

#### Clause One

In Part 1, the Bill provides for the creation of a Legal Services Oversight Commissioner for Northern Ireland. The Bar Council accepts the broad principles in relation to the Commissioner but there are a number of concerns which merit further consideration.

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Clause 1(2) relates to the appointment of the Commissioner by the Department of Finance and Personnel. The Bar Council believes that the Commissioner should be appointed in consultation with the Lord Chief Justice with the Chair of the Bar Council and the President of the Law Society also involved in the recruitment process.

The Bar Council welcomes the Department's amendment which will place a responsibility on the Department to consult with the Lord Chief Justice on the appointment of the Commissioner. However, the Bar would contend that the Chair of the Bar Council and the President of the Law Society should play a role in the appointment process.

Clause 1(3) highlights that the Commissioner must be a lay-person and must never have been a solicitor or barrister. The Committee should reconsider this provision as the preclusion of someone with a legal background ignores the fact that previous experience of legal practice could provide a beneficial understanding of the nature of the law and legal professional services. The Bar would challenge any implication that any legally qualified professional could not be impartial and able to act in the public interest on matters pertaining to that same profession. Currently it is the case that, within the courts system, judges will be involved in deciding cases involving claims against lawyers. They do so with full impartiality and rigour despite previous backgrounds as practising lawyers.

The Bar would stress that any appointment must be made on merit and no individual with previous experience of legal practice should be excluded provided that they can serve the functions of the office to the required standard. The Bar believes that this aspect of the Bill therefore is an unnecessary and unwarranted preclusion.

Furthermore, a balance must be achieved between transparency and ensuring that complaints are dealt with efficiently and cost effectively. The Bar Council notes that a Commissioner with previous experience of legal practice would achieve these goals.

## Clause Two

Clause 2 provides for the general powers of the Commissioner and outlined below are a number of points which should be included in the draft Bill. These have a focus on transparency whilst also ensuring regulatory overreaching is avoided in Northern Ireland, an issue which has proven very concerning in England, Wales and the Republic of Ireland.

Clause 2(1)(a) deals with how complaints will be handled by the Commissioner. The Bar Council maintains that this clause is presently constructed too widely. The phrase "complaints about its members" should refer solely to those complaints which relate to the professional services provided by a barrister. The Bar welcomes the Department's clarification that it is not the intention for the Commissioner to examine conduct complaints but the clause must be amended to reflect this.

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The Bar Council believes that clauses 2(1)(b)-(f) raise a number of issues around the manner in which the Commissioner engages with the professional bodies. Clause 2(1)(b) should allow for the Commissioner to “engage in consultation” with the professional bodies in relation to the complaints handling procedure rather than “investigate”. This represents a more equitable approach to engagement with the professional bodies.

In addition, clause 2(1)(d) refers to target setting by the Commissioner. The Bar Council notes that the complaints procedure can be delayed for a number of reasons, including delay caused by the complainant. The complaints procedure should instead be focused on the quality of service offered to the complainant and barrister involved. Consequently, performance should be measured according to our service guidelines which would form the basis of an annual return to the Commissioner. The Committee may wish to consider whether the setting of targets represents the most appropriate means for the handling of complaints.

Clause 2(2) permits the Commissioner to require a professional body to pay a penalty if it fails to submit adequate plans for complaint handling. The Bar Council intends to engage constructively with the Commissioner, sharing relevant information and consulting where appropriate, as part of an open and transparent system of regulation.

The Bar welcomes the Department’s focus on the importance of maintaining dialogue by affording the professional bodies with a reasonable opportunity of appearing to make representations to the Commissioner on plans for complaint handling. However, members should consider that concerns remain around the probity of the Department both setting the maximum amount and ultimately receiving the penalty.

## **Clauses Three and Four**

Clauses 3 and 4 of the draft Bill relate to the input of the Commissioner into the other regulatory objectives of the professional bodies. The Bar Council agrees with the need for transparency and openness within the regulatory structures as this represents a key tenet of the Bain review. However, there are concerns that these clauses are currently drafted too widely by the Department as the Commissioner’s role in terms of rules and regulations should relate to those which apply to the provision of professional services by a barrister.

The Bar Council believes that the Commissioner’s powers should not be widened beyond this to include the duty to review the other aspects such as education, training, entry to the profession and competition. These clauses appear to potentially allow the Commissioner unrestricted access to review the regulatory objectives of the legal profession. The Bar strongly advises that the Committee should question the purpose of the drafting of such wide permissions and the potential this could create for regulatory overreach by the Commissioner.

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Furthermore, the drafting of clauses 3 and 4 is linked to the current requirement in clause 1(3) for the Commissioner to be a layperson. The Bar notes that it would not be beneficial for the professional bodies to be required to consult with an individual who is not legally qualified about matters other than complaints which relate to the professional services provided by a barrister. The drafting of clauses 3 and 4 further highlight that individuals with involvement in the legal profession should not be excluded from the post of Commissioner given the need for the rules governing the regulatory objectives of the profession to be drafted by those with relevant experience.

## Clauses Five and Six

Clauses 5 and 6 deal with the Department's proposal that the cost of the Legal Services Oversight Commissioner should be met by a levy on the professional bodies. The Bar Council has a number of concerns surrounding the cost of establishing and operating such an office and the subsequent burden to be met by the profession.

The Bar Council believes that the levy framework must be proportionate. The Bar has made a number of internal changes to support the objectives of the Bill. This has included comprehensive changes to the Constitutions of the Inn of Court and the General Council of the Bar of Northern Ireland, approved at the 2015 AGM. These changes will require internal restructuring and reorganisation. The Bar is confident that the planned changes will embed a rigorous and independent system of regulation in keeping with the aspirations of the Bill. The provisional cost of restructuring the current internal complaints system is approximately £100,000. This significant cost will be borne by members of the Bar, in addition to the annual levy at a time of increasing financial pressure upon the profession with significant reductions in the availability and remuneration of publicly funded work.

The Bar is concerned that an additional onerous levy will impact significantly on social mobility within the profession. The Bar Council operates a professional fees subsidy system with fees increased on a graduated scale during the first eight years in practice. The imposition of another substantial fee will only serve to impact negatively on the profession, particularly on those commencing their careers at the Bar.

In addition, there is a significant variance in the number of complaints dealt with by the professional bodies which must be recognised in the outworkings of the draft Bill. Due to a greater number of practitioners, the Law Society receives a greater number of complaints than the Professional Conduct Committee. Clarification from the Department is essential on how issues around cost allocation will be addressed in the subsequent subordinate legislation to ensure that the barristers are not disproportionately impacted. Further clarity is required on how any such levy will be applied to barristers who appear in individual cases in Northern Ireland but reside in another jurisdiction.

The Bar has a number of concerns in relation to accountability for the costs of the Commissioner's office. The Department has estimated that this will be in the region of

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£200,000 per year. We require further information on the basis of this figure. The Bar strongly believes that there must be the highest standards of accountability and probity around the costs of the office. Any expenditure must be justified on the basis that it will deliver a directly correlated improvement over the current system. The Bar would expect strict parameters to be set on any initial budget afforded to the office to ensure that it cannot be increased without full consultation.

The Committee should ensure that there are express responsibilities placed on the Accounting Officer, charged with ensuring that the Commissioner's office represents value for money. The Bar takes the view that this must be measured and demonstrable through prompt reporting.

## Part Two: Complaints against Barristers

### Clause Eleven

Part 2 of the Bill sets out the proposed process for complaints handling for barristers as defined in Clause 11(1). The Bar Council welcomes the Department's preferred model for this which sees the professional bodies maintaining the responsibility for complaints handling but cautions that there are concerns around some of the proposed changes in relation to the membership and appointment of the Bar Complaints Committee and the methods of redress available.

Importantly, the Bar Council highlights to Committee members that the independent referral bar model represents a key cornerstone of the justice system in Northern Ireland and that dealing with a "complaint which relates to the professional services provided by a barrister" will have some wholly distinct characteristics that will be different from complaints that may pertain to professional services provided by a solicitor. For example, a complaint could not arise in relation to financial wrongdoing as barristers never receive or hold any client money. This ensures complete protection for clients and is in the public interest. However, the construction of any levy and the setting of the scope for the Commissioners' office will require a clear understanding of the very different features of the solicitor and barrister professions in Northern Ireland.

The definition of a "relevant complaint" in clause 11(3) of the draft Bill as a "*complaint which relates to the professional services provided by a barrister*" requires further clarification from the Department with the term "*professional services*" needing explanation. The Bar Council contends that further guidance from the Department must be developed in conjunction with the relevant stakeholders and included within the rules, publications and websites.

The Bar Council highlights that significant work has already been undertaken to consider how the complaints handling system will be structured internally. This reform will see a subcommittee of the Professional Conduct Committee established which will conduct an

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initial assessment of the type of complaint received, namely whether it represents a service or conduct complaint. This will not involve any adjudication on the substance of the complaint but rather represents a means of ensuring that every complaint is filtered to the appropriate channel.

The Bar Council considers that this is an enhancement upon the system that operates in Scotland as we feel it is imperative that anyone submitting a complaint has confidence that it will be subject to a review by people with the relevant context and expertise to determine the nature of the complaint. The Bar Council also contends that members should consider whether complainants might be required to pay a fee when initially applying in an effort to discourage unmeritorious claims with this being returned if the complaint is upheld.

The prioritisation of service complaints represents a key feature of this new structure with a focus on mediation where possible. It is important to consider practice in other jurisdictions with the Bar of England and Wales and the Faculty of Advocates in Scotland which favour the informal resolution of complaints where possible. The Bar Council contends that this approach can avoid the potentially lengthy, costly and stressful process of formal proceedings. The Bar welcomes the Department's recognition of the importance of a system which permits complaints to be dealt with swiftly. This will see the establishment of a mediation panel by the Bar Council which will attempt to resolve service complaints in the first instance.

The Bar would highlight the benefits of the Scottish Legal Complaints Commission procedure, under which complaints must be brought within a specific timeframe. This means that unless there are exceptional circumstances, a complaint will not be entertained if it has been received outside the period of one year from the relevant events giving rise to the complaint, from the date of knowledge of them or from the cessation of the conduct or services provided. The Bar Council considers that a similar limit for complaints must be implemented in Northern Ireland.

## Clause Fourteen

The Bar Council welcomes view expressed by clause 14(1) that the Bar's internal complaints procedure must be the gateway for all complaints. However, it is our view that as outlined above, all complaints must initially be considered by a subcommittee of the Professional Conduct Committee simply to classify them as a service or conduct complaint, with no adjudication being made on the merits of the complaint. Having done so, there will be an initial attempt to resolve all service complaints within the Bar's internal complaints procedure in the first instance. We envisage that this will afford an opportunity for mediation and early resolution of issues. When the internal procedure is unable to reach a resolution on a complaint relating to the professional services provided by a barrister, it will be transferred to the Bar Complaints Committee.

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The Bar Council has accepted that responsibility for this part of the complaints handling function should transfer to the Benchers to ensure that functional separation is achieved. Consequently, the Benchers will be charged with administering the work of the Bar Complaints Committee. The Constitutions of both the General Council of the Bar of Northern Ireland and the Inn of Court were amended in May 2015 to reflect this separation and our Code of Conduct (see Appendix Two) has been structured accordingly. Therefore the requirements to establish the rules and procedures that will pertain to the Bar Complaints Committee are already in development.

## Clause Fifteen

This clause relates to the jurisdiction of the complaints committee. The Bar Council believes that a number of points within this clause are drafted too widely, particularly around the categories of complainant. The Bar understands that the Department's aim is to ensure that the barrister's own client is the complainant. The Bill and supporting regulations should therefore reflect this.

## Clause Nineteen

Clause 19 makes provision for compensation to be paid in relation to complaints. It should be recognised that civil remedies already exist for anyone to pursue in relation to compensation and the Professional Conduct Committee has the power to levy a fine on a respondent and has done so in past cases. The Bar Council has argued for a proportionate punitive levy with an upper limit of £3,500. However, the Department is proposing to increase the maximum payable to £5,000. We maintain that this figure is disproportionate for barristers.

Significant concerns arise due to the drafting of clauses 19(2)(c) and 19(2)(d) which allow for compensation payments to be made to the complainant from the respondent barrister in respect of alleged negligence and also for any other loss, inconvenience or distress.

The use of the term 'negligence' poses major difficulties for the profession. The Bar recommends that the reference to negligence should be removed from clause 19(2)(c). A finding of professional negligence is the express purview of legal proceedings. The Complaints Committee is an inappropriate forum for such a finding to be made.

The potential ramifications are severe as under strict rules of professional indemnity, such a finding would result in an insurance company declining to indemnify a barrister for future work. It is therefore highly unlikely that any barrister would accept a finding of negligence without appealing the decision to the Courts.

Findings of negligence are not available in either the Scottish or the England and Wales regulatory schemes. A recent court case arising from a determination by the Scottish Legal Complaints Commission highlights the potential difficulties of lay panels determining matters of professional negligence. In *Bartos v Scottish Legal Complaints Commission*



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[2015] CSH 50, an advocate appealed a decision on a service complaint which was heard by a lay panel and resulted in a finding against the advocate. The court was critical in its judgement of the approach of the lay panel, highlighting that it has a “statutory quasi-judicial function” as it is adjudicating on disputes which would have previously been directed to the courts on issues around professional negligence. The court highlighted that the Commission must be “independent, objective and impartial” in order to maintain the confidence of the parties involved and pointed to the need to ensure that the professionals on the panel have the appropriate background and standing to deal with the complexities that can arise in cases. The Bar Council believes that this case presents a situation which could be replicated in NI under the provisions contained in the Bill as it is currently drafted.

## Schedule Two

Schedule 2 details further information on the appointment and maintenance of the Bar Complaints Committee. The Bar Council argued against the proposed 2/3rds lay majority as this would reduce the expertise on the committee, highlighting that this should be amended to provide for a simple lay majority. The Bar welcomes the acknowledgement that a reduction in professional membership on the committee could lead to practical difficulties.

However, the Committee should give further scrutiny to the Department’s proposal that the complaints committee must be chaired by a layperson. The Bar Council proposes that this should not preclude a non-practising or retired member of the legal profession. The Bar appreciates the need for complainants to have confidence in the system and lay involvement is a vitally important part of this. However, our considerable experience of running the Professional Conduct Committee over the last number of years has shown the benefit of having a legally qualified chair with an understanding of the profession.

Members should consider that the current regulatory procedures carried out by the Professional Conduct Committee, comprising twelve independent practising barristers and two lay members, represents a rigorous and detailed process. Each complaint is treated very seriously and extensively investigated with both written and oral evidence.

## Issues

In summary, there are a number of key issues which members should address:

### Levy Cost

Whilst recognising the need for public confidence in regulation, there is a need to ensure that the profession is not unnecessarily burdened by the weight and cost of regulation. The Bar Council is committed to a levy system governed by proportionality for the legal profession. The Professional Conduct Committee dealt with 54 complaints in 2013 and 70 in 2014. By comparison, the Law Society dealt with 280 complaint enquiries in 2013. There is a need for any levy system to reflect the differences in complaint numbers between the

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two professions. The Bar notes that a key feature of the independent referral bar model is it is not possible for a complaint to arise in relation to alleged financial wrongdoing with client money as barristers never receive or hold any client money.

## Legal Services Oversight Commissioner

The Bar Council contends that anyone who is or has been a solicitor or barrister should not be excluded from appointment as the Legal Oversight Commissioner. The pre-condition for the Commissioner to be a lay person is a concern as we do not believe that previous experience of legal practice would be a hindrance to the role of the Commissioner and would provide a beneficial understanding of the nature of the services provided by the legal profession.

Furthermore, the Bar Council has considerable reservations regarding the potential for regulatory overreaching as evidenced and experienced in England and Wales. This relates specifically to the power to be given to the Commissioner to be consulted on future rules or regulations made by the professional bodies. The Bar Council believes that the Commissioner could offer an important contribution in the development of future rules in relation to legal services. However, the Commissioner's role in terms of rules and regulations should be restricted to those which apply to the provision of professional services by a barrister. The Commissioner's powers should not be extended to include the duty to review the "organisation" of the professional bodies, nor the manner in which professional conduct issues or the interpretation of the Code of Conduct are dealt with that are not related to issues around scrutiny of the professional services provided by the barrister to his or her own client.

## Bar Complaints Committee: Lay Representation

The Bar Council accepts that increased lay representation is important to maintain transparency and confidence in the complaints handling process. However, difficulties could arise in practice as it will be difficult to properly adjudicate complaints regarding the provision of legal services and potential breaches of professional duties without the experience of practice, knowledge of the legal system and understanding of the law. In terms of the membership of the complaints committee, the Bar urges the Committee to reconsider the provision that the Chairman must be a layperson. Our experience has shown the benefit of having a legally qualified chair who can understand the issues and has the confidence of the profession.

## Compensation Cost

Clause 19 of the Bill makes provision for compensation to be paid in relation to complaints. As currently operated, the Bar's Professional Conduct Committee has the power to levy a fine on a respondent and has done so in past cases. The Bar argued strongly for a proportionate punitive levy of £3,500 maximum. The Department has accepted that there is no need for a large increase to the levels applied in England and Wales as this would not

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be appropriate for this jurisdiction. However, the Department has now given consideration to a further increase with an extension to £5,000. The figure of £3,500 is derived from the excess paid by solicitors under a master insurance policy and no excess exists for the Bar. Consequently, the Bar asserts that this difference provides a basis for lowering the maximum amount payable by a barrister for compensation awards. Alongside the level of compensation payable, the Bar has considerable concerns around the potential for this Committee to make a finding of professional negligence against a barrister which is outside the jurisdiction of the court system.

## Conclusion

The Bar Council welcomes the opportunity to submit evidence to the Committee on this important area of work and is committed to the implementation of the Bill. There is considerable work required to give effect to the various provisions contained within it and to educate individual barristers as to the imminent changes and the implications for practitioners. This work is already underway and the Bar will continue to engage with the Committee as the Bill progresses through the legislative process.

## **Appendix One: Response to Draft Bill**

### **General Points**

1. The Bar Council is the representative body of the Bar of Northern Ireland. Members of the Bar specialise in the provision of expert independent legal advice and courtroom advocacy. Access to training, experience, continual professional development, research technology and modern facilities within the Bar Library enhance the expertise of individual barristers and ensure the highest quality of service to clients and the court.
2. The Bar Council welcomes the opportunity to respond to consultation on the Draft Legal Complaints and Regulation Bill 2013 and to work constructively with the Department of Finance and Personnel. We greatly welcome and value the engagement to date.
3. The Bar Council is committed to a transparent and accountable complaints procedure for clients. This consultation response focuses on the procedure for complaints which relate to the professional services provided by barristers to their clients.
4. All references within the draft legislation to the Executive Council of the Inn of Court of Northern Ireland should read the General Council of the Bar of Northern Ireland.
5. By way of assistance, we have included an outline of the present system of complaints handling at Appendix One.

### **Part 1 of the Bill: Legal Services Oversight Commissioner**

#### **Issue 1: Consultees are invited to comment upon the powers available to the Legal Services Oversight Commissioner**

*1(2) The Commissioner must be appointed by the Department of Finance and Personnel.*

6. It is proposed that Clause 1(2) should read that the Commissioner is appointed by the Department in consultation with the Lord Chief Justice. We understand that the Commissioner will be selected following a public appointment process. The Bar Council would propose that the Chair of the Bar Council and the President of the Law Society be involved in the recruitment process.

*1(3) The Commissioner must not be, and must never have been, a solicitor or barrister.*

7. The Bar Council disagrees with this preclusion. We do not believe that previous experience of legal practice would be a hindrance to the role of the Commissioner and may in fact provide a beneficial understanding of the nature of the professional services provided by the legal profession. This appointment may be one of significant interest to those presently serving in or retired from judicial office, a non-practicing solicitor or barrister or an in house/employed barrister. A balance needs to be achieved between transparency and ensuring complaints are dealt with efficiently, and cost effectively, and the appointment of such persons would in our view achieve those goals. In the event that a barrister or solicitor is appointed to the position he/she shall cease to practise on appointment.

*2(1) The Commissioner may—*

*(a) require a professional body to provide information, or make reports, to the Commissioner about the handling of complaints about its members;*

8. The remit of Clause 2(1)(a) is currently drafted too widely. It is proposed that “complaints about its members” should refer solely to those complaints which relate to professional services provided by a barrister, as envisaged in Clause 11(3) and Clause 13(1).
9. It is proposed that this requirement would be satisfactorily discharged by way of the relevant professional body filing an annual return with the Commissioner. The return would outline in detail the handling of

complaints which relate to the professional services provided by a barrister including: key statistical information; the action taken; method of disposal; and use of informal resolution.

*2.—(1) The Commissioner may—*

*(b) investigate the manner in which complaints about the members of a professional body are handled by that body;*

*(c) make recommendations in relation to the training of members of—*

*(i) the Bar Complaints Committee;*

*(ii) the Solicitors Complaints Committee;*

*(e) make recommendations in relation to the handling of complaints about the members of a professional body;*

10. In Clause 2(1)(b), it is proposed that the Commissioner may “engage in consultation” with the professional body in relation to the complaints handling procedure rather than “investigate”, following the submission of the annual return [see paragraph 9]. Similarly, in Clause 2(1)(c) and Clause 2(1)(e), the phrase “make recommendations” should be replaced with “engage in consultation” with the professional body.

*2.—(1) The Commissioner may—*

*(d) set targets in relation to the handling of complaints about the members of a professional body;*

11. Clause 2(1)(d) refers to the setting of targets. The Bar Council notes that the complaints procedure may be delayed for a variety of reasons, including delay caused by the complainant. The complaints procedure will require balancing due expedition with due process which will inevitably vary depending on the circumstances, including the complexity and gravity of the complaint. For these reasons, the Bar Council proposes that the complaints procedure should not be subjected to target setting but rather that the focus will be on the quality of service offered to the complainant and the barrister involved, dependant on all the circumstances of a particular case. The Bar Council is committed to investigating complaints thoroughly within a reasonable period of time and to this end, sets its own service

guidelines. We propose that the performance according to these service guidelines will form the basis of the annual return to the Commissioner. The Bar Council would then welcome constructive engagement with the Commissioner and consider any recommendations flowing from the same.

*2.—(1) The Commissioner may—  
(f) require a professional body to submit to the Commissioner a plan for the handling of complaints about its members;*

12. Clause 2(1)(f) should require the professional body to “consult” with the Commissioner in relation to its plan for complaint handling. As expected in an open and transparent system of regulation, the Bar Council will engage with the Commissioner and ensure that he or she is well informed on the complaints handling system operated by the Bar.

*2.—(1) The Commissioner may—  
(g) do any other thing which the Commissioner has power to do by virtue of this Act or any other statutory provision.*

13. The Bar Council does not agree with Clause 2(1)(g) as it is currently drafted too widely. Such a clause would render the Department, the representative bodies and legal practitioners in Northern Ireland vulnerable to regulatory overreaching, an issue which has proven very concerning in the neighbouring jurisdictions of England and Wales and the Republic of Ireland.

*2(2) Where the Commissioner requires a professional body to submit a plan for the handling of complaints about its members but the body—  
(a) fails to submit a plan which the Commissioner considers adequate for securing that such complaints are handled effectively and efficiently; or  
(b) submits such a plan but fails to handle complaints in accordance with it,  
the Commissioner may require the body to pay a penalty.*

14. Clause 2(2) permits the Commissioner to require a professional body to pay a penalty if it fails to submit adequate plans for complaint

handling or fails to handle complaints in accordance with its plan. In the course of operating an open and transparent system of regulation, the Bar Council would intend to engage constructively with the Commissioner, sharing relevant information and consulting where appropriate.

*2(3) Before requiring a professional body to pay a penalty under subsection (2) the Commissioner must consult with the body and afford it a reasonable opportunity of appearing before the Commissioner to make representations.*

15. In Clause 2(3), it is proposed that the reference to “appearing before the Commissioner” is omitted. It is proposed that “the Commissioner must consult with the body and afford it a reasonable opportunity to make oral and/or written representations to the Commissioner”.

*2(4) The Department must by order specify the maximum amount of any penalty under subsection (2).*

*2(7) A penalty under subsection (2) must be paid to the Commissioner who must pay it to the Department.*

16. The Bar Council has concerns regarding the legitimacy of the Department’s powers to both set the maximum amount for the penalty and ultimately receive the penalty, as envisaged in Clause 2(4) and Clause 2(7).

*2(5) No order shall be made under subsection (4) unless a draft of the order has been laid before, and approved by resolution of, the Assembly.*

*2(6) In determining the amount of any penalty which a professional body is to be required to pay under subsection (2) the Commissioner must have regard to all the circumstances of the case, including in particular—*

*(a) the total number of complaints about members of the body and, where the penalty is imposed in respect of a failure to handle complaints in accordance with a plan, the number of complaints not so handled; and*

*(b) the assets of the body and the number of its members.*

17. Clause 2(5) and 2(6) are contingent clauses relating to the penalty, which also require closer review. The Bar Council proposes that Clause



2(6)(b), which links the penalty to the assets of the professional body and the number of its members, should be removed.

18. The issue of penalty payments will also need to be addressed by the Benchers.

**Issue 2: Consultee's views are welcomed on the provisions in Clauses 3 - 4 that will give the Commissioner the power to be consulted on future rules/regulations made by the relevant professional bodies, and to potentially examine existing rules relating to the professional bodies.**

*3.—(1) Where any body listed in subsection (2) has power to make any rules or regulations (however they may be described) which apply to or in relation to barristers, other than those made for the purposes of any functions that that body has to represent or promote the interests of barristers, that body must consult the Commissioner before making those rules or, as the case may be, those regulations.*

19. The remit of Clause 3(1) is currently drafted too widely. The duty to consult should be limited to the rules and regulations which apply to complaints relating to a barrister's provision of professional services, as defined in Clauses 11(3), 13(1) and 15.

*3(2) The bodies referred to in subsection (1) are—*  
*(a) the Benchers of the Honorable Society of the Inn of Court of Northern Ireland;*  
*(b) the Executive Council of the Inn of Court of Northern Ireland;*  
*(c) the General Council of the Bar of Northern Ireland.*

20. The precise terminology of Clause 3(2) will change depending on the restructuring of the Bar Council and the Executive Council.

*4.—(1) At the request of the Department, and within such time as the Department may specify, the Commissioner must review, and submit a report to the Department on, such matter or matters relating to the organisation or regulation of the professional bodies as the Department may specify.*

21. The remit of Clause 4(1) is currently drafted too widely. The Commissioner's duty to review should be limited to the regulations which apply to complaints relating to a barrister's provision of

professional services to his or her client. The Commissioner's powers should not be extended to include the duty to review the "organisation" of the professional bodies, as is currently envisaged in this clause.

**Issue 3: Consultees are invited to offer their views on the levy provisions contained at Clauses 5-6 of the Draft Bill.**

*5.—(1) The Department must make regulations providing for the imposition of a levy on each professional body for the purpose of raising an amount corresponding to the expenditure of the Legal Services Oversight Commissioner incurred under or for the purposes of this Act or any other statutory provision.*

*(2) A levy imposed under this section is payable to the Commissioner.*

*(3) Before making regulations under this section, the Department must satisfy itself that the apportionment of the levy as between each professional body will be in accordance with fair principles.*

*(4) No regulations shall be made under this section unless a draft of the regulations has been laid before, and approved by resolution of, the Assembly.*

*6.—(1) In this section—*

*"the levy" means the levy payable by virtue of section 5;*

*"the levy regulations" means the regulations made in accordance with that section.*

*(2) The levy is to be payable at such rate and at such times as may be specified in the levy regulations.*

*(3) Any amount which is owed to the Commissioner in accordance with the levy regulations may be recovered as a debt due to the Commissioner.*

*(4) The levy regulations must include provisions requiring the Department—*

*(a) to calculate the amount of the levy payable by each professional body;*

*(b) to consult each professional body on the amount of the levy payable by that body;*

*(c) to notify each professional body of its liability to pay an amount of levy and the time or times at which it becomes payable.*

*(5) Without prejudice to subsections (2) to (4), the levy regulations may—*

*(a) make provision about the collection and recovery of the levy;*

22. The Bar Council is committed to a levy system governed by the principle of proportionality. The Bar Council would appreciate more information on the source of the figures used in relation to the levy cited on pp.83-84 of the Consultation Paper.

23. The Bar Council notes that in 2013, the PCC dealt with a total of 34 complaints. In comparison, the Law Society received a total of 280 complaint enquiries in 2013.
24. The provisional costing of restructuring the current complaints system to facilitate the new regulatory scheme is approximately £100,000. This cost will be borne by the members of the Bar, in addition to the annual levy.
25. To ensure social mobility within the profession, the Bar Council operates a professional fees subsidy system, whereby fees are increased on a graduated scale. During their first seven years at the Bar, barristers pay an annual fee which increases incrementally, year on year, until they reach their eighth year. The Bar Council is concerned that an additional onerous annual levy would impact significantly on social mobility within the profession.

**Issue 4: Consultees are invited to comment on Clauses 8 - 9 and on Part 1 of the Bill generally**

*10. In this Part—*

*“the Bar Complaints Committee” means the committee established under section 12;*

*“the professional bodies” are*

*(a) the Honorable Society of the Inn of Court of Northern Ireland;*

*(b) the Law Society of Northern Ireland;*

*“the Solicitors Complaints Committee” means the committee established under section 30.*

26. In Clause 10 (a), the professional body is the General Council of the Bar of Northern Ireland, not the Inn of Court.

**Part 2 of the Bill: Complaints against Barristers**

**Issue 5: Consultees are invited to give views on the manner in which the Bar Complaints Committee will be appointed and maintained**

*11.—(1) The General Council of the Bar must make provision requiring every barrister to participate in, or make arrangements to be subject to, procedures for the resolution of relevant complaints established and maintained by such person or body as may be specified by the General Council of the Bar, and provision must be made by the Council for the enforcement of that requirement.*

27. Clause 11(1) requires the Bar Council to establish a procedure for the resolution of complaints.
28. Both the Bar of England and Wales and the Faculty of Advocates in Scotland are regulated by an approach which favours the informal resolution of all complaints where possible. Both the Legal Ombudsman for England and Wales and the Scottish Legal Complaints Commission insist that the complainant must attempt to resolve the problem with the barrister in the first instance before lodging a complaint. Where a complaint relating to the service provided by a barrister is lodged in England and Wales or Scotland, there is still the opportunity to resolve the issue informally during either the mediation [Scotland only] or investigation stage of the process. It is only when the investigation stage has produced no informal resolution that the matter is passed to an Ombudsman or Determination Committee for formal consideration.
29. It is submitted that this approach has much to commend it as it avoids the potentially lengthy, costly and stressful process of formal proceedings. It is submitted that such an approach should be adopted by the Bar of Northern Ireland's internal complaints procedure. In particular, careful consideration should be given to the proposal of offering mediation to the parties at the initial stage of the complaints process with the aim of a prompt resolution.

*14.—(1) A complaint is excluded from the jurisdiction of the Bar Complaints Committee if the complainant has not first used the respondent's complaints procedures in relation to the complaint.*

30. The Draft Bill proposes that in most cases the complainant must first use the respondent's complaints procedures before the complaint is eligible for consideration by the Bar Complaints Committee [Clause 14(1)]. Thus the internal complaints procedure will be the gateway for all complaints relating to barristers i.e. complaints relating to conduct issues and complaints relating to the service provided by a barrister. It is only when the internal procedure is unable to reach an accepted resolution about a complaint which relates to "professional services provided by a barrister" that the complaint will be transferred to the Bar Complaints Committee.
31. Only complaints which relate to "professional services provided by a barrister" will be transferred to the Bar Complaints Committee if the internal complaints procedure is unable to reach a resolution.
32. It is submitted that rather than having two separate complaints procedures for service complaints and conduct complaints, both types of complaints should be subject to the same process within the internal body, although the disciplinary penalties will vary depending on the nature of the complaint.

*11(2) Before making the provision mentioned in subsection (1), the General Council of the Bar must consult the Legal Services Oversight Commissioner.*

33. Clause 11(2) should read that the General Council of the Bar and the LSOC "will engage in consultation" before making the provision mentioned in subsection (1).

*11(3) In subsection (1) "relevant complaint" means a complaint which relates to professional services provided by a barrister.*

34. Clause 11(3) defines “relevant complaint” as “a complaint which relates to professional services provided by a barrister”. It is proposed that the definition of “relevant complaint” requires further clarification. In particular, the term “professional services” requires definition.
35. It is proposed that the explanatory notes accompanying the legislation should give some guidance on how to identify a complaint relating to the provision of professional services. The same guidance should also be provided by both the internal complaints body and the Bar Complaints Committee within their rules, publications and websites.
36. It is proposed that such guidance should define a professional services complaint as “a complaint which relates to the quality of work a barrister has carried out, or which the complainant thinks should have been carried out, during the course of providing professional services”. This definition is similar to the wording used by the Scottish Legal Complaints Commission.
37. It is further proposed that the guidance should also include some examples of complaints relating to professional services. Such examples might include complaints arising from:
- a. the exercise of rights of audience on behalf of the complainant;
  - b. the conduct of litigation on behalf of the complainant; and
  - c. the provision of legal advice to the complainant.

**Issue 6: Consultee’s views are invited in relation to the conditions set out in Clauses 14-16 relating to the jurisdiction of the complaint committee and the eligibility to make a complaint.**

- 15.—(1) A complainant (“C”) is within this section if C*
- (a) meets the first and second conditions; and*
  - (b) is not excluded by subsection (4).*
- (2) The first condition is that C is*
- (a) an individual; or*

*(b) a person (other than an individual) or body of a description prescribed by order made by the Department in accordance with a recommendation made under section 16.*

*(3) The second condition is that*

*(a) the services to which the complaint relates were provided by the respondent to C;*

*(b) the services to which the complaint relates were provided by the respondent to a solicitor who procured them on C's behalf; or*

*(c) C satisfies such other conditions, in relation to the services to which the complaint relates, as may be prescribed by order made by the Department in accordance with a recommendation made under section 16.*

38. Clause 15(3)(c) is currently drafted very widely and potentially allows for further, unspecified, categories of complainant. It is proposed that this clause is removed.

*15(4) C is excluded if, at the time when the act or omission to which the complaint relates took place*

*(a) C was a solicitor and the services to which the complaint relates were procured by C on behalf of another person;*

39. The wording of Clause 15(4)(a) is unclear. The clause should simply exclude a barrister's instructing solicitor from making a complaint.

*15(4) C is excluded if, at the time when the act or omission to which the complaint relates took place*

*(b) C was a person or body of a description prescribed by order made by the Department in accordance with a recommendation made under section 16.*

40. Clause 15(4)(b) is unclear as to what persons or bodies might be excluded from making a complaint.

**16.—(1) An interested body may recommend to the Department that the Department make an order under section 15(2)(b), (3)(c) or (4)(b).**

**(2) An interested body must, if requested to do so by the Department, consider whether or not it is appropriate to make a recommendation under subsection (1).**

**(3) An interested body must, before making a recommendation under subsection (1)**

**(a) publish a draft of the proposed recommendation;**

**(b) invite representations regarding the proposed recommendation; and**

**(c) consider any such representations which are made.**

*(4) Where the Department receives a recommendation under subsection (1), the Department must consider whether to follow the recommendation.*

*(5) If the Department decides not to follow the recommendation, the Department must publish a notice to that effect which includes the Department's reasons for the decision.*

*(6) In this section "interested body" means*

*(a) the Bar Complaints Committee; or*

*(b) the Legal Services Oversight Commissioner.*

41. Clause 16 allows for the Bar Complaints Committee and the LSOC to make recommendations to the Department to extend or restrict the categories of complainant. The rationale informing this clause is unclear. It is proposed that this clause is unnecessary. The category of complainant should be restricted to clients to whom the respondent barrister has provided a professional service.

**Issue 7: Consultee's views on the proposed schemes for the procedures for the Bar Complaints Committee are welcomed.**

42. Clause 17, which focuses on the procedures to be adopted by the Bar Complaints Committee, raises issues which must also be addressed by the Benchers.

*17(4) Rules under subsection (1) may (among other things) make provision*

*(h) for the Committee to award costs against the complainant in favour of the respondent if, in the opinion of the Committee, the complainant acted so unreasonably in relation to the complaint that it is appropriate in all the circumstances of the case to make such an award;*

*(i) for the Committee to award costs against the complainant in favour of the Committee for the purpose of providing a contribution to resources deployed in dealing with the complaint if, in the opinion of the Committee, the complainant acted so unreasonably in relation to the complaint that it is appropriate in all the circumstances of the case to make such an award;*

43. Clauses 17(4)(h) and 17(4)(i) allow the Committee to award costs against a complainant where the complainant acts so unreasonably that it is appropriate to do so. It is proposed that this threshold is too high.



Instead, the Committee should retain a general discretion to award costs against an unsuccessful complainant.

*17(4) Rules under subsection (1) may (among other things) make provision:*

*(a) for the whole or part of a complaint to be dismissed, in such circumstances as are mentioned in subsection (5), without consideration of its merits;*

*17(5) The circumstances referred to in subsection (4)(a) are the following:*

*(b) the Committee considers that the complaint or part of the complaint would be better dealt with by arbitration or by legal proceedings;*

*(d) the Committee is satisfied that the matter which is the subject of the complaint or part of the complaint has previously been dealt with by the Committee or by legal proceedings;*

44. Clause 17(4)(a) provides for circumstances in which the Committee may dismiss a complaint in whole or in part without consideration of its merits. The circumstances in which such a dismissal may occur include complaints which the Committee considers would be better dealt with by arbitration or by legal proceedings and complaints which have previously been dealt with by the Committee or by legal proceedings [s.17(5)(b)(d)].

45. It is proposed that the Committee should also be able to dismiss complaints in the following circumstances:

- a. it considers that the complaint would be better dealt with by the internal complaints procedure;
- b. it is satisfied that the matter has previously been dealt with by the internal complaints procedure.

These circumstances should be added to Clause 17(5).

*17(7) An amount due under an award made in favour of the Committee by virtue of any provision made under subsection (4)(g) or (i) shall be payable to the Executive Council of the Inn of Court of Northern Ireland.*

46. Clause 17(7) should read that awards made in favour of the Committee shall be payable to the General Council of the Bar of Northern Ireland, not the Executive Council.

**Issue 8: Consultee's views on the proposed determination provisions available to the Bar Complaints Committee are welcomed.**

*17(4) Rules under subsection (1) may (among other things) make provision:*  
*(f) for the Committee to award costs against the respondent in favour of the complainant;*  
*(g) for the Committee to award costs against the respondent in favour of the Committee for the purpose of providing a contribution to resources deployed in dealing with the complaint;*

*19(2) A determination by the Committee upholding a complaint may contain one or more of the following:*  
*(c) a direction that the respondent pay compensation to the complainant of such amount as is specified in the direction in respect of any loss which, in the opinion of the Committee, has been suffered by the complainant as a result of the respondent's negligence;*  
*(d) a direction that the respondent pay compensation to the complainant of such amount as is specified in the direction in respect of any loss (other than such loss as is mentioned in paragraph (c)), inconvenience or distress which has been caused to the complainant as a result of any matter connected with the complaint;*

47. The Bar Council notes that financial awards can be made against the respondent barrister on several grounds within Clause 17(4) and Clause 19(2). It is suggested that there should be an upper limit on any combined financial awards imposed.

48. It is proposed that any financial awards made against a respondent barrister are governed by the principle of proportionality. It is important to note that any payments which the respondent barrister is directed to make should be compensatory in nature rather than punitive. The Bar Council wishes to eliminate the possibility of onerous financial penalties on its members.

*19(2) A determination by the Committee upholding a complaint may contain one or more of the following:*

*(c) a direction that the respondent pay compensation to the complainant of such amount as is specified in the direction in respect of any loss which, in the opinion of the Committee, has been suffered by the complainant as a result of the respondent's negligence;*

*(d) a direction that the respondent pay compensation to the complainant of such amount as is specified in the direction in respect of any loss (other than such loss as is mentioned in paragraph (c)), inconvenience or distress which has been caused to the complainant as a result of any matter connected with the complaint;*

*19(7) The amount of any compensation specified in a direction under subsection (2)(c) must not exceed £3,500.*

*19(8) The amount of any compensation specified in a direction under subsection (2)(d) must not exceed £3,500.*

49. Clause 19(2)(c) and Clause 19(2)(d) allow for compensation payments to be made to the complainant from the respondent barrister for negligence and also for any other loss, inconvenience or distress. The compensation payments are capped at £3500 each, as outlined in Clauses 19(7)-(8).

50. The Consultation Paper notes at p.83 that the figure of £3500 was derived from the excess paid by solicitors under a master insurance policy. The paper also notes that no excess exists for the Bar. It is proposed that this difference provides a basis for lowering the maximum amount payable by a barrister for compensation awards.

51. The Bar Council is concerned that the legislation allows for an award of compensation for negligence and other losses, together with an award for costs, to be made against a barrister outside the jurisdiction of court proceedings. It is unclear from the Consultation Paper whether or not the Legal Services Review Group consulted with insurers regarding indemnifying barristers in light of the Committee's powers to award payments for negligence.

52. We have concerns about what criteria would be employed to assess how and when an award of compensation should be made. It is plausible that an insurance company might decline to indemnify a barrister for future work after a finding of negligence by the

Committee. As professional insurance is mandatory, this could preclude a barrister from remaining in practice.

53. The Bar Council notes that findings of negligence are not available in either the Scottish or the England and Wales regulatory schemes. Instead, the regulator may direct for compensation to be paid for loss, inconvenience and distress [Legal Profession and Legal Aid (Scotland) Act 2007 s.10(2)(d) and Legal Ombudsman Scheme Rules 5.38].
54. For these reasons, the Bar Council proposes that the word negligence should be removed from Clause 19(2)(c). Instead, the respondent barrister may be directed to pay compensation to the complainant for failure to provide an adequate level of professional services.
55. Further, it is proposed that a finding by the Committee would disbar any further legal proceedings grounded on the Committee's finding. Such a provision would reflect the position in Scotland [LPLA Scotland Act 2007 s.14(1)].
56. It is also proposed that the legislation should contain an express provision precluding a complainant from pursuing further legal proceedings after the complainant has accepted a resolution or determination by the Committee. Such a provision would reflect the position in England and Wales [Scheme Rule 5.50].

*20.—(1) The Department may by order subject to negative resolution amend subsection (7) or (8) of section 19 in accordance with a recommendation made by an interested body under subsection (2).*

*(2) An interested body may recommend to the Department that subsection (7) or (8) of section 19 should be amended so as to substitute the amount specified in the recommendation for the amount for the time being specified in subsection (7) or, as the case may be, (8).*

*(3) An interested body must, if requested to do so by the Department, consider whether or not it is appropriate to make a recommendation under subsection (2).*

*(4) An interested body must, before making a recommendation under subsection (2)*

*(a) publish a draft of the proposed recommendation;*

*(b) invite representations regarding the proposed recommendation; and*

*(c) consider any such representations which are made.*

*(5) Where the Department receives a recommendation under subsection (2), the Department must consider whether to follow the recommendation.*

*(6) If the Department decides not to follow the recommendation, the Department must publish a notice to that effect which includes the Department's reasons for the decision.*

*(7) In this section "interested body" means*

*(a) the Bar Complaints Committee; or*

*(b) the Legal Services Oversight Commissioner.*

57. Clause 20 allows for the alteration of the compensation limit. It is proposed that the compensation limit should only be altered in certain circumstances. The legislation should state what factors would trigger an alteration of the compensation limit.

*25.—(1) The Bar Complaints Committee may, if it considers it appropriate to do so in any particular case, publish a report of the investigation, consideration and determination of a complaint made to it.*

*(2) A report under subsection (1) must not (unless the complainant consents)*

*(a) mention the name of the complainant; or*

*(b) include any particulars which the Committee considers are likely to identify the complainant.*

58. Clause 25(2)(a) states that the complainant's name will not be mentioned in any published report by the Committee, unless the complainant consents. The legislation does not provide any justifiable grounds to support withholding the complainant's name. In legal proceedings, anonymity is granted only to vulnerable witnesses, for example, children or complainants in cases dealing with charges of a sexual nature. It is proposed that the complainant should not be offered anonymity under the scheme.

**Issue 9 Consultee's views on these provisions and the scheme for complaints against barristers generally are welcomed.**

*Schedule 1 2.—(1) The Commissioner may do anything, apart from borrowing money, which the Commissioner considers is*

*(a) appropriate for facilitating; or*

*(b) incidental or conducive to, the exercise of the Commissioner's functions.*

*Schedule 1 2(2) That includes in particular*  
*(a) acquiring, holding and disposing of real or personal property;*  
*(b) entering into contracts.*

59. Schedule 1 2(1) states that the Commissioner “may do anything”, apart from borrow money, in the exercise of the Commissioner’s functions. It is proposed that this power is too wide and should be removed. Further, any acquiring of real or personal property, as envisaged under Schedule 1 2(2)(a), should be subject to approval by the Department.

*Schedule 1 3.—(1) Subject to the provisions of this paragraph, a person shall hold and vacate office as the Commissioner in accordance with the terms of that person’s appointment.*

*(2) An appointment as the Commissioner shall be for a term of 3 years.*

*(3) A person who ceases to be the Commissioner on the expiration of that person’s first term of office shall be eligible for re-appointment, but a person who has been re-appointed by virtue of this sub-paragraph shall not be eligible for appointment or re-appointment as the Commissioner at any time after the end of that person’s second term of office.*

*(4) A person may at any time resign from office as the Commissioner by notice to the Department.*

*(5) The Department may remove a person from office as the Commissioner if satisfied that that person has*

*(a) been convicted of a criminal offence;*

*(b) become bankrupt or made an arrangement or composition with that person’s creditors;*

*(c) without reasonable excuse, failed to discharge the functions of the Commissioner for a continuous period of 3 months; or*

*(d) become unfit or unable to exercise the functions of the Commissioner.*

60. It is submitted that the Commissioner’s tenure of office, as outlined in Schedule 1 Clause 3, should be subject to a performance review on an annual basis by the Department and the relevant professional bodies.

*Schedule 1 4.—(1) The Department may appoint a person to exercise the functions of the Commissioner where*

*(a) the Commissioner’s office becomes vacant; or*

*(b) the Commissioner is incapable of exercising those functions or considers that it would be inappropriate to exercise any of those functions in connection with a particular matter (because of a possible conflict of interests or for any other reason).*

61. Schedule 1 4(1)(b) should read where the Commissioner is “unable to perform the functions of the office” .

*Schedule 1 5.—(1) The Department may pay to or in respect of the Commissioner—*

*(a) such remuneration and allowances, and*

*(b) such sums for the provision of a pension, as the Department may determine.*

62. Schedule 1 5(1)(a) should read “such reasonable remuneration...as the Department may determine in consultation with the Bar Council and the Law Society”. The Commissioner’s salary should not exceed an upper limit, to be determined by the Department in consultation with the professional bodies.

*Schedule 1 5(2) Where a person ceases to hold office as Commissioner otherwise than on the expiration of that person’s term of office and the Department determines that there are special circumstances that make it right for that person to receive compensation, the Department may make to that person a payment of such amount as the Department may determine.*

63. It is proposed that the Commissioner should only receive compensation from the Department in circumstances where the Commissioner successfully pursues a legal action against the Department. The payment of compensation to the Commissioner should not be a matter of concern for the relevant professional bodies.

*Schedule 1 6.—(1) The Commissioner may appoint such number of officers as the Commissioner may determine.*

64. The current clause allows for the appointment of “such number of officers as the Commissioner may determine”. This power to appoint unlimited numbers of staff is too wide and should be restricted.

65. The Consultation Paper, at p.84, states that the costs of the Commissioner will be in the region of £200k per year. The Bar Council

would appreciate further information as to how this figure was reached.

*Schedule 1 13(3) The Commissioner must, within such period after the end of each financial year as the Department may direct, send copies of the statement of accounts relating to that year to*  
*(a) the Department; and*  
*(b) the Comptroller and Auditor General.*

*Schedule 1 13(4) The Comptroller and Auditor General must*  
*(a) examine, certify and report on every statement of accounts sent to him or her by the Commissioner under this paragraph; and*  
*(b) send a copy of the report to the Department.*

66. Schedule 1 13(3) should read that the Commissioner must send a copy of the annual statement of accounts to the relevant professional bodies. Schedule 1 13(4) should read that the Comptroller and Auditor General must send a copy of his or her report on every statement of accounts to the professional bodies.

*Schedule 1 14.—(1) As soon as practicable after the end of each financial year, the Commissioner must send to the Department a report on the carrying out of the Commissioner’s functions during that year.*

67. Schedule 1 14(1) should read that a copy of the Commissioner’s annual report must be sent to the relevant professional bodies as soon as practicable after the end of each financial year.

*Schedule 2 3. The Benchers may not make any appointment under paragraph 1 without the consent of the Legal Services Oversight Commissioner*

68. Schedule 2 clause 3 should read that the Benchers may not make any appointment “without consulting the Commissioner”.

*Schedule 2 4.(1) In appointing members of the Bar Complaints Committee, the Benchers must ensure that*  
*(a) at least two thirds of the members of the Committee are lay persons;*



69. Schedule 2 4 (1)(a) should read “the majority of the members of the Committee are lay persons”.

70. The Bar Council notes that in the Scottish Legal Complaints Commission [SLCC], where a determination is made by a Determination Committee, it is chaired by a legal member. Determination Committees usually consist of three members of the SLCC, although committees of five, seven or nine members may also be convened. When determining issues in their committees, there is always a majority of lay members. This arrangement thereby allows for a majority of lay committee members together with a legal chair.

*Schedule 2 4(2) The chair of the Bar Complaints Committee must be a lay person.*

71. It is proposed that some consideration should be given to the adoption of the Scottish model for the Bar Complaints Committee. Schedule 2 4(2) currently states that the chair of the Committee must be a lay person. It is proposed that a lay chair should not preclude a retired member of the legal profession or a non-practicing member of the legal profession [see paragraph 7].

*Schedule 2 5(6) A member (including the chair) may only be removed from office under sub-paragraph (4)(b) with the consent of the Legal Services Oversight Commissioner.*

72. Schedule 2 5(6) should read that a member of the Committee may only be removed from office following consultation with the Commissioner.

*Schedule 2 6(2) If*

*(a) a person ceases to be a member of the Committee; and*

*(b) it appears to the Benchers that there are special circumstances which make it right that that person should receive compensation, the Benchers may make arrangements for that person to be paid such amount as the Benchers may determine.*

73. Schedule 2 6(2) allows for compensation to be paid to a Committee member after that person ceases to be a Committee member. It is proposed that this clause is removed.

*Schedule 2 8(4) At least two thirds of the members of a sub-committee must be lay persons.*

74. It is proposed that Schedule 2 8(4) should read that “a majority of the members of a sub-committee must be lay persons”.

## APPENDIX ONE

### Regulation – The Present Position

1. The Bar Council discharges its regulatory functions through a separate and constitutionally recognised committee. The Professional Conduct Committee [PCC] consists of twelve independent practising barristers and two lay members. The present structure involves complaints being considered by the PCC, which may deal with matters itself or it may prefer charges to a Summary Panel or a Disciplinary Committee of the Executive Council.
2. A Summary Panel deals with more straightforward matters involving less serious breaches of the Code of Conduct. A Summary Panel consists of a senior barrister, a junior barrister and a lay person. For more serious breaches of the Code of Conduct, a Disciplinary Committee is constituted. The Disciplinary Committee is chaired by a High Court Judge or a Lord Justice of Appeal. It comprises members of the profession representing different levels of seniority and experience at the Bar and two lay representatives. An appeal lies from the Disciplinary Committee to the Disciplinary Appeals Committee of the Benchers.
3. The Disciplinary Appeals Committee comprises three Benchers of the Inn of Court of Northern Ireland and one lay member. The Lord Chief Justice nominates the Chairman, a judge of no less standing than a Lord Justice of Appeal. In addition, there is a High Court judge representing the Benchers and a senior member of the profession. The involvement of individuals holding high judicial office in the disciplinary process ensures objectivity and impartiality.
4. The Appeals Committee has the powers of the Disciplinary Committee to admonish, reprimand, censure, fine, order repayment of fees, suspend or expel from membership of the Bar Library, disbar or

suspend from practice, impose conditions on practice or deal with the barrister in such other manner as may appear appropriate. In a recent case, for example, a costs award was made against the respondent barrister to cover the costs of the hearing. All disciplinary hearings are in public. In the case of a finding of a breach of a Code of Conduct, the finding is published on a notice board in the Bar Library and in the Great Hall of the Royal Courts of Justice.

5. There is also a review panel who consider complaints which have been dismissed by the PCC. The complainant must demonstrate promptly that the PCC did not consider relevant evidence. The review panel is independent of the PCC and consists of a chair, usually a former Chair of the PCC or a nominee of the Chair of the Bar Council, one member of the Bar and a lay person.
6. Complaints can be made in a variety of ways and information is available on the Bar Library website to assist members of the public. The information available on the website includes downloadable versions of the Code of Conduct, a guide to the complaints process and a complaint form. The Bar Library website is currently being upgraded which will further enhance the transparency of the complaints process.
7. Complaints can be submitted by a member of the public, a public representative, individual barristers or judicial officers. Complaints can also be made through a solicitor or an MLA, which has occurred in the past. The PCC is supported by a member of staff who is solely responsible for regulatory matters and may be contacted at the Bar Library. The PCC dealt with 25 complaints in 2012 and 34 complaints in 2013. These figures are comparatively low when compared to other professions and when considering the high number of court proceedings each year.
8. The PCC is proactive as well as being reactive:
  - it advises members of the Bar through the issuing of memos;
  - it provides barristers with one-to-one advice; and

- it has the power to initiate an investigation on the basis of any matter of concern which has come to its attention.
9. It should be recognised that the current procedures represent a rigorous and detailed process. Each complaint is treated very seriously and investigated to the highest degree. Anecdotal evidence from those involved in the disciplinary matters indicates that the members of the profession are far tougher on other members of the profession than lay representatives who sometimes may not appreciate the fundamental nature of the core duties required of a barrister.



THE BAR *of*  
NORTHERN  
IRELAND

## **The Bar of Northern Ireland Code of Conduct**

**2015**

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# **CODE OF CONDUCT FOR THE BAR OF NORTHERN IRELAND**

## **1. INTRODUCTION**

- 1.1 The Bar of Northern Ireland grew out of the Irish Bar as it existed before the 1<sup>st</sup> October 1921 when the relevant provisions of the Government of Ireland Act 1920 establishing a separate Supreme Court of Judicature of Northern Ireland and giving recognition to the creation of a separate Bar of Northern Ireland came into force. That Act preserved the right of all then existing members of the Irish Bar to practise at and be members of the Bar of both Northern Ireland and Southern Ireland. It was as a sequel to a meeting of twenty-two of these members held on the 26<sup>th</sup> October 1921 that the first General Council of the Bar of Northern Ireland was elected.
- 1.2 The original Bar of Northern Ireland consisted of a mixture, in territory as well as personnel, of the North East and North West Circuits of the former Irish Bar. Belfast (for County Antrim), Downpatrick and Armagh, which became three of the towns of the Circuit of Northern Ireland, were former North East Circuit towns and Enniskillen, Omagh and Londonderry, which became three other towns of the Circuit of Northern Ireland, were former North West Circuit towns.
- 1.3 The Inn of Court of Northern Ireland was established at a meeting of the Bench and Bar held on the 11<sup>th</sup> January 1926. Prior to that date and following the coming into force of the Government of Ireland Act 1920, the Lord Chief Justice of Northern Ireland had, under appropriate warrants, called members of the Bar to the Inner Bar in Northern Ireland as King's Counsel.
- 1.4 Accordingly, subsequent to the 11<sup>th</sup> January 1926 there were both:
- a) the Inn of Court of Northern Ireland governed by the Benchers of the Inn (a body consisting of all the judges of the Supreme Court, the Attorney General and at least nine practising members of the Bar of Northern Ireland) and
  - b) the General Council of the Bar of Northern Ireland (the "Bar Council").

- 1.5 At a General Meeting of the Inn of Court of Northern Ireland on the 5<sup>th</sup> October 1983 it was resolved that the present Constitution be adopted as the Constitution of the Honorable Society of the Inn of Court of Northern Ireland with effect from the 14<sup>th</sup> November 1983 the Bar of Northern Ireland at a General Meeting on the 22<sup>nd</sup> June 1983 having resolved that with effect from the same date the Bar of Northern Ireland and the General Council of the Bar of Northern Ireland should be governed by the Regulations of the same Constitution.
- 1.6 Under the present Constitution most of the powers formerly exercised by the Benchers are now effectively exercised by the Executive Council of the Inn of Court of Northern Ireland. Practising barristers comprise the majority of the members of the Executive Council.
- 1.7 The Executive Council deals with the admission of students, education of students, liaison with corresponding bodies in other countries, fees on admission as a student, called to the Bar, administration of the Bar Library, the fixing of annual subscriptions to the Bar Library and all other matters of finance including income and expenditure.
- 1.8 The Bar Council deals with the maintenance of the standards, honour and independence of the Bar and, through its Professional Conduct Committee, receives and investigates complaints against members of the Bar in their professional capacity and also investigates and deals with matters arising from their behaviour and conduct generally.
- 1.9 Every barrister in independent practice shall be a member of the Bar Library.
- 1.10 The Bar Council may, in its discretion, grant an exemption from the requirement that a barrister shall be a member of the Bar Library.
- 1.11 Any barrister who applies for such an exemption must demonstrate, to the satisfaction of the Bar Council, that he:
- i. has the necessary experience to practise outside the Bar Library;

- ii. has access to adequate library facilities, which are defined as facilities commensurate with those available to members of the Bar Library;
- iii. has the ability to manage his practice efficiently;
- iv. is in good standing with Her Majesty's Revenue and Customs;
- v. holds a valid and subsisting practising certificate for the Bar of Northern Ireland.

1.12 If the Bar Council grants such exemption, it may, in its discretion, impose such restrictions on the barrister's practice as it sees fit and it shall be a condition of the grant of such exemption that the barrister undertakes to abide by such restrictions as are imposed.

1.13 Membership of the Bar Library entitles a barrister to the use of all its facilities including the Library itself, the Robing Room, the Servery Room and use of the facilities available to members of the Bar at courthouses in Northern Ireland. Subscriptions are graduated and reflect standing and date of call.

1.14 A visiting member is a barrister in independent practice who has been called to the Bar of Northern Ireland but who does not practise permanently in Northern Ireland and who has been briefed by a solicitor or a professional with a right of professional access. A visiting member is entitled to use the facilities of the Bar Library but only during the conduct of his professional engagement in Northern Ireland and upon payment of the fee deemed appropriate by the Executive Council.

## **2. COMMENCEMENT AND AMENDMENT OF CODE OF CONDUCT**

2.1 This Code of Conduct, which applies to all barristers whenever called to the Bar and whether or not they are practising, was adopted by the Bar in General Meeting on 8<sup>th</sup> November 1990 and replaces the Handbook issued by the Bar Council in December 1979. A revised Code of Conduct came into operation on 6<sup>th</sup> March 2003. This Code of Conduct also applies to those registering under Article 3 of the

Lawyers' Establishment Directive 98/5/EC in the same way as it applies to practising barristers notwithstanding that such persons are not called to the Bar.

2.2 Amendments and additions to the Code may be made from time to time by the Bar Council or by the Bar in General Meeting.

2.3 The Bar Council shall be under an obligation to review this Code at least once every five years.

2.4 This revised Code of Conduct came into force on the 27 day of May 2010.

### **3. DEFINITIONS**

3.1 A "barrister" is an individual who has been called to the Bar of Northern Ireland and has not subsequently been disbarred.

3.2 (a) A "practising barrister" is a barrister who is either a barrister in independent practice or an employed barrister who has a current practising certificate.

(b) A "non-practising barrister" is a barrister who does not have a current practising certificate.

Any reference hereafter to the word "barrister" shall mean a practising barrister save as otherwise expressly stated or required by context (or as appropriate).

3.3 A "barrister in independent practice" is a barrister who represents to the public generally that he is willing in return for the payment of fees to render legal services to a client provided that:

a) a barrister who is a Law Officer of the Crown shall be deemed to be a barrister in independent practice although he does not represent to the public generally that he is willing to render legal services to clients;

b) a barrister who is a Member of Parliament or a Member of the European Parliament (or any assembly/forum) or a lecturer/teacher of law at an institution of higher or further education or an author of legal text books or articles may be a barrister in independent practice notwithstanding that his practice may not be his primary occupation.

- 3.4 An “employed barrister” is a barrister who in return for the payment of a salary is employed wholly or primarily for the purpose of providing legal services to an employer 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 has complied with the requirements of section 27.01 of the Code.
- 3.5 The “Bar Council” is the General Council of the Bar of Northern Ireland.
- 3.6 The “Inn” is the body originally constituted by a special meeting of the Bench and Bar of Northern Ireland on the 11<sup>th</sup> January 1926 and subsequently designated “the Honorable Society of the Inn of Court of Northern Ireland”.
- 3.7 The “Chairman” is the chairman for the time being of the Bar Council.
- 3.8 “Client” includes both professional and lay clients.
- 3.9 “Court” includes any court or tribunal or other person or body before whom a barrister may appear.
- 3.10 The “Executive Council” is the Executive Council of the Inn.
- 3.11 “Foreign Lawyer” is a person who is a “lawyer” as defined in the Directive on the Provision of Services by Lawyers (77/249/EEC) other than a barrister or advocate of the United Kingdom.
- 3.12 “Government Legal Service” means those barristers, advocates and solicitors qualified in any part of the United Kingdom who are employed or hold office as lawyers in any Government Department or in the Public Prosecution Service for Northern Ireland or the Serious Fraud Office.
- 3.13 “Lay client” is the person or organization on whose behalf a barrister in independent practice is instructed.
- 3.14 “Legal services” include the provision of legal advice, the drafting of documents, representing clients in any contentious and non-contentious matters in any court, tribunal, inquiry or hearing.

- 3.15 “Professional client” is the solicitor or member of a recognized professional body by whom a barrister in independent practice is retained or instructed.
- 3.16 “Public authority” is an authority which has public or statutory duties to perform and which performs the same for the benefit of the public and not for private profit.
- 3.17 A “recognized professional body” is a professional body approved as such by the Bar Council in accordance with the provisions of section 28 of this Code.
- 3.18 With regard to the construction of this Code:
- a) singular and plural: every word importing the singular shall, unless the contrary intention appears, be construed as if it also imported the plural and every word importing the plural shall, unless the contrary intention appears, be construed as if it also imported the singular;
  - b) masculine and feminine: every word importing the masculine gender shall, unless the contrary intention appears, be construed as if it also imported the feminine gender, and every word importing the feminine gender shall, unless the contrary intention appears, be construed as if it also imported the masculine gender;
  - c) a person: the word “person” shall, unless the contrary intention appears, be construed as importing a body corporate (whether a corporation aggregate or a corporation sole) and an un-incorporated body of persons as well as an individual.

#### **4. PRIMARY DUTIES OF THE INDIVIDUAL BARRISTER**

- 4.1 A barrister has an over-riding duty to the court to ensure the proper administration of justice.
- 4.2 It is a fundamental obligation of a barrister to ensure that every aspect of the lay client's interests is properly represented and protected without fear or favour.
- 4.3 A barrister must ensure that the privacy and dignity of the lay client are maintained at all times.

- 4.4 A barrister should envisage what the litigation experience is like for the lay client and assist the client by:
- a. explaining carefully the procedures and issues in the case in language that the client can understand including how the client should conduct themselves as a witness but avoiding any attempt to coach him;
  - b. ascertaining and addressing anxieties about the litigation;
  - c. inviting questions about the litigation and providing answers, where possible;
  - d. explaining the strength and weaknesses in the client's case;
  - e. advising the client as to the advantages and disadvantages of negotiations and settlement and the availability of alternative dispute resolution;
  - f. ensuring that the client is never misled or bullied in order to obtain authority to settle its case;
  - g. ensuring the waiting periods are explained;
  - h. where a case is lost, explaining to the client what happened and advising as to an appeal.
- 4.5 In all his work in court for the professional or lay client and in all his dealings with the public the barrister must conduct himself with honour and integrity as befits the high standing of his profession.
- 4.6 A barrister in independent practice shall remain independent of all intrinsic pressures and personal interests.
- 4.7 A barrister must exercise his own professional judgment as to how to conduct a case. He must not accept directions from anyone but should be in a position to explain the approach he has taken.
- 4.8 A barrister in independent practice is under a duty to accept a brief to appear in any court in which that barrister holds out for practice (having regard to experience and seniority) and to mark a proper and reasonable professional fee having regard to the length and difficulty of the case.

- 4.9 A barrister should refuse to accept a brief where special circumstances such as a conflict of interest or the possession of relevant and confidential information exists.
- 4.10 Where a barrister has accepted a brief he must not return it to the professional client or transfer it to another barrister simply because he has received a more lucrative assignment.
- 4.11 A barrister should decline to act in any case which is beyond his competence and he must so inform his professional client forthwith.
- 4.12 Where a barrister accepts a brief he is obliged to attend the trial or hearing.
- 4.13 Except as is provided for in section 18.05 where more than one barrister is briefed in a civil or criminal trial or hearing each must attend the trial or hearing in its entirety. It is the duty of each barrister to conduct his practice in such a way as to avoid a foreseeable clash of commitments.

## **5. GENERAL DUTIES OF THE INDIVIDUAL BARRISTER**

- 5.1 A barrister in independent practice must ensure that his primary occupation is that of practise as a barrister and must not engage in any other occupation which is inconsistent with his practice at the Bar. In particular, he should not engage in any other employment without first obtaining a consent in writing of the Benchers of the Inn and informing the Bar Council in writing of the fact that such consent has been obtained. Any application to undertake work outside the Bar should be made in accordance with the Guidance set out at Appendix 14 of the Code.
- 5.2 A barrister is not obliged to accept or retain any brief or to advise, act or appear in any case if the barrister reasonably forms a view that fair remuneration will not be paid within a reasonable time after the conclusion of the case.
- 5.3 A barrister must at all times ensure that his practice is efficiently and properly administered and take all reasonably practicable steps to ensure that his professional engagements are properly fulfilled and that adequate notice is given if they cannot be fulfilled. Proper administration includes an obligation to keep and



maintain proper accounts and to register for VAT on reaching the appropriate income level.

- 5.4 A barrister must not treat any person (including, without prejudice to the generality of the foregoing, a lay client, professional client, pupil or fellow barrister) less favourably on the grounds of race, ethnic or national origin, sex, family status, sexual orientation, disability, age, religious belief or political opinion than he would treat any other person in circumstances which are the same or not materially different. In determining whether a barrister has been in breach of this duty regard shall be had to the Equality Code for the Bar reproduced in Appendix 1.
- 5.5 If, subsequent to accepting a brief, a barrister finds that it is not possible to attend the trial or hearing, the brief should be returned promptly to the professional client.
- 5.6 A barrister must not give advice, draft pleadings or accept instructions or a brief in any case where he has previously advised or acted for another client in connection with the same matter. When a barrister becomes aware that he is in breach of this requirement, he should return the papers forthwith.
- 5.7 A barrister must not appear:
- a. in any matter in which he is or may foreseeably become a party or acquire a pecuniary interest;
  - b. either for or against any local authority, firm or organization of which he is a member or has directly or indirectly a significant pecuniary interest;
  - c. in any matter in which there is reason to believe he may be a witness.
- 5.8 If it becomes apparent to the barrister that he is likely to be a witness on a material question of fact, he should cease to act providing his withdrawal from the case can be achieved without prejudice to the lay client's interests.
- 5.9 A barrister must not accept instructions or a brief in any matter in which he has been previously involved in the course of another profession or occupation whether as a partner, director or employee.

- 5.10 A barrister must inform the professional client immediately if there is an appreciable risk of him being unable to undertake the case in which a brief has been accepted and, in any event, the brief should be returned in sufficient time to allow another barrister to be instructed and to prepare the case. If another barrister accepts the brief, he is deemed to have satisfied himself that he has sufficient time to properly prepare the case.
- 5.11 Save in exceptional circumstances, if it is necessary for a barrister to return a brief because of conflicting commitments, the last brief accepted should be returned unless the professional client in the first case in which the barrister was retained consents to his doing otherwise.
- 5.12 A barrister who is instructed to appear for a person charged with a serious criminal offence (which will include all indictable offences which are tried on indictment or summarily) must give priority to this case and must not allow any other commitment to interfere with the conduct of the defence or undertake any commitment which conflicts with his duty to represent this person.
- 5.13 A barrister must ensure that all verbal, documentary and e-mail communications with their professional and lay clients are kept strictly confidential and that any such material is not heard or read by any unauthorized person.
- 5.14 A barrister must comply with the provisions of the Constitution of the Inn of Court of Northern Ireland and the bye-laws made thereunder.
- 5.15 A barrister must become acquainted with this Code of Conduct and the many traditions, practices and customs of the profession otherwise known as the etiquette of the Bar.

## **6. PRACTISING CERTIFICATES AND SUBSCRIPTIONS TO THE BAR LIBRARY**

- 6.1 A practising certificate shall only be issued when the barrister signs a declaration confirming that he has:
- i. professional indemnity insurance cover and

- ii. achieved the requisite number of Continuing Professional Development points as specified by the CPD Committee and
- iii. properly registered as a Data Controller for the purposes of the Data Protection Act 1998 and
- iv. not been suspended from practice and
- v. not been found unfit to practise in accordance with the Fitness to Practise Rules as set out in Regulation 13A of The Honourable Society of The Inn of Court of Northern Ireland Constitution and bye-laws and
- vi. paid all subscriptions and fines.
- vii. has satisfied any other requirements laid down by the Bar Council.
- viii. satisfied requirements of the Professional Conduct Committee as to the suitability to practise in the event of the barrister being made bankrupt or entering into an individual voluntary arrangement with creditors.
- ix. Where a barrister has been made bankrupt or has entered into an individual voluntary arrangement with creditors, and after having received advice from the Professional Conduct Committee as to his suitability to practise, the Bar Council may impose restrictions on the barrister's practise. In the exercise of its functions under this rule, the Bar Council may, on foot of advice from the Professional Conduct Committee or otherwise, impose a requirement upon a barrister to notify any instructing solicitor who has or is proposing to engage him of the bankruptcy or the individual voluntary arrangement so that the solicitor can make an informed decision as to whether to instruct the barrister or, as appropriate, to continue to instruct the barrister.

6.2 It shall constitute professional misconduct for a barrister in independent practice to provide legal services without a current practising certificate.

- 6.3
- a) A barrister must pay within 30 days of the same falling due the appropriate subscription currently payable to the Bar Library.
  - b) The Executive Council directly or the secretary, with its authority, may on the grounds of hardship or for some other reason as may seem fit postpone the payment of the whole or any part of the subscription payable by a barrister.
  - c) If a barrister fails to pay the subscription by the due date, the Bar Council may suspend him from the Library, postpone the granting of a practising certificate or cancel an existing practising certificate.

## **7. INSURANCE**

- 7.1 Every barrister in independent practice shall take out and maintain insurance in respect of all claims arising out of alleged negligence in respect of the provision of legal services as a barrister.

This provision also applies to persons called to the Bar of Northern Ireland in accordance with 26a of the Rules of the Honorable Society of the Inn of Court of Northern Ireland, persons registering under Article 3 of the Lawyers' Establishment Directive 98/5/EC and to external members when practising in Northern Ireland. Alternatively, such persons must satisfy the Bar Council that they are adequately covered by professional indemnity insurance.

- 7.2 Such insurance must be taken out with an insurer approved by the Bar Council for that person and on foot of a policy approved by the Bar Council. If a barrister in independent practice wishes to be insured other than in accordance with the foregoing, the Bar Council shall accept a certificate from his insurance brokers for the time being that the insurance so offered is at least equivalent to that approved by the Bar Council.
- 7.3 While the minimum level of cover to be provided by such insurance shall from time to time be fixed by the Bar Council, the barrister is obliged to maintain an adequate

level of cover having regard to the nature of the work undertaken and the potential liability arising in the event of negligence.

- 7.4 A barrister must immediately inform the Bar Council if he has been refused insurance cover or such cover has been withdrawn.
- 7.5 The payment of the insurance premium may not be postponed, either in whole or in part, beyond the due date for payment thereof.
- 7.6 It shall constitute professional misconduct by a barrister engaged in independent practice to represent to the public generally as being willing to render legal services without insurance.

## **8. DISCIPLINE**

- 8.1 If a barrister fails to comply with any of the duties and standards of his profession he may be charged with:
- i. professional misconduct.
  - ii. breach of professional etiquette.
  - iii. providing an inadequate professional service.
  - iv. incompetence.
  - v. conduct unbecoming a barrister.
  - vi. bringing the profession of barrister into disrepute.
  - vii. library offences involving dishonesty and not involving dishonesty.
  - viii. breach of the Bar Library Circulation Rules or the House Rules of the Old Bar Library and New Bar Library.
- 8.2 If on Call to the Bar a barrister is found to have made a false declaration in any material respect or, prior to Call, to have engaged in conduct which is dishonest or otherwise discreditable and which was not, prior to Call, fairly disclosed in writing to the Benchers of the Inn of Court of Northern Ireland or any undertaking given by him on Call to the Bar is breached in any material respect, this shall constitute professional misconduct.

- 8.3 It shall constitute professional misconduct for a person registered under Article 3 of the Lawyers' Establishment Directive to practise without displaying the name of the professional body of which they are a member at home on a name plaque or headed notepaper.
- 8.4 It shall constitute professional misconduct for a person registered under Article 3 of the Lawyers' Establishment Directive to present a case in court in the absence of a practising barrister who is instructed on behalf of the same client.
- 8.5 Where a complaint alleging a breach of one or more of the duties or standards referred to in this Code of Conduct is made or any matter touching professional misconduct, the provision of professional service or behaviour comes to the attention of the Professional Conduct Committee, the said complaint/matter shall be investigated and dealt with by the Professional Conduct Committee.
- 8.6 A barrister must promptly respond to any requirement from the Professional Conduct Committee for comment or information on a complaint or when the Committee is investigating any matter which comes to its attention and, when required to do so, attend before the Committee, Summary Panel, Disciplinary Committee or Disciplinary Appeals Committee in answer to any charge made against him or as a witness.
- 8.7 A barrister must comply promptly with any direction of the Professional Conduct Committee, Summary Panel, Disciplinary Committee or Disciplinary Appeals Committee.
- 8.8 Where a barrister has pleaded guilty to or has been convicted of a criminal offence for which he was liable to be sentenced to a term of imprisonment or which might otherwise bring the profession into disrepute or where there has been a finding against him in his professional conduct, competence or reputation in any civil proceedings, or where he has been adjudicated bankrupt or has entered into an Individual Voluntary Arrangement, he must report these details promptly to the

Professional Conduct Committee. Having reported the fact of bankruptcy or entering into an individual voluntary arrangement with creditors, a barrister must comply with requirements from the Professional Conduct Committee to provide documents or information concerning the conduct which led to the bankruptcy, or entering into an individual voluntary arrangements with creditors, and the barrister is under an ongoing duty to report in any relevant change of circumstances, and comply with any further requirements from the Professional Conduct Committee during the period of the bankruptcy or individual voluntary arrangement.

8.9 It is professional misconduct for any barrister to fail to comply with any direction made by the Professional Conduct Committee, Summary Panel, Disciplinary Committee or Disciplinary Appeals Committee by way of penalty imposed on him for any disciplinary offence of which he is found guilty or to fail to comply with an order made for the payment by him of the costs of or incidental to any proceedings before the Professional Conduct Committee, Summary Panel, Disciplinary Committee or Disciplinary Appeals Committee.

8.10 A barrister shall report evidence of misconduct by another barrister to the Professional Conduct Committee. Failure to do so will be deemed to be professional misconduct on the part of the barrister in default.

## **9. CONDUCT IN COURT**

9.1 A barrister must not misstate the law knowingly nor conceal from the court any authority known or believed to be relevant.

9.2 A barrister must not misstate any fact or state as a fact any matter which there are no reasonable grounds for believing can be proved nor should he cross-examine any witness upon a basis which he does not reasonably believe to be true.

9.3 In an ex-parte matter a barrister must exercise the utmost good faith and must not withhold from the court any matter of fact or law which may be relevant to the issues.

9.4 A barrister must in all appearances before a court act with due courtesy.

- 9.5 A barrister must in every case endeavour to avoid unnecessary expense, should keep costs to a minimum and reduce, where possible, the time taken to hear a case.
- 9.6 A barrister must not state his personal opinion of the facts or law.
- 9.7 A barrister must exercise personal judgment as to the substance and purpose of questions asked and statements made. A barrister is personally responsible for the conduct and presentation of a case in court and must guard against being made the channel for questions or statements made by him which are only intended to insult or annoy either the witness or some other person or which bear no relevance to the issues in the case.
- 9.8 In all cases a barrister must ensure that the court is informed of all relevant decisions and legislative provisions of which the barrister is aware whether the effect thereof is favourable or unfavourable towards the contention for which the barrister argues.
- 9.9 Prior to judge's summing-up both the prosecution and the defence barristers at the invitation of the judge must bring to the attention of the judge all authorities which are relevant to the legal issues which are likely to arise in the summing-up.
- 9.10 After the judge's summing-up a defence barrister must inform the judge of all issues of fact or law which the barrister considers to have been misstated and which impinge on the lay client's right to a fair trial.
- 9.11 A barrister must bring any procedural irregularity to the attention of the court during the trial and must not intentionally reserve any such matters to be raised on appeal.
- 9.12 A barrister may only suggest that a witness is guilty of fraud, misconduct or a crime if any such allegation goes to a matter in issue which is material to his client's case. Where the only issue is the credibility of the witness, the barrister must be satisfied that there are reasonable grounds for the allegation.



- 9.13 If, at any time before judgment is delivered in a case, a barrister is informed by a lay client that that client has committed perjury or has otherwise been guilty of fraud upon the court, a barrister must not so inform the court without that client's consent. If the client refuses to give consent, the barrister must withdraw from the case.
- 9.14 In civil cases where it become necessary or appropriate for a barrister to seek to discuss a case or any aspect thereof with the trial judge in private or is invited by the trial judge to take part in such discussion, this discussion shall only take place in the presence of the opposing barrister or his instructing solicitor or the personal litigant. In criminal cases the barrister may only discuss a case or any aspect of it with the trial judge in private in the circumstances and subject to the conditions set out in the judgment of the Northern Ireland Court of Appeal in Attorney General's Reference (Number 1 of 2005) in R –v- Rooney and others (2005) NICA 44.
- 9.15 In any civil case where a barrister has had private discussions with the judge in relation to any aspect of the case the general principle set out in section 9.14 applies although the judge may be more ready than in any criminal case to permit disclosure of the discussion to the lay client where, for example, the judge has suggested that the case is one in which the possibility of settlement might usefully be investigated.
- 9.16 A barrister must not impugn a witness in his address to the jury or in any closing submissions to the trial judge unless the witness has been given an opportunity to answer the allegations in cross-examination.
- 9.17 A barrister must not himself obtain or seek to obtain a document or knowledge of the contents of a document belonging to another party otherwise than by means of the normal and proper channels for obtaining such documents or such knowledge.
- 9.18 If a barrister comes into possession of a document belonging to another party by some means other than the normal and proper channels (e.g. in consequence of a

mistake or inadvertence by another person), the document must be returned at once unread to the person entitled to possession of it.

- 9.19 If, having come into possession of a document or a copy of such document, as referred to in 9.18, the barrister reads it before realising the nature of the document, and if he is professionally embarrassed by having such knowledge, then, provided there is no prejudice to the lay client the barrister must return the papers to the professional client and explain why this step has been taken.
- 9.20 Where before or during a trial a barrister for one party receives, as part of or in the course of instructions, a document which appears to be a document belonging to another party or to be a copy of a document so belonging and to be privileged from discovery or otherwise to be one which ought not to be in the possession of the professional or lay client then before the barrister makes any use of such document;
- i. The barrister must make appropriate enquiries of the professional client in order to ascertain the circumstances in which the document was obtained by the professional or lay client as the case may be and
  - ii. Unless satisfied that the document has been properly obtained the barrister must inform his opponent of the intention to use the document and the circumstances (as far as known) in which the document has been obtained. In the event of objection to the use of such a document it is for the court to determine what use, if any, may be made thereof.
- 9.21 If, during the course of a case, a barrister becomes aware of the existence of a document which ought to have been referred to in a list of documents, the barrister must advise the professional client to amend the list to refer to this document. If the professional client refuses to make the said amendment, the barrister must withdraw from the case and, should this arise during the conduct of a trial, the court should be informed of the reason giving rise to the withdrawal.

- 9.22 A barrister must not confer with a witness called by that barrister while such witness is under examination or cross-examination without the prior leave of the other parties and the court.
- 9.23 In a case in which more than one barrister is engaged it is for Senior Counsel or, where appropriate, the leading Junior Counsel to decide which of the barristers will make the closing address but Senior Counsel or the leading Junior Counsel must ensure that the barrister making the closing address has been present during a substantial part of the case and has heard the submissions which require a reply.
- 9.24 If a member of the Bar of England and Wales or the Faculty of Advocates who is a Queen's Counsel or of the Bar of the Republic of Ireland who is a Senior Counsel appears under the provision of the EEC Directive the following rules shall apply:
- i. if the Queen's Counsel or the Senior Counsel appears with a Junior of the Northern Ireland Bar, precedence shall be agreed between them and in default of agreement the Queen's Counsel or the Senior Counsel shall be the leader if he has been called to the Bar before the Junior.
  - ii. if a Queen's Counsel of the Northern Ireland Bar is also briefed with a Senior Counsel or Queen's Counsel not of the Northern Ireland Bar, the former shall be the leader regardless of precedence in call.
  - iii. where a barrister is instructed to appear as a local lawyer with an EEC lawyer other than a member of the Bar of England and Wales or of the Faculty of Advocates or of the Bar of the Republic of Ireland, the local barrister shall be deemed to be the leader.
- 9.25 A barrister who is instructed to draw a pleading or other court documents is under a responsibility to the court as well as to the lay client and, accordingly, must not:
- i. make any allegation unsupported by the client.
  - ii. make any allegation unsupported by instructions.

- iii. make any allegation of fraud unless expressly instructed to plead fraud and there exists material which establishes a prima facie case of fraud.

9.26 When mentioning settlements and making applications in the Queen's Bench Division of the High Court barristers should have regard to the document entitled Etiquette in the Queen's Bench Division issued by the chairman of the Professional Conduct Committee on the 15<sup>th</sup> December 2004 and which is contained in Appendix 2.

## **10. RELATIONS BETWEEN BARRISTERS**

- 10.1 A barrister must at all times act with due courtesy to colleagues and other persons.
- 10.2 It is the duty of barristers to maintain good relations with each other in order that the interests of their clients may be best advanced and, subject to that, that the interests of their profession may be observed. Personal relationships must in no circumstances interfere either with the interests of their clients or the profession.
- 10.3 Matters of dispute between barristers should not be made public. If a barrister has a complaint against a colleague, it should first be made to that colleague. If no adequate explanation or satisfaction is forthcoming and the complainant wishes that formal procedures be instituted, the complaint should be referred, in the prescribed form, without delay to the Professional Conduct Committee. The foregoing shall not restrict a complainant from seeking informal guidance from the Committee.
- 10.4 A barrister may not take over a case from another barrister (the original barrister) unless –
  - a) there are reasonable grounds for the professional client discharging the original barrister and
  - b) he has personally notified the original barrister (unless there is no reasonable opportunity to do so) that he has been instructed in place of him and thereby

gives the original barrister an opportunity to take appropriate steps to recover outstanding fees properly marked.

- 10.5 A barrister should not without the consent of the lay client hand over papers to another barrister for drafting or research unless such other barrister is also instructed in the case or is the barrister's pupil.
- 10.6 A barrister must not enter into a partnership with another barrister.
- 10.7 A barrister must not enter into a fee-sharing arrangement with another barrister or with a professional client.
- 10.8 In contentious matters a barrister may not conduct negotiations with any person other than a barrister save where a solicitor alone has been appointed to represent the opposing party or as set out in Section 10.09. In this connection, attention is also drawn to section 12.05 of this Code.
- 10.9 A barrister may conduct negotiations with an insurance company's representative in circumstances where the insurance company has not retained any legal representation for the purpose of those negotiations. If his client is present, a barrister may only conduct such negotiations if attended by his instructing solicitor or a member of his instructing solicitor's staff. In conducting such negotiations attention is drawn to section 32.09 and to the "Guidelines for Negotiations with Insurance Company Representatives" contained in Appendix 3.

## **11. PERSONS FROM WHOM INSTRUCTIONS MAY BE ACCEPTED**

- 11.1 A barrister in independent practice, whether or not acting for a fee, may only act in a professional capacity upon instructions from:
- a) Any lawyer, whether or not from Northern Ireland, who is currently registered with the appropriate governing body in his host state and is not subject to any regulatory restriction in terms of his practice. The lawyer in question should be required to provide evidence that he satisfies these criteria. In receiving such

instructions a barrister must still observe Rule 12.06 and also Appendix 4 of the Code of Conduct.

- b) any government legal service or a member of the staff of a government legal service.
- c) a member of a recognised professional body as provided by section 29 of this Code.
- d) an employed barrister including a barrister employed in a Law Centre or Citizens' Advice Bureau.
- e) a person who has been appointed as an Ombudsman and whose office as Ombudsman has been recognised by the Bar Council for the purpose of advising on any point of law, practice or procedure arising in the course of the performance of his duties.

## **12. RELATIONS BETWEEN BARRISTERS AND PROFESSIONAL CLIENTS**

- 12.1 A barrister must not permit a professional client to limit the barrister's discretion as to how the best interests of the client can be served.
- 12.2 A barrister must avoid compromising his professional relationship with the professional client by over-familiarity.
- 12.3 A barrister may attend at the office of a professional client in order to consult with witnesses, peruse documents or inspect equipment relevant to the case. When attending at the office the barrister must ensure that his independence is not compromised and must not take instructions or record witness statements.
- 12.4 A barrister may attend at the premises of the lay client providing:
  - a) it is necessary to inspect property or equipment for the purpose of giving advice or presenting a case in court;
  - b) it is necessary for the purpose of taking evidence on commission;
  - c) the lay client is severely incapacitated.

12.5 It is a serious breach of professional etiquette for a barrister to hold any communication either with a solicitor or the lay client on the opposite side with a view to negotiating a settlement or otherwise except in the following circumstances:

- a) a barrister may hold discussions with the opposing solicitor if the prior consent of the opposing barrister has been given or no barrister has been instructed by the opposing solicitor;
- b) a barrister may hold discussions with the opposing party if prior consent has been given by the barrister or, where none has been instructed, by the solicitor for the opposing party or by an opposing party who is a litigant acting in person.

However, it should only be in exceptional circumstances that a barrister should seek the permission of the opposing barrister or solicitor to hold discussions directly with his client and a barrister should be very careful when holding any discussions directly with an opposing party.

12.6 Apart from work in the Magistrate's Courts and work in other courts which only involves dealing with uncontentious matters, a barrister should not consult with a lay client or any witness or represent that client in court in the absence of the professional client or a member of the professional client's staff. If the professional client or a member of staff is absent, the barrister should decline to represent the lay client and the absence of the professional client or the member of staff should be brought to the attention of the court. Where, in exceptional circumstances, in the absence of the professional client or a member of staff the barrister consults with the lay client or represents the lay client in court, the barrister shall forthwith furnish a written memorandum of instruction received during the consultation or the outcome of the hearing to the professional client. Attention is drawn to the "Guidance on Attendance by Solicitors on Counsel" contained in Appendix 4.

### **13. ACCEPTANCE OF INSTRUCTIONS**

- 13.1 Unless in an emergency or exceptional circumstances exist a barrister should refuse to accept instructions which are not comprehensive or properly presented. The barrister should draw the inadequacy of the instructions to the attention of the professional client.
- 13.2 A barrister does not accept instructions merely because they have been delivered with or without a fee. Upon receipt of instructions from a professional client the barrister should promptly inform this client whether he accepts these instructions or declines them. If the barrister accepts the instructions, he should give an estimate of the period of time required in which to do the work and if it becomes apparent that the work cannot be done within the period estimated, he must inform the professional client forthwith.
- 13.3 A barrister is not under an obligation to accept instructions or a brief merely on the ground that he has previously advised or drafted pleadings for another person or appeared on behalf of another person in connection with the same cause or matter.
- 13.4 A barrister must not accept instructions or a brief or a request from or on behalf of a client which seek to limit the ordinary authority or discretion of a barrister in the conduct of court proceedings or which impose an obligation to act in a manner inconsistent with the provisions of this Code.
- 13.5 Where a barrister has advised or acted for a client in relation to any proceedings he must, before accepting a brief in any other proceedings arising out of the same transaction or circumstances, ensure that there is no actual or apparent conflict of interest.
- 13.6 A barrister holding the position of a Government Minister, Parliamentary Secretary or equivalent may not accept instructions on behalf of or a brief for a client in any



case in which any Ministry, Government Department or equivalent or any service administered under the same may be concerned.

13.7 If, after a barrister has accepted instructions or a brief on behalf of more than one lay client, there appears to be a conflict of interest, he should not continue to act for any of them.

13.8 Even if there is no conflict of interest, a barrister who has accepted instructions or held a brief for a lay client in any proceedings should not appear on an appeal or further stage of the proceedings for another lay client in the same case without obtaining the prior consent of the original lay client.

#### **14. WITHDRAWAL FROM A CASE AND RETURN OF BRIEF OR INSTRUCTIONS**

14.1 If a barrister is instructed in a civil case which clashes with instructions which have been previously accepted to defend a person charged with a serious criminal offence (which will include all indictable offences whether tried on indictment or summarily), the barrister should normally return the brief in the civil case.

14.2 A barrister may withdraw from a case if he is satisfied that:

- a) his instructions have been withdrawn or
- b) his professional conduct is being impugned and provided that such withdrawal can be achieved without prejudicing the lay client's interests or
- c) he has been instructed and required to act otherwise than in conformity with the provisions of this Code.

14.3 A barrister shall not hand over a brief to another barrister unless the professional client consents. In these circumstances the other barrister should be given the opportunity to look through the brief and to determine whether there is sufficient time to familiarise himself with the case and to present it properly in court. Should the other barrister decide that there is insufficient time to enable him to prepare the case adequately, he should return the brief to the original barrister.

- 14.4 If a barrister has retained papers for an undue length of time and is required by a professional client to return them, whether or not the work has been done, he must return them forthwith.

## **15. TOUTING/SOLICITING FOR WORK**

- 15.1 A barrister must not solicit work or advertise himself in any way save as is provided for in section 30 of the Code.
- 15.2 A barrister must not entertain professional or lay clients, whether on a regular or occasional basis, so as to solicit or maintain their business.
- 15.3 A barrister shall not give a commission or a present to any person who introduces or provides professional work or accept a present of such value or in such circumstances as may lead to a reasonable inference that his independence may be compromised.
- 15.4 A barrister must not lend money to a professional client for the purpose of financing that client's practice or for any other professional purpose and should not accept money by way of a loan or otherwise from a professional client save as a fee in accordance with the provisions of this Code.
- 15.5 A barrister must not attempt to persuade a lay client to engage a particular professional client for the purpose of obtaining that lay client's work or any other work.
- 15.6 A barrister must not attempt to persuade a lay client to transfer his instructions to another professional client with the intention of representing this lay client.

## **16. RELATIONS BETWEEN BARRISTER AND LAY CLIENT**

- 16.1 If a barrister believes that evidence exists that the professional client has failed to perform his professional duties properly, he should inform the lay client accordingly.

- 16.2 A barrister must avoid compromising his professional relationship with the lay client by over-familiarity or by direct communication with that lay client outside a consultation.
- 16.3 The papers in any brief or instructions delivered to a barrister are the property of the lay client.
- 16.4 A barrister must not, without the consent of the lay client, reveal the contents of a brief or instructions to any person with the exception of his pupil beyond what is necessary for the proper discharge of his duties.
- 16.5 At the conclusion of the case a barrister shall return the papers to the professional client unless that client agrees to their disposal as confidential waste. Negligent loss of papers by a barrister will be deemed to be professional misconduct.
- 16.6 A barrister must not communicate information furnished by or on behalf of the lay client to a third party and must not use such information to the lay client's detriment or to the barrister's own or another client's advantage. This requirement continues even after the relationship between the barrister and the lay client has ceased and after the death of the lay client.
- 16.7 A barrister must not divulge, without the consent of the lay client, confidential information entrusted to him unless:
- a) he is compelled to divulge the same by an Order of the Court or
  - b) the circumstances give rise to a public or statutory duty of disclosure or
  - c) the protection of the barrister's professional interests require it or
  - d) it is necessary when answering accusations made against the barrister by the lay client.
- 16.8 If a lay client asks a barrister to act on his behalf, the barrister should advise the lay client to instruct a solicitor. If it is an urgent matter, the barrister may contact the solicitor that the lay client proposes to instruct.

- 16.9 A barrister whose lay client behaves in an offensive manner to him should nevertheless, where time does not allow for the obtaining of alternative representation, continue to act unless the conduct of the lay client to him is of such a nature that the barrister cannot reasonably be expected to do so.
- 16.10 A barrister must not take a formal or signed statement from a prospective witness in any proceedings or be present when such a statement is taken whether or not he is briefed in these proceedings.
- 16.11 A barrister must not discuss a case with any member of a jury panel.

## **17. LEGAL AID**

- 17.1 Where a barrister provides an opinion for submission to the Legal Services Commission it must comprise a full and accurate assessment of the strengths and weaknesses of the lay client's case.
- 17.02
- a. A barrister must not in any circumstances be a party to an abuse of the provision of legal aid.
  - b. Where a barrister who represents a plaintiff or defendant concludes that the lay client's claim has no reasonable prospect of success he must inform the Legal Services Commission as soon as possible.
  - c. Where a barrister who represents a plaintiff or defendant decides that his lay client requires his case to be conducted or continued unreasonably the barrister must inform the Legal Services Commission as soon as possible.
- 17.3 If a barrister in any case in which the lay client is legally-aided believes that legal aid has been granted on the basis of false or inaccurate information, he must advise both the professional client and the lay client accordingly and, if no action is taken to remedy the situation, must withdraw from the case.
- 17.4 A barrister must not demand, request or receive a fee from or on behalf of a person who has been granted civil/criminal legal aid.

- 17.5 1. Without prejudice to the provisions of section 20.11 , in any criminal case in which a Certificate for Two Counsel has been granted but the advocates instructed by the lay client's solicitor on foot of that certificate to represent him/her do not in fact consist of both Queen's Counsel and Junior Counsel, any counsel who is instructed has a duty to personally ensure and satisfy himself, before commencing to act upon his instructions, that the lay client has been given clear and unequivocal advice that he is entitled to be represented by both Queen's Counsel and Junior Counsel and has thereupon made an informed decision not to be so represented. If not so satisfied Counsel so instructed must decline to act. A representation to the Counsel by any other person other than the lay client himself that the lay client has been so advised and has made such a decision shall not be deemed to be sufficient proof of that matter for the purposes of this Rule.
2. Counsel so instructed has the further duty of ensuring both upon receipt of his instructions and thereafter on a continuing basis while his instructions continue that any other legal professional who is instructed to appear with him is competent to satisfy and does in fact satisfy and continues to satisfy the requirements for which the Certificate for Two Counsel has been granted.
3. Before commencing to act upon his instructions, Counsel so instructed shall complete a written certificate (in the form set out at Appendix 12 to the Code) that he has been satisfied of the matters at 1. and 2. and copies thereof shall forthwith be provided to the lay client, the instructing solicitor, the other instructed legal professional and a copy lodged with the Court. For the purpose of auditing compliance with this Rule, the Bar Council shall be empowered to request copies of any such completed certificates lodged with the Court.
4. If at any time after commencing to act and during the continuance of his instructions Counsel so instructed considers that he is no longer satisfied of any of the above

matters it shall be his duty to immediately and in writing so inform the lay client, the instructing solicitor, the other instructed legal professional and the Court.

5. Failure by Counsel so instructed to take all reasonable steps to satisfy and continue to satisfy himself as to each of the matters specified above and to forthwith give any requisite written certificate or notice shall constitute a breach of this Code.

## **18. DUTIES OF BARRISTERS INSTRUCTED FOR THE DEFENCE IN CRIMINAL CASES**

- 18.1 A barrister who is instructed to represent an accused person is and remains under a duty to do so irrespective of any belief or opinion formed as to the guilt or innocence of that person.
- 18.2 A barrister who is instructed to represent an accused person must ensure that his right to a fair trial is protected.
- 18.3 A barrister must not attend an identification parade.
- 18.4 Barristers who are instructed to represent an accused person must be present throughout the trial unless they have the express consent of the professional client and of the accused person.
- 18.5 If, at the conclusion of the opening speech by the prosecuting barrister, the barrister who represents an accused person believes that there is no serious possibility that any of the evidence to be adduced will have any relevance to the charge which has to be met may, with the consent of the professional client and the accused person and having informed the trial judge, absent himself from the trial.
- 18.6 If a barrister is representing more than one accused person and there is a lack of unanimity among them, he should be alert to the possible need for separate representation and should try to hold a separate consultation with each accused person so that each person can be seen to have his undivided attention. This

does not mean that a joint consultation with all the accused persons can not be held. In many cases such a consultation may be desirable.

18.7 In any case where a barrister provides written advice to an accused person he should ensure that the accused person has sufficient opportunity to consider it.

18.8 If at the time of the trial there is a major difference of opinion between a barrister and his professional client as to the conduct of the defence, the barrister should ask the professional client personally to be present immediately before the trial and during the trial until such time as the difference is no longer material.

18.9 A barrister may appear for more than one accused person in a criminal trial providing he is satisfied that there is no conflict of interest.

18.10 If during the course of a trial or prior to sentence being passed the accused person voluntarily absconds and his solicitor withdraws from the case, the barrister must also withdraw. If, for any reason, the solicitor does not withdraw, the barrister retains an absolute discretion as to whether to continue to act having regard to the accused person's right to a fair trial.

If the barrister continues to act, the case should be conducted as if the accused person was still present in court but had decided not to give evidence. In such circumstances, the barrister is free to use any material contained in the brief and may cross-examine witnesses called for the prosecution or call witnesses for the defence.

18.11 Every accused person has the right to decide whether to give evidence in defence of the charge. A barrister must properly and adequately advise him but it is the accused person who must make the decision.

18.12 A barrister who is instructed to represent an accused person is not under a duty to correct any misstatement of fact made by the prosecution. If a court has been informed by the prosecution that the accused person has no previous convictions, the barrister is not under a duty to disclose facts to the contrary which are known

to him or correct any information given by the prosecution if such disclosure or correction would be to the accused person's detriment. The barrister should ensure that he does not lend himself to any assertion that the accused person has no convictions or no more than a limited number of convictions or ask a prosecution witness whether the accused person has any previous convictions in the hope that a negative answer will be given.

- 18.13 If a barrister has been instructed that the accused person is not guilty of the offence charged but has decided not to give evidence, the barrister should present his defence as instructed and, if so instructed, make positive suggestions to witnesses.
- 18.14 Where an accused person confesses to his barrister that he committed the offence with which he is charged, the barrister should have regard to the guidance as set out in Appendix 5 of this Code.
- 18.15 A barrister should advise an accused person about the strengths and weaknesses of the prosecution case. This may include advising an accused person to plead guilty.
- 18.16 Where a barrister advises an accused person to plead guilty he must also explain that such advice should only be accepted where the accused person agrees that the prosecution case is true or substantially true and that such agreement is implied in the plea of guilty. The barrister must ensure that any such plea is entered voluntarily by the accused person.
- 18.17 A barrister who is instructed to represent an accused person must not in a plea of mitigation make any allegation which is merely scandalous or calculated to vilify or insult any person. He should, if possible, avoid the naming in open court of third parties whose character would thereby be impugned and where necessary, names, addresses or other such details should be written down and handed into court.



- 18.18 A barrister who is instructed to represent an accused person who has pleaded guilty is not entitled in mitigation of sentence to allege that any other named person was involved with the accused in the transaction or events out of which the charge arises unless it appears in the trial papers or is otherwise established in evidence before the court.
- 18.19 A barrister who is instructed to represent an accused person should after conviction and/or sentence meet that person and advise, if necessary in writing, whether there are grounds for an appeal. This advice should be given in the presence of the professional client or his representative.
- 18.20 A barrister who is instructed on behalf of the accused person who has been convicted and sentenced must appear for that person in any appeal against conviction or sentence if instructed to do so unless he has advised the accused person that there is no prospect of success on appeal and has advised against the appeal. If the accused person appeals despite the advice given by the barrister, the barrister may withdraw from the case.
- 18.21 A barrister should not withdraw from a criminal case and leave the accused person unrepresented because of the conduct of or anything said by the trial judge unless the accused person has expressly instructed the barrister to withdraw or unless the barrister considers that withdrawal is in the best interests of the accused person.
- 18.22 Where an accused person who is charged with a criminal offence denies committing the offence but, nevertheless, insists on pleading guilty, his barrister should continue to represent him but only after the barrister has advised as to the consequences and that any submission in mitigation will be on the basis that the accused person is guilty.

- 18.23 No discussion between a barrister and the trial judge should take place unless the opposing barrister is present or that barrister has expressly declined an invitation to attend and is willing to allow the discussion to take place in his absence.
- 18.24 The barrister who is instructed on behalf of the accused person and the prosecuting barrister should have regard to the guidance contained in the decision of the Court of Appeal in Attorney General's reference (Number 1 of 2005) in R – v- Rooney and others (2005) NICA 44 when seeking an indication of sentence from the trial judge.
- 18.25 A barrister must not in any part of a trial attribute to another person the crime with which the accused person is charged unless there are facts or circumstances which reasonably suggest the possibility that the crime may have been committed by that person.

## **19. DUTIES OF THE PROSECUTING BARRISTER IN CRIMINAL CASES**

- 19.1 The prosecuting barrister should not seek to achieve a conviction by all means but rather should present the facts to the court fairly and impartially and assist the court on all relevant matters of law.
- 19.2 If the prosecuting barrister becomes aware of information which he believes may assist in the defence of the persons charged, he should ensure that it is disclosed to the defending barrister.
- 19.3 Where the prosecuting barrister has in his possession a statement from a prosecution witness which differs materially from his evidence in court or from any other statement, he should ensure that the said statement is disclosed to the defending barrister.
- 19.4 Where the prosecuting barrister has in his possession relevant statements from persons who he does not intend to call as witnesses, he should decide whether, in accordance with law and practice, these statements should be disclosed to the defence.

- 19.5 Upon receipt of instructions the prosecuting barrister should read them and give appropriate directions expeditiously.
- 19.6 The prosecuting barrister shall only inform the victim of a crime or his family about significant changes in the prosecution case (including acceptance by the prosecution of a plea of guilty to a lesser charge) upon receipt of instructions from the appropriate prosecution service.
- 19.7 If there is only one prosecuting barrister, he should be present throughout the trial unless he has obtained the leave of the trial judge. If two barristers appear for the prosecution, both should be present for all or substantially all of the case.
- 19.8 At the conclusion of the trial judge's summing-up, the prosecuting barrister shall draw the judge's attention to matters of law or fact which the barrister considers ought to be corrected.
- 19.9 In relation to sentencing the prosecuting barrister:
- a) should not attempt by advocacy to influence the trial judge. If, however, a defendant is unrepresented, the prosecuting barrister shall inform the trial judge about any matter which the barrister considers is relevant to mitigation.
  - b) should assist or correct the trial judge in relation to all statutory provisions and authorities which are relevant to the convictions and any guidelines laid down by the Court of Appeal.
  - c) should inform the trial judge about all relevant compensation, forfeiture and restitution matters which arise on foot of the conviction.
  - d) should inform the defendant's barrister about assertions of material facts made on mitigation and which he believes are untrue. If the defendant's barrister persists with any such assertions, the prosecuting barrister should invite the trial judge to resolve the issue and, where appropriate, call evidence.
- 19.10 The prosecuting barrister should read and follow the current Code for Prosecutors issued by the Public Prosecution Service.

## **20. SENIOR COUNSEL**

- 20.1 Queen's Counsel is otherwise known as Senior Counsel.
- 20.2 Senior Counsel may accept instructions to appear in a case without a Junior.
- 20.3 Senior Counsel should decline to appear in a case without a Junior if he believes he would be unable to conduct it properly or the interests of the lay client require that a Junior should also be instructed.
- 20.4 Senior Counsel who has been invited to accept instructions without a Junior in any case in which a Junior has already been instructed should normally consult that Junior before deciding whether to accept the invitation. If Senior Counsel decides to accept the invitation, he should, in any event, notify the Junior of his decision.
- 20.5 In any contentious proceedings or matters Senior Counsel should not settle or draft such documents as are normally settled or drafted by a Junior unless no Junior has been instructed.
- 20.6 In non-contentious proceedings or matters Senior Counsel may settle or draft documents without a Junior but may decline to do so if he believes that the interests of the lay client would be best served by having a Junior carry out this work.
- 20.7 If any question arises under sections 20.03, 20.05 or 20.06 as to whether or not Senior Counsel may decline instructions unless a Junior is also instructed, the question should be referred for determination by the Professional Conduct Committee whose determination shall be binding upon the barrister or barristers concerned.
- 20.8 Junior Counsel should decide, having regard to the amount of money involved and/or the complexity of the case, whether it is in the best interests of the lay client that Senior Counsel should be instructed and at what stage he should be instructed and should inform his professional client accordingly.

- 20.9 In the application of this Code of Conduct to proceedings before the Judicial Committee of the Privy Council “Junior” includes any person who is not a Senior Counsel and has a right of audience in the case in question before the Judicial Committee.
- 20.10 Senior Counsel may accept instructions to appear without a Junior at the taking of evidence abroad.
- 20.11 In criminal cases in which a Legal Aid Certificate for two Counsel has been granted, one of the two advocates in the case should be a Senior Counsel. Except as provided for in Rule 17.05, the second Advocate should be Junior Counsel. Where, exceptionally, a Senior Counsel is unavailable, it is permissible for a Junior to lead. This Junior should be experienced and be of not less than 15 years’ standing. Before commencing to act upon his instructions as the lead Counsel in such a case, Junior Counsel so instructed shall satisfy himself that all reasonable steps have been taken to instruct Senior Counsel and that Senior Counsel is not available to deal with the case and that the lay client has been informed of all relevant matters and is agreeable to experienced junior Counsel acting as lead Counsel in the case, and if so satisfied, Junior Counsel shall complete a written certificate to this effect (in the form set out at Appendix 12 to the Code) and copies of this certificate shall be provided to the lay client, the instructing solicitor, the other instructed legal professional advocate instructed in the case and a copy lodged with the Court. Failure by Junior Counsel so instructed to take all reasonable steps to satisfy himself as to each of the matters specified above and to forthwith give any requisite written certificate or notice shall constitute a breach of this Code. For the purpose of auditing compliance with this Rule, the Bar Council shall be empowered to request copies of any such completed certificates or notices lodged with the Court.
- 20.12 A Junior who is called within the Bar during the hearing of any civil proceedings should continue to act at the original fee appropriate for a Junior.

20.13 A Junior who is called within the Bar during the hearing of any criminal proceedings should continue in the case, including any subsequent appeal, at the original fee for a Junior.

20.14 Senior Counsel may appear in court outside the United Kingdom with or without a Junior.

## **21. RETAINERS**

21.1 Where a barrister is instructed to draft a writ or defence or other documents initiating or responding to the proceedings or any pleading or affidavit or to provide advice or to appear in any interlocutory application, he shall be retained to represent that lay client throughout the proceedings and in any negotiations unless the barrister has been given express notice to the contrary by the professional client whereupon he is not precluded from representing any other party in the proceedings unless a conflict of interest arises.

For the purposes of this section of the Code “proceedings” includes any action, suit or appeal in any court or tribunal but an appeal to another court or tribunal or any bankruptcy matters or criminal case which arises from the proceedings shall be deemed to be separate proceedings.

21.2 A retainer is the retainer of the lay client. A retainer can only be delivered by a professional client.

21.3 A barrister must not have a retainer to do or enter into any agreement to do all the work, whether advisory or contentious, emanating from a professional client’s office but may have a retainer to do all the work of lay clients in which case the barrister must, however, require payment of a separate fee for each piece of work done.

21.4 Unless reasonable grounds exist for withdrawing a retainer another barrister shall not accept instructions in respect of the same work.

- 21.5 A barrister who is so retained is entitled to a brief on any occasion on which a barrister is usually briefed in such proceedings except that a Senior Counsel shall not be entitled to a brief on any occasion on which it usual to instruct a Junior only.
- 21.6 A special retainer should not be given or accepted until after the commencement of the proceedings to which it relates.
- 21.7 A barrister who has accepted a special retainer is entitled to a brief in any case in which a barrister is briefed in proceedings to which a special retainer applies save that a special retainer does not entitle Senior Counsel to a brief on any occasion on which it is usual to instruct a Junior only.
- 21.8 When a barrister has held a brief for a lay client in any proceedings he shall not accept a special retainer or a brief upon an appeal from any decision in such proceedings for another lay client without giving the original lay client the opportunity of retaining him.

## **22. ORDER 25**

- 22.1 A barrister should not draft any document comprising medical evidence within the meaning of Order 25 of the Rules of the Court of Judicature of Northern Ireland 1980.
- 22.2 A barrister may, however, direct the alteration of the contents of a medical report or statement of evidence within the following guidelines:
- a) a barrister should not advise in relation to the contents of the medical report or a Statement of Evidence so as to lead to the alteration of the meaning or effect of the stated medical opinion as to the findings on examination or diagnosis, prognosis or conclusion of the medical report.
  - b) a barrister should not direct the re-drafting of the medical report. If a medical report is considered unsuitable for disclosure in its existing form and requires alterations, those alterations should be directed to be contained in a Statement of Evidence.

- c) subject to (a) and (b) above a barrister should not direct alterations in a medical report to be contained in a Statement of Evidence or alteration in a Statement of Evidence except to direct:
- (i) the deletion of matters relating to incidents other than the subject matter of the action or the history of the subject incident or unnecessary comments or opinions upon non-medical matters or general comments which are not essential to the expression of medical opinion.
  - (ii) the addition, to be contained in a Statement of Evidence, of such matters as incorporate the expression of medical opinion contained in the medical report or any supplementary report of the medical report.
- d) a barrister may direct disclosure to be made by way of a Statement of Evidence even if it is not intended to make any alteration to the contents of the medical report.

## **23. SENIORITY**

- 23.1 Save in the case of the Attorney General and the Solicitor General, who take precedence over all other members of the Bar in the Court of Judicature of Northern Ireland, Senior Counsel seniority is determined by the date of call within the Bar. When two or more Senior Counsel are called within the Bar on the same occasion, seniority is determined by the date of their call to the Bar.
- 23.2 The order of precedence for Junior Counsel takes account not only of the date of call to the Bar but also the order of call and any subsequent prolonged periods of absence from practice in Northern Ireland.
- 23.3 Seniority at the Bar has no relevance to the order in which cases are either heard or listed for hearing in the courts but Senior Counsel have a right of pre-audience in the Motion Court or where several matters are listed in the Chancery Court.

## **24. DRESS OF BARRISTERS**



- 24.1 Robes must be worn by barrister in independent practice in the High Court and in the Court of Appeal at all times other than during the long vacation when robes are not worn except:
- a) in criminal trials and matters.
  - b) on the trial of an action including a contested matrimonial cause.
  - c) on a bail motion.
- 24.2 Robes must be worn at all times by barristers in independent practice in the Supreme Court, the Crown Court, the County Court, the Masters' Court and at a Court Martial but robes are not worn in most tribunals including the Lands Tribunal or in the Magistrates' Courts.
- 24.3 If in doubt as to the correct dress, a member should consult the Clerk of the Court or Tribunal or the Chairman or a member of the Professional Conduct Committee.
- 24.4 In addition to a wig and gown a barrister in independent practice attending a court at which robing is obligatory should wear, in the case of a male Junior Counsel, a dark suit, white shirt, collar, neck band and black shoes and, in the case of a female Junior Counsel, a dark suit or similar apparel, white blouse, collar, neck band and black shoes. The wig should be straight and not worn at an angle.
- 24.5 A barrister has a discretion as to the type of clothing worn outside the courtroom save that the profession expects that while acting as a barrister or in the precincts of the Royal Courts of Justice and in the Old Bar Library, New Bar Library and the Inn of Court during working hours he will dress in a dignified manner.
- 24.6 Attention is drawn to Practice Direction (4 of 2006) dated 11<sup>th</sup> May 2006 and the Memorandum 11<sup>th</sup> December 2006 on Wigs & Gowns issued on behalf of the Bar Council in Appendix 6.

## **25. PUPILLAGE**

- 25.1 Save where the Benchers otherwise expressly provide every person intending to practise at the Bar must enter into pupillage with a barrister in independent practice of not less than seven years' standing for a period of twelve months.
- 25.2 A person who has entered into pupillage should not accept instructions as a barrister or conduct any case until a period of six months' pupillage has been completed to the satisfaction of the Education Committee save that a pupil who has completed to the satisfaction of the Education Committee not less than three months' pupillage may conduct on behalf of or at the request of his Master a case or part of a case before a Master of the Court of Judicature of Northern Ireland.
- 25.3 During pupillage and at all times thereafter the pupil must preserve the confidentiality of the affairs of all clients. Attention is drawn to sections 16.04, 16.06, 16.07 and rule 14 of the Honorable Society of the Inn of Court.
- 25.4 The general obligations and functions of a pupil Master are as follows:
- a) to ensure that the pupil is well grounded in the rules of conduct and etiquette of the Bar.
  - b) to require the pupil to read papers and draft pleadings and other documents, including preparing opinions and require the pupil to accompany the pupil Master to court on sufficient occasions so that the pupil has the opportunity to do all such work and gain all such experience as is appropriate for a person commencing practice in all types of work done by the pupil Master.
  - c) to require the pupil to attend sufficient consultations to enable the pupil to gain experience on how to conduct a consultation.
  - d) in the second six months of the pupillage to take direct interest in the work the pupil does alone and, in particular, in relation to court appearances by the pupil and to give assistance before the pupil goes into court and to give the opportunity for discussion afterwards.

- e) in the second six months of the pupillage to take reasonable steps to ensure that the pupil does not carry out extensive extraneous work to the detriment of his pupillage.
- f) if it is proper to do so and at the proper time, to provide the certificate of satisfactory completion of the pupillage.

25.5 Attention is drawn to the Bar of Northern Ireland Pupillage Guidelines June 2002 in Appendix 7.

## **26. LIBRARY FACILITIES**

- 26.1 The Circulation Rules as agreed by and revised from time to time by the Library Committee govern the loan periods, issue and return, reservation and fine procedures relating to hard copy library materials. See Appendix 8.
- 26.2 Access details to online information that is provided as a benefit of membership of the Bar Library must be retained securely and must not be disclosed or caused or permitted to be disclosed to any other person or organisation.
- 26.3 The House Rules as agreed by and revised from time to time by the Library Committee govern general conduct within the new Bar Library and the old Bar Library. See Appendix 9.
- 26.4 Save as provided for in House Rules all modern forms of office technology may be used in all working rooms of the Libraries provided that the use of the same does not cause significant annoyance and nuisance.
- 26.5 A barrister should not give a gratuity to any member of the library staff except through the funds of the Inn.
- 26.6 Smoking is prohibited in all areas of the Libraries.
- 26.7 Possession or the use of illegal drugs/substances in any part of the libraries will constitute professional misconduct.

## **27. COURT AND COURT ETIQUETTE**

- 27.1 There is no objection to a member of the Bar of England and Wales or the Faculty of Advocates of Scotland appearing either in an arbitration or in a Court Martial held in Northern Ireland or to members of the Northern Ireland Bar appearing in such proceedings.
- 27.2 Whilst not prohibited, it is undesirable that a barrister should appear for or before a near relative in any case tried without a jury where there is only one judge and there is no appeal on a question of fact from the decision.
- 27.3 Junior Counsel when appearing in court should, where possible, sit in the seats assigned to them but should, wherever seated, stand at the Bar to address the court.
- 27.4 It is regarded as good professional practice for all barristers appearing in all courts to ensure that before the case in which they are to appear is called the Registrar or Clerk is aware of their names and also of the party or parties they represent.

## **28. EMPLOYED BARRISTERS**

- 28.1 A barrister may supply legal services as an employed barrister provided that:
- a) the barrister is qualified to practise and
  - b) the barrister has notified the Bar Council of the name, address, telephone number and the nature of the business of the employer and of any change in the same and
  - c) the barrister has, unless exempted by the Executive Council, paid to the Executive Council at such time or times as it shall have become due the subscription currently payable by an employed barrister of the barrister's seniority as prescribed from time to time by the Executive Council and
  - d) the barrister does not supply legal services to the public or a section of the public and

- e) the firm or company which employs the barrister is not wholly or in part a device whereby the barrister, with or without others, is intending directly or indirectly to supply legal services to the public or a section of the public.
- f) the barrister has current certification.

28.2 Subject to section 28.03 and 28.04 an employed barrister may appear on behalf of the barrister's employer in any court in circumstances where barristers in independent practice do not have an exclusive right of audience in such court and shall not be required by any rule of professional conduct or etiquette to be instructed by a solicitor.

28.3 An employed barrister may only act in pursuance of section 28.02 if that barrister:

- a) has completed a period of first six months' pupillage and is serving the remainder of his pupillage or
- b) has completed twelve months' pupillage or
- c) became an employed barrister before the 1<sup>st</sup> January 1991 and has been an employed barrister for a period or periods amounting to not less than five years or
- d) has obtained the consent of the Bar Council.

28.4 An employed barrister may not supply legal services of any kind to a person including a fellow employee other than that barrister's employer except as follows:

- a) a barrister in the government legal service may act on behalf of those Ministers or Officers of the Crown or organizations or public officers or servants for whom the government legal service customarily acts.
- b) a barrister employed by a trade association may give advice of a general nature to individual members of the association and may act for the association in matters affecting the members of the association as a whole or a class of those members but may not act on the instructions of any one or more members of the association as distinct from the instructions of the association itself.

- c) a barrister employed in a Law Centre or in a Citizens' Advice Bureau.
- d) a barrister giving advice on legal matters free to a friend or relative or on a charitable basis.

References to the supply of legal services do not include lecturing, teaching or the writing of legal textbooks or of legal articles in newspapers or journals.

## **29. DIRECT PROFESSIONAL ACCESS RULES**

- 29.1 Subject to these rules a barrister in independent practice may accept instructions from a member of a "recognised professional body" without the intervention of a solicitor in any matter of a kind which falls generally within the professional expertise of the members of the recognised professional body.
- 29.2 A professional body shall only be recognised for the purposes of these rules when it has been approved as a "recognised professional body" by the Bar Council.
- 29.3 In deciding whether to grant such recognition the Bar Council must have regard to whether the body satisfies each of the following criteria:
- a) its members provide skilled and specialist services.
  - b) its affairs and the conduct of its members are regulated by a written constitution which among other matters:
    - i. provides for admission to membership of persons who have satisfied, by examination, specified high standards of general and professional education and
    - ii. make unethical or dishonourable conduct by a member a disciplinary offence and has an effective enforcement procedure for breach of its disciplinary rules.
  - c) its members are likely to have a significant requirement to retain the service of a barrister for the benefit of their clients or employers.

- d) those of its members intending to instruct a barrister directly under these rules will be subject to a mandatory obligation to have adequate professional negligence indemnity insurance.
- 29.4 A barrister under these rules shall be entitled to accept direct instructions only from a member of a “recognised professional body” which must be identified at the time of giving instruction. Such a member may be a director, partner, member or employee of a company, firm or other body giving instructions in that capacity.
- 29.5 A barrister is not under an obligation to accept instructions direct from a member of a recognised professional body.
- 29.6 A barrister shall not accept any instructions under these rules unless the Bar Council and its Professional Negligence Indemnity Insurer has been informed that the barrister intends to accept “direct professional access” instructions and has satisfied the Bar Council that there has been compliance with the relevant professional indemnity insurance obligations and the appropriate insurance premium has been paid.
- 29.7 A barrister may not accept instructions under these rules:
- a) to receive or handle clients’ money.
  - b) to do substantial administrative work not normally performed by a barrister in independent practice in Northern Ireland.
  - c) to do inter-partes work (e.g. the conduct of correspondence with an opposing party) of a kind not normally performed by a barrister in independent practice in Northern Ireland.
  - d) to appear in the Judicial Committee of the House of Lords, the Privy Council, the Supreme Court, the Crown Court or a County Court.
  - e) in a case in which at any stage the barrister considers it to be in the interests of the lay client that a solicitor should be instructed.
- 29.8 In this section the word “instructions” shall include “a brief”.

29.9 Save as in these rules otherwise provided, the other provisions of this Code of Conduct shall apply to instructions received and accepted under these rules.

29.10 In these rules a Council or other body established by Act of Parliament and required by that Act to maintain a register of persons entitled to practise as members of the profession to which the Act relates shall be deemed to be a recognised professional body and any person so registered shall be deemed to be a member of that recognised professional body.

### **30. ADVERTISING**

30.1 There shall be established an Advertising Standards Committee of the Bar Council nominated for that purpose in order to regulate advertising under this section and consider complaints received from any individual or body relating to the content of any advertising or promotional material published or distributed by a barrister in independent practice in Northern Ireland or a registered European lawyer registered by the Executive Council or a qualified European lawyer temporarily registered with the Executive Council.

30.2 Subject to section 30.03, a barrister in independent practice or a registered European lawyer registered by the Executive Council or a qualified European lawyer temporarily registered with the Executive Council may engage in any form of advertising or promotion in connection with that barrister's or registered lawyer's practice which conforms to the British Code of Advertising Practice (and, in the case of extra-jurisdictional work, conforms to any further requirements binding on that barrister under the rules of any national or local Bar). Such advertising or promotion may include:

- a) photographs or other illustrations of the barrister or registered lawyer;
- b) statements about the nature and extent of the barrister's or registered lawyer's services;
- c) with that client's express written consent, the name of any professional or lay client.



30.3 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 comparisons with or criticisms of any other barrister(s) or member of any other profession;
- d) include statements about the quality of the barrister's or registered lawyer's work, the size or success of his practice or his success rate;
- e) indicate or imply any willingness to accept a brief or instructions or any intention to restrict the persons from whom a brief or 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.

30.4 For the avoidance of doubt, a barrister or registered lawyer shall be allowed to publish or distribute any advertising or promotional material without the prior approval of the Advertising Standards Committee. However, the barrister or registered lawyer, prior to publication or distribution, may furnish any advertising or promotional material to the Advertising Committee for an opinion on whether the advertising or promotional material is compliant with the Advertising Code. Any such opinion expressed by the Advertising Committee shall not be binding upon the barrister or registered lawyer who may publish or distribute the advertising or promotional material regardless of the opinion expressed by the Committee but the publication or distribution of the advertising or promotional material without regard for the opinion expressed by the Committee shall be a matter which can be taken into account in any disciplinary proceedings subsequently commenced against the barrister or registered lawyer arising out of a breach of the Code.

30.5 Following the publication or distribution of any new or materially altered advertising or promotional material, the barrister or registered lawyer may notify the Advertising Committee of the publication or distribution and may provide Committee with copy of same or a link to same if the same consists of online advertising or promotion. Such notification is not mandatory but is encouraged in order to demonstrate a willingness to promote the maintenance of high standards in the legal profession and to ensure the maintenance of public confidence in the legal profession.

30.6 Upon receipt of any such notification and material from a barrister or registered lawyer, the Advertising Committee will be entitled to scrutinise the advertising or promotional material in order to ascertain whether it complies with the Code and shall do so if the Committee receives any complaint about advertising or promotional material, irrespective of whether or not voluntary post publication notification has occurred.

30.7 If, having scrutinised the advertising or promotional material provided and/or having considered any complaint made in respect of any advertising or promotional material published or distributed by a barrister or registered lawyer, the Advertising Committee is of the opinion that a breach of Code has occurred, it shall forthwith notify the barrister or registered lawyer in writing to this effect and shall set out the reasons for its opinion.

30.8 Following the receipt of any such opinion, the barrister or registered lawyer shall have to the right to make written and/or oral representations to the Committee.

30.9 If, following consideration of the representations of the barrister or registered lawyer in question, the Committee is satisfied that there has been a breach of the Code, the Committee shall notify the barrister or registered lawyer in writing to this effect and shall set out the reasons for its decision. Copies of the said notification shall also be provided

to the Bar Council and to any person or body who made a complaint to the Committee about the said advertising or promotional material. The Committee will have the power to require the barrister or registered lawyer to withdraw entirely and/or amend the advertising or promotional material that is found to be in breach of the Code. The Committee may also refer the matter to the Professional Conduct Committee so that the manner may be investigated by means of a disciplinary investigation.

30.10 If the barrister or registered lawyer in question is dissatisfied with the decision of the Advertising Committee, he has a right to appeal to the Bar Council who shall consider the matter afresh including any additional written and/or oral submissions the barrister or registered lawyer wishes to make and shall come to a determination on whether a breach of the Code has occurred.

30.11 Notice of Appeal must be lodged with the Bar Council within 7 days of the barrister or registered lawyer receiving the determination of the Advertising Committee. The lodging of a Notice of Appeal shall have the effect of placing in abeyance any referral of the matter by the Advertising Committee to the Professional Conduct Committee until the outcome of the appeal is determined.

30.12 If, on appeal, the Bar Council is satisfied that a breach of the Code has occurred, it will have the power to require the barrister or registered lawyer to withdraw and/or amend the advertising or promotional material in any material respect. The Bar Council may also refer the matter to the Professional Conduct Committee so that the manner may be investigated by means of a disciplinary Investigation. If the Bar Council, on appeal, does not consider that there has been a breach of the Advertising Code, or that even though there has been a breach of the Code, the breach is not such as to warrant a referral to the Professional Conduct Committee, it shall make this determination and any earlier

decision of the Advertising Committee to refer the matter to the Professional Conduct Committee shall no longer have any effect.

30.13 Unless a Notice of Appeal is lodged within the stipulated time limit, failure to comply with any direction of the Advertising Committee in relation to the withdrawal and/or amendment of any advertising or promotional material will constitute a disciplinary offence.

30.14 Failure to comply with any direction given the Bar Council on appeal in relation to the withdrawal and/or amendment of any advertising or promotional material will constitute a disciplinary offence.

30.15 For the avoidance of doubt the powers of the Professional Conduct Committee upon a referral from the Advertising Committee or the Bar Council under this section shall include the power

(a) to require the Barrister found to be in breach of the Code to publish at his own expense a retraction or correction of similar prominence and frequency to the original offending advertising or promotional material; and

(b) to impose a financial penalty as deemed appropriate by the Professional Conduct Committee.

30.16 In the event that any liability to any third party is incurred by the Bar Council arising out of any advertising or promotional material published by a barrister in independent practice in Northern Ireland or a registered European lawyer registered by the Executive Council or a qualified European lawyer temporarily registered with the Executive Council, the Bar Council shall be entitled to be indemnified by the barrister or registered lawyer to the full extent of that liability.

## **31. PUBLISHING AND BROADCASTING**

- 31.1 Subject to section 16 a barrister may not write for publication, broadcast by radio or television, publish in a book or film, or otherwise cause or permit to be published any particulars of any case or matter on which that barrister is currently engaged whilst that case or matter is ongoing.
- 31.2 Only the Chairman of the Bar Council or a person authorised by the Chairman may write or speak on behalf of the Bar.

## **32. FEES AND REMUNERATION**

32.1 A barrister is entitled to take into account, when marking or nominating any fee, all features of the instructions which bear upon the commitment which is thereby undertaken including:

- a) the complexity of the issues or subject matter;
- b) the length and venue of any trial or hearing;
- c) the amount or value of any claim or subject matter in issue;
- d) the time within which the work is required to be undertaken and
- e) any other special feature of the case.

It is improper for a barrister to mark an excessive fee. A substantial reduction on taxation of the fee marked may be deemed to be prima facie evidence of professional misconduct.

No provision of this code or any previous code would prevent a barrister from charging a fee for any work undertaken by him on any basis or by any method he considers appropriate or from competing with other barristers in respect of the level of fee provided that such basis or method:-

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

32.2 It is improper for a barrister to charge a brief fee in respect of a proceeding if the barrister has not been present for any substantial part of the hearing unless notice has been given to the professional client not later than the day before the hearing that the barrister would or might not be able to be present for any substantial part of the hearing and notwithstanding such notification the professional client expressly agrees to the barrister retaining the brief.

- 32.3 Refreshers are essentially fees for work done in court and it is improper for a barrister to mark a refresher fee unless present in court for a substantial part of the hearing on the relevant day.
- 32.4 Where a barrister has been paid fees in advance and has died before the work for which payment has been made is completed the Bar Council will arrange for another barrister to complete the work without further fee instead of any part of the said fee being refunded.
- 32.5 It is improper for a barrister to accept any fee less than that marked on the brief and a barrister who is a Member of Parliament or a member of a Local Authority may not do professional work for a constituent without charging a proper fee.
- 32.6 It is improper for a barrister to accept a fee directly from a lay client.
- 32.7 On a Civil Bill brief any fee for the barrister in excess of the relevant scale fee must be arranged in advance and agreed by the lay client.
- 32.8 If a brief, not being one where the barrister's fee is fixed by Rules of Court, is not marked with a fee when delivered to the barrister, it is left to the discretion of the barrister to mark the appropriate fee.
- 32.9 It is a proper and established practice for a barrister to charge a suitable negotiation fee for negotiations conducted and resulting in a settlement of the case at a time when trial briefs have not been delivered.
- 32.10 A barrister whose request to a solicitor for payment of outstanding fees has not been met should refer the matter to the secretary of the Bar Council acting on behalf of the Fees Complaints Committee of the Bar Council. The secretary will then write to the solicitor giving the name of the barrister who has sought payment and ask for a comment. If no reply is received, the secretary will again write to the solicitor and send a copy of that letter with copies of the barrister's written request for payment to the Law Society of Northern Ireland which has agreed that in such circumstances it will then write to the solicitor. If this fails to achieve payment and the right to

payment of the fee remains undisputed, the Fees Complaints Committee will then screen the solicitor's name on the notice board in the Bar Library whereupon no barrister may accept any new work from that solicitor.

### **33. OVERSEAS PRACTICE RULES**

- 33.1 A barrister may act on the instructions of a lawyer as defined in paragraph 11.01(a). For the avoidance of doubt this will allow the barrister to act on instructions from a lawyer from outside of Northern Ireland without the intervention of a Northern Irish solicitor. Instructions from a lawyer outside of Northern Ireland shall be defined as "foreign work". A barrister is permitted to refuse to accept instructions for "foreign work" for any reason but once having accepted instructions should comply fully with Rule 13.
- 33.2 The barrister should ensure that in the case of foreign work the lawyer has made adequate arrangements for the discharge of such administrative and other functions as are normally discharged in relation to such work by a solicitor and, if necessary, the barrister shall ensure that the lawyer shall procure the services of a Northern Irish solicitor to act as agent in relation to the proceedings
- 33.3 A barrister may accept instructions directly from a lay client;
- a) for professional work relating to matters essentially arising, taking place or contemplated outside the United Kingdom and which is to be substantially performed outside the United Kingdom or
  - b) for professional work:
    - i. whether or not to be performed in the United Kingdom, for the purpose of or in connection with litigation or arbitration or other proceedings outside the United Kingdom which does not involve the performance in Northern Ireland of excepted work as defined in the section 33.05 hereof or

- ii. which consists of giving advice incidental and subsidiary to work falling within section 33.03 hereof.

33.4 Nothing in these rules shall enable a barrister in independent practice to:

- i. receive or handle lay clients' money or
- ii. accept the status of an employee or of a commercial agent or of a business agent.

33.5 "Excepted Work" means:

- a) substantial administrative work not normally performed by a barrister in independent practice in Northern Ireland.
- b) inter-partes work (e.g. the conduct of correspondence with an opposite party) of a kind not normally performed by a barrister in independent practice in Northern Ireland.

33.6 A member of the Bar of Northern Ireland appearing in court as a barrister outside the jurisdiction of the courts of the United Kingdom shall observe the Rules of Professional Conduct of the host Bar without prejudice to the barrister's obligations as a member of the Bar of Northern Ireland. When appearing in a foreign court the barrister shall wear such professional dress as would be worn in a court of equivalent jurisdiction in Northern Ireland.

33.7 A member of the Bar of Northern Ireland providing legal services as a barrister outside Northern Ireland shall remain subject to this Code of Conduct save as is provided in section 33.08 and shall also observe, so far as is appropriate, the Code of Conduct of the place where the legal services are being provided whether the barrister is practising there as an established lawyer or is providing occasional services.

33.8 Any failure to comply with the rules of the host Bar, whether or not such rules are applicable to the conduct of a member of the Bar pursuant to section 33.08 or 33.09 hereof may constitute a breach of this Code of Conduct.



33.9 Nothing in these rules shall permit a barrister to undertake work outside Northern Ireland which, if performed inside Northern Ireland, would involve an infringement of any other provision of this Code of Conduct.

#### **34. APPLICATIONS OF THIS CODE TO EMPLOYED BARRISTERS AND NON-PRACTISING BARRISTERS**

34.1 In its application to employed barristers this Code shall apply mutatis mutandis as it applies to barristers in independent practice but with the substitution:

- a) of references to the relevant employer for references to the professional client or the lay client;
- b) of references to the directions received in whatever form from the relevant employer for references to a brief or instructions.

34.2 The provisions of the Constitution and Bye-laws of the Inn of Court of Northern Ireland relating to Disciplinary and Professional Conduct Committees apply to all barristers including employed or non-practising barristers.

34.3 A non-practising barrister may not, without the permission of the Bar Council, act in any capacity whereby directly or indirectly legal services are supplied to the public or to a section of the public save insofar as is permitted by the rules in force in the country where being resident the barrister so acts.

34.4 Lecturing, teaching and the writing or editing of legal textbooks and of articles in legal journals shall not, for the purposes of this section, be considered the supply of legal services to the public.

34.5 Any question as to the applicability of this Code of Conduct to employed or non-practising barristers should be referred, in the first instance, to the Professional Conduct Committee of the Bar Council.

#### **35. EUROPEAN LAWYERS**

35.1 A Code of Conduct for European Lawyers was originally adopted at the The Council of Bars and Law Societies of Europe (CCBE) plenary session held on the 28<sup>th</sup>

October 1988, and subsequently amended during the CCBE plenary sessions on 28<sup>th</sup> November 1998, 6<sup>th</sup> December 2002 and 19<sup>th</sup> May 2006. The Code includes an Explanatory Memorandum which was up-dated during the CCBE plenary session on 19<sup>th</sup> May 2006. This Code of Conduct is referred to in Appendix 10.

35.2 The CCBE also adopted the Charter of Core Principles of the European Legal Profession at the plenary session in Brussels on 24<sup>th</sup> November 2006. The Charter is not conceived as a Code of Conduct. The Charter contains a list of ten core principles common to the national and international rules regulating the legal profession. The Charter is referred to in Appendix 11.

## **EQUALITY CODE FOR THE BAR**

### **Equal Opportunities Guidance Under Revision (June 2015)**

## Etiquette in the Queen’s Bench Division

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### Mentioning settlements and making applications

The appropriate procedure

1. The initial cover in the Queen’s Bench Division almost invariably takes place at 10.15 a.m. but any junior counsel who is involved in a case must ensure that he/she ascertains the time from the daily list.
2. At this callover, and at any further callover (see below) it is essential that each party to the proceedings is represented by counsel. The court will not accept any settlement unless each party is represented in court at the announcement of the settlement.
3. Prior to the Judge coming into court an appearance form should have been properly completed by Junior counsel – with the name of the case and the names of all counsel – and handed to the Registrar. This is particularly important if the Judge does not know counsel by name. The proper completion of this form is the responsibility of counsel for the plaintiff.
4. When the Judge comes into court all counsel should stand. When the Judge bows junior counsel should not bow in response.
5. At the first callover the case is called as “Going on”, “Settled” or “Application” – normally by the plaintiff’s counsel. No terms of settlement are to be mentioned at this stage, nor appearances given, unless the Judge specifically requests it.
6. Normally the Registrar will then call out in turn the title of the settled cases followed by the title of those in which it has been indicated that there is to be an application.
7. Settlements should be announced and applications made from the bar of the court. It is wrong to try to mention a settlement from the second row behind the bar. If there are no seats in the front row behind the bar (i.e. junior counsels’ seats) counsel should move to the gap between the seats and go forward to the bar (where there is a swing door) before announcing his/her appearance.
8. At the second callover a settled action is announced as follows:
  - a. The plaintiff’s counsel stands up and announces his/her appearance in the following terms: “*May it please your lordship, my lord, I appear for the plaintiff with my learned friend Mr/Ms Jones*”. He/she then sits down.
  - b. The defendant’s counsel then stands up and announces his/her appearance “*May it please your lordship, my lord, I appear for the plaintiff with my learned friend Mr/Ms Jones*”. He/she then sits down.
  - c. If there are several defendants in the action, counsel for each defendant (e.g. ‘first-named defendant’ or ‘second-named defendant’) he/she appears, until the appearances in respect of all defendants have been announced.
  - d. Each counsel should ensure that the Judge has had time to write down the previous counsel’s appearances before he/she starts to speak.
  - e. If there is only one defendant, the plaintiff’s counsel then stands again and says “*My lord the action is settled for £20,000 damages and costs to be taxed in default of agreement. There are no complications and a 3 week stay is agreeable*”. (A 3 week stay means that the defendant has 3 weeks in which to pay the plaintiff’s damages. It is normal stay in High Court. Complications, dealt

with below, arise in cases where the plaintiff is legally aided, where there is a lodgement, fatal cases and cases where there are minors or other persons in respect of whom any settlement requires the approval of the court).

- f. If there are several defendants it is for the plaintiff's counsel to be in possession of the information as to which defendant/s is/are paying the plaintiff's damages and which, if any, are to have judgement against the plaintiff. Where there are several defendants of whom one or more is not contributing to the settlement each non-contributing defendant normally (although the circumstances of each case are different) takes judgement against the plaintiff, *with no order as to costs*. This means that the non-contributing defendant is paying its own costs of the action; the plaintiff is not paying its costs. An example in a case where there are three defendants is as follows – with the plaintiff's counsel speaking –

*“My Lord, the action is settled. The plaintiff is to have judgement against the first and second named defendants for £20,000 damages and costs to be taxed in default of agreement. The third-named defendant is to have judgement against the plaintiff with no order as to costs. There are no complications and a 3 week stay is agreeable”.*

- g. In an example such as in (f) above, it is for counsel who appears for the relevant paying defendants to know whether it is necessary to ask the Judge to make an order as between the paying defendants, and sometimes the Judge will ask whether he is to make any such order. In example above it may be that the first-named defendant is paying 25% of the plaintiff's damages and costs. Usually, the defendants do not require the Judge to make any order, but if one is required, counsel for one of those defendants should ask the Judge to make an order reflecting the appointment.
- h. There are occasions when there are third parties in the action. The plaintiff normally has no knowledge of what arrangement has been arrived at between a defendant and the third party which that defendant has joined into the action. In such circumstances, it is for counsel appearing for the relevant defendant to explain the position to the Judge. This is done after the plaintiff's counsel has announced the terms of the settlement as between the plaintiff and the defendant/s. The relevant defendant's counsel will announce to the court something along the following lines (assuming, for these examples, that he/she appears for the second-named defendant) –

*“My lord the second-named defendant is to have judgement against the Third Party for £.x and its costs of the third party proceedings”* or *“My Lord the second-named defendant is to have judgement against the Third Party for 50% of the plaintiff's damages and 50% of the plaintiff's costs and its costs of the third party proceedings”* or *“My Lord no order is required in the third party proceedings”*

- i. There are occasions when, as a result of the arrangements between a defendant and a third party, both indicate to the plaintiff's counsel that the third party is to be joined as a further defendant in the action. In such circumstances, after the appearances for all the parties have been announced, counsel for the plaintiff (prior to telling the Judge the

settlement terms) should say “*My Lord would your lordship by consent make an order adding the third party to the action as the second-named defendant*” and then proceed to give the agreed terms of settlement.

- j. If for some reason it is not possible to give all the terms of the settlement to the court or if the parties prefer not to announce the terms of the settlement in open court, the case will normally be “stayed on terms endorsed”. If an action is stayed on terms endorsed it should be announced as follows:

*“My Lord, the action has been settled on terms endorsed on counsels’ briefs. Would your Lordship, by consent, stay the action upon those terms and give the parties liberty to apply? Would your Lordship also make an order for taxation of the plaintiff’s costs in default of agreement (and/or in a legally aided case) order taxation of the plaintiff’s costs under the second schedule?”*

In cases which are stayed on terms endorsed, it is important for the plaintiff’s counsel to ensure that he/she asks for an order that the plaintiff’s costs be taxed in default of agreement. This is because the Taxing Master requires a court order before he will entertain an application to tax the plaintiff’s costs. Failure to ask for such an order will cause considerable delay in the taxation process, as the plaintiff’s solicitor will have the case listed again for the court to make the order for taxation.

- k. Where an action is settled on terms endorsed on counsel’s brief the terms should be drawn up and signed before the settlement is announced. The Judge is not entitled to see the terms. The relief sought is that the action be stayed.

### **The complications**

9. If a solicitor for any defendant has made a lodgement in the case, the solicitor on both sides should be in possession of a copy of the lodgement docket, the document on which the lodgement is recorded. It will not be in the Judge’s papers. When settlement in such a case is announced, the lodgement docket is handed up by the plaintiff’s Solicitors to the Registrar and the plaintiff’s counsel says:

*“My Lord there is a lodgement of £5000. Would your Lordship order that the lodgement be paid out to the plaintiff’s solicitors and allow a 3 week stay on the balance? Would your Lordship order the interest to be paid out to the defendant’s solicitors?”*

10. If the plaintiff has Legal Aid for the proceedings, legal aid taxation is required. The plaintiff’s counsel will say:

*“My Lord the plaintiff is an assisted person. Would your Lordship order taxation of the plaintiff’s costs under the second schedule?”*

[The second schedule is a reference to the schedule in the Legal Aid, Advice and Assistance (Northern Ireland) 1981 Order, pursuant to which costs are taxed by the Taxing Master]

11. Fatal cases require to have the damages apportioned between the Fatal Accidents (N.I) Order 1977 (the dependants) and the Law Reform (Miscellaneous Provisions) Act (N.I) 1937 (the estate). If there are minor dependant children the settlement requires Court approval.
12. Any proposed settlement in a case in which the plaintiff is a minor requires the approval of the Judge in those circumstances at the callover when the case is first called counsel for the plaintiff should say “*My Lord that case is settled subject to the court’s approval*”. That case will then be assigned to a Judge at the end of the callover.
13. The same procedure applies where the plaintiff is, for whatever reason, a person under a disability.
14. Following the approval by the court of any settlement (which is done by the plaintiff’s counsel while the court is sitting “in chambers” – i.e. in the absence of members of the public and of the opposing counsel) the case will be called again at the next callover. Counsel for the defendant and any other party must attend at that callover to give his/her appearance.

### **Common Errors**

15. Attempting to announce the whole settlement at the first callover or giving your opponent’s appearance.
16. It is unacceptable for counsel to tell the Judge that he/she is mentioning the settlement on behalf of another counsel, as an explanation or excuse for being unable to deal with a query raised by the Judge. If counsel is unable to answer the Judge’s query, counsel should ask the Judge for the appropriate time to permit him/her to ascertain the information. It may be true that counsel is mentioning the case for a colleague but the counsel who mentions the case must assume responsibility for the settlement – the Judge is not interested in the fact that another counsel is actually instructed for the party in the case.
17. Telling the court that you are instructed by Smith and Jones Solicitors. While this is then normal way of announcing an appearance in a criminal case, it is not appropriate in the High Court. In a civil action the court has the appearance of the solicitor on a document in the court papers.
18. Telling the court that you are appearing with Mr/Mrs Smith Q.C. Your appearance should be “*with my learned friend Mr/Mrs Smith*”. It is not correct to add “QC” or “Senior counsel” or the like.
19. Telling the court the first name of senior counsel, unless there are two or more members of the senior bar with the same surname. In the same vein if counsel is referring to any other counsel by name, the first name of that counsel should never be given, unless there are two or more counsel at the Bar with the same surname.
20. Telling the court that a case is settled for “*£20,000 plus the CRU*”. The Court is no interested in the CRU as a concept. You should know what the CRY figure is and if a case is settled for say £20,000 plus CRU of £501.99 and costs the settlement is announced as settled “*for £20,501.99 damages and costs*”. If the CRU figure is not known at the time that the settlement is announced it may be appropriate to have the case stayed on terms endorsed on counsels’ briefs. If there is a CRU repayment but no special damage in the case it is acceptable to tell the court that the action is settled for £20,000 general damages. The general damages are “ring-fenced” and it follows that the defendant will still have to pay the CRU.

21. Failing to mention the costs. In the County Court they do not require to be mentioned because they follow as a matter of course but in the High Court the Judge's order will mention them.
22. In cases where the damages are £15,000 or less the court requires to know the level at which costs are agreed to be paid. This will usually be "*High Court costs*" or "*County Court costs with High Court outlay, to include 2 counsels*".
23. Where an application is made to take out an action not in the day's list a different form is required to be completed, normally by the counsel moving the application. In this form appearances are given and the grounds of the application are required to be set out. The form is handed to the Registrar before the Judge comes into court. These applications are heard at the end of the settlements and after the Judge has heard any applications to take cases out of the day's list. It is acceptable to give your opponent's appearance after your own and it is appropriate to indicate whether the application is opposed or by consent. The Judge's name is written on the form as "Smith J" or, if a Lord Justice is taking the callover as "Brown LJ".
24. The correct response to the Judge's ruling on any matter is "*As your Lordship pleases*", whether you like the ruling or not.
25. It is not acceptable to refer to a solicitor (who may be appearing against counsel in an application) as "*My friend*" or "*My learned friend*". Only counsel are referred to in such a way. The solicitor should be referred to by counsel as "Mr Smith" or "Ms Jones" etc.
26. Junior counsel should address the Judge from the bar court and not from anywhere other than that. The first two rows of seating behind the bar of the court are the reserved benches for junior counsel (solicitors should not sit there). It is acceptable to address the court from the first of these rows, but not from the second row. If counsel is sitting in the second row and is required to address the judge, he/she should move from the second row to the bar of the court in the centre between the rows. Further, it is unacceptable for junior counsel, in the addressing the court, to move beyond the bar into the area in front of the bar which is for senior counsel and solicitors only.

### **Further callovers**

27. During the course of the day, any action not settled will be reviewed by the Judge periodically at further callovers. These may be every half hour or so. It is the duty of junior counsel to be aware of the times of each of these callovers and to attend each.
28. At each of these callovers counsel should be aware of the state of the readiness of the case in which he/she is involved and should be prepared if asked, to advise the Judge (who is trying to obtain relevant information so that he can allocate cases to other judges) as to whether the case is ready to start, if not, when it will be ready to start: the reason why it is not ready to start, and whether there are any meaningful negotiations which might lead to settlement.
29. It is unacceptable for counsel not to be in attendance at these further callovers.

### **County Court Appeals and Appeals from a Master**

30. Counsel in these appeals should announce his/her appearance as being "*for the Plaintiff/Appellant*" or "*for the Defendant/Appellant*" or "*for the Plaintiff/Respondent*" or "*for the Defendant/Respondent*", whichever is appropriate.



31. The announcement of a settlement in a County Court appeal is different from the announcement of a settlement of a High Court action because there is in existence a County Court decree. The result of the negotiations on the appeal must either be that the order of the County Court is affirmed or varied.
32. For example, if at the County Court the Plaintiff's Civil Bill was dismissed but, on the Plaintiff's appeal, the Plaintiff is to receive damages for £3,500, the appropriate way of announcing this is to say:

*“Would your lordship by consent allow the appeal and vary the Order of the County Court by entering a decree for the Plaintiff for £3,500.”*

If at the County Court the Plaintiff was awarded £10,000 but on the Defendant's appeal the Plaintiff is to receive £7,500 counsel should say:

*“Would your lordship by consent allow the appeal and vary the Order of the County Court by entering a decree for the sum of £7,500.”*

If, at the County Court the Plaintiff received £10,000 and, on the Defendant's appeal, the Plaintiff is still to receive £10,000 counsel should say:

*“Would your lordship by consent dismiss the appeal and affirm the Order of the County Court”.*

33. Whatever be the result of the appeal, the issue of costs will have to be explained to the Judge. For example, a successful party may be getting the costs of the County Court hearing and of the appeal (*“costs above and below”*); or may be getting only the costs of the appeal (*“costs of the appeal only”*). There are several possibilities and counsel announcing the appeal know what order is being sought following the settlement of the appeal.
34. The settlement of any appeal from a Master as from the County Court, means that an existing order has either to be varied or affirmed. Similarly, the Judge will expect to be told what order is required in relation to costs both before the Master and in High Court.

### **Court dress**

35. All counsel are reminded of paragraph 22.04 of the Code of Conduct for the Bar of Northern Ireland which is in the following terms –

*“In addition to wig and gown, it is mandatory for a barrister in independent practice attending a Court at which robing is obligatory to wear, in the case of a male junior counsel a dark suit, waistcoat, white shirt, collar, neckband and black shoes and in the case of a female junior counsel a dark suit or similar apparel, white blouse, collar, neckband and black shoes.*

*The wig should be straight and not worn at an angle”.*

36. It is not acceptable for male counsel to appear without a waistcoat unless the jacket is double breasted. If a single breasted jacket is worn, counsel should wear a waistcoat.

37. Far less is it acceptable to leave a jacket unbuttoned when counsel is not wearing a waistcoat.

### **Generally**

38. The purpose of announcing a settlement in the Queen's Bench Division is to ensure that a court order can be drawn up. It is therefore imperative that each callover is attended by at least one counsel for each party and that the correct information is provided to the Judge when the settlement is announced so that the actual terms of settlement of the case reflecting what has been agreed between counsel, are properly recorded. This information includes whether or not the Plaintiff is legally aided and, therefore, whether the necessary order for taxation is required.
39. It is the duty of counsel involved in the case to ensure that this is done. This means not only the counsel who actually appears for the party in the case, but also any counsel who is asked by him/her to announce the settlement.
40. Accordingly, the original counsel has a duty to ensure that if he/she asks a colleague to mention a settlement, that other counsel is provided with all the necessary information. Likewise, the counsel who is asked to mention the settlement must ensure that he/she is provided with the necessary information. If counsel asked to mention a settlement by a colleague is not satisfied that he/she had been given all the necessary information, he/she should decline to mention the settlement for the colleague.
41. Unless senior counsel specifically indicates that he/she intends to be present to announce a settlement or that he/she intends to be present at any callover, it is the duty of junior counsel to attend to this Junior counsel must always assume that they will be required to do so and should ensure that they are in possession of the relevant information.

Noelle McGreenera QC,  
Chairperson of the Professional Conduct Committee.

15<sup>th</sup> December 2004.

## **GUIDELINES FOR NEGOTIATION WITH INSURANCE COMPANY REPRESENTATIVES**

- (1) It is still to be regarded as the preferable practice in negotiations that such negotiations be carried out with a legal representative retained on behalf of the Defendant.
- (2) If Counsel has been retained on behalf of the Defendant then Counsel for the Plaintiff should carry out negotiations with that Counsel unless Counsel confirms he has not been retained for the purposes of those negotiations.
- (3) It is not appropriate for Counsel on behalf of the Plaintiff to negotiate directly with an insurance company's representative where there have been previous negotiations either with Counsel or solicitor representing the Defendant and those negotiations have been unsuccessful.
- (4) It is not appropriate to negotiate directly with an insurance company's representative where a solicitor has been engaged on behalf of the Defendant unless it has been clearly confirmed that the solicitor has a limited engagement. Counsel negotiating with an insurance company's representative in those circumstances has an obligation to ensure through his own instructing solicitor that the solicitor, who has been retained by the insurance company, has confirmed that he/she has only a limited retainer which does not include authority to enter into negotiations.
- (5) Negotiations should be carried out preferably on a face-to-face basis, not through correspondence, emails or by telephone communication directly with insurance representatives.
- (6) Face to face negotiations with an insurance company's representative should take place within the precincts of a Court or the Bar Library. It is not appropriate to have such negotiations in a solicitor's office except where there are compelling or special reasons such as disability which make it difficult for the client to attend at

Court or the Bar Library. Negotiations should never take place in an insurance company's premises.

- (7) A memo should be kept of all discussions or communications with an insurance representative and should be provided to his or her instructing solicitor as soon as reasonably practicable.

- 10.5 A barrister should not without the consent of the lay client hand over papers to another barrister for drafting or research unless such other barrister is also instructed in the case or is the barrister's pupil.
- 10.6 A barrister must not enter into a partnership with another barrister.
- 10.7 A barrister must not enter into a fee-sharing arrangement with another barrister or with a professional client.
- 10.8 In contentious matters a barrister may not conduct negotiations with any person other than barrister save where a solicitor alone has been appointed to represent the opposing party or as set out in Section 10.09. In this connection, attention is also drawn to Section 12.05 of this Code.
- 10.9 A barrister may conduct negotiations with an insurance company's representative in circumstances where the insurance company has not retained any legal representation for the purpose of those negotiations. If his client is present, a barrister may only conduct such negotiations if attended by his instructing solicitor or a member of his instructing solicitor's staff. In conducting such negotiations attention is drawn to Section 32.09 and to the "*Guidelines for Negotiations with Insurance Company Representatives*" contained in Appendix 3.



## UPDATED GUIDANCE ON ATTENDANCE BY SOLICITORS ON COUNSEL

1. The Professional Conduct Committee of the Bar continues to have concerns about solicitors not attending counsel. The following advice is issued for the guidance of all members.
2. The starting point is Rule 12.06 of the Code of Conduct which states:

*Apart from work in the Magistrate's Courts and work in other courts which only involves dealing with uncontentious matters, a barrister should not consult with a lay client or any witness or represent that client in court in the absence of the professional client or a member of the professional client's staff. If the professional client or a member of staff is absent, the barrister should decline to represent the lay client and the absence of the professional client or the member of staff should be brought to the attention of the court. Where, in exceptional circumstances, in the absence of the professional client or a member of staff the barrister consults with the lay client or represents the lay client in court, the barrister shall forthwith furnish a written memorandum of instruction received during the consultation or the outcome of the hearing to the professional client. Attention is drawn to the "Guidance on Attendance by Solicitors on Counsel" contained in Appendix 4.*

3. As Members can see from the wording of this rule it is only in exceptional circumstances that a Barrister should consult with a lay client or represent the lay client in Court when not attended by a Solicitor or a member of the Solicitor's staff. It is the view of the Professional Conduct Committee that a Barrister should never undertake a substantive hearing without being so attended.
4. Normally a barrister should not consult with a client, or represent a client in court, unless the instructing person or member of that person's staff is present. This is standard practice in other than the magistrates' courts, and a barrister should have no compunction in so advising a solicitor who ignores the practice.
5. The presence of the solicitor ensures that there is less room for dispute about what has actually happened during a consultation or in court. A significant part of the work of the Professional Conduct Committee continues to be taken up with investigating allegations made against barristers by clients when solicitors have not been present. The absence of the solicitor leaves barristers more vulnerable to allegations about their attitude, lack of preparation, poor presentation of the case etc.
6. It had been previously indicated by a Judge that he would not insist on a solicitor attending providing that counsel is attended by someone from the solicitor's firm. That is in accordance with the Rule which refers to the staff of the solicitor. However, even in that situation, a barrister should have no reservation in advising the solicitor that the person attending him/her should have some knowledge of the case so that the attendance of the person concerned is meaningful.

## GUIDANCE APPLICABLE WHEN A CLIENT CONFESSES

1. Where a person charged with a criminal offence confesses to the defence barrister the following points should be borne in mind:
  - a) That every punishable crime is a breach of common or statute law committed by a person of sound mind and understanding;
  - b) That the issue in a criminal trial is always whether the accused is guilty of the offence charged and not whether he is innocent;
  - c) That the burden of proof rests on the prosecution.
2. The mere fact that a person who is charged with a criminal offence has confessed to the barrister is not itself a bar to that barrister appearing or continuing to appear in his defence nor does such a confession release the barrister from his duty to represent the accused to the fullest possible extent.
3. A confession by an accused person to the barrister limits that barrister's presentation of the defence. He should not assert that which he knows to be a lie. He must not connive at or substantiate a fraud.
4. While it would be proper to raise objections and concerns as to the competency of the court, due process, Human Rights issues, the form of the indictment, the admissibility of any evidence or the evidence admitted, it would be improper in such circumstances to suggest that some other person had committed the offence or to call evidence which the barrister knows to be false having regard to the confession, e.g., evidence in support of an alibi, which is intended to show that the accused could not have committed the act with which he is charged. The barrister must not (whether by calling the accused as a witness or otherwise) set up an affirmation case inconsistent with the confession made to him.
5. With regard to challenging the evidence presented by the prosecution either by cross-examination or in his speech to the court, the barrister is entitled to test the evidence given by each individual witness and to argue that the evidence taken as a whole is insufficient to amount to proof that the accused person is guilty of the offence but he must not go any further than this.
6. This guidance is based on the assumption that the accused has made a clear confession that he did commit the offence with which he is charged and does not profess to deal with the very difficult questions which may arise when a series of inconsistent statements are made to the barrister by the accused before or during the proceedings. Nor does it deal with the questions which may arise where statements are made by the accused which point almost irresistibly to the conclusion that the accused is guilty but does not amount to a clear confession. Statements of this kind hamper the defence but questions arising on them are not dealt with here. They can only be answered after careful consideration of the actual circumstances of the particular case.

**PRACTICE DIRECTION**

**4 of 2006**

**WEARING OF WIGS AND GOWNS IN THE FAMILY DIVISION AND  
FAMILY CARE CENTRES**

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As from 5 September 2006 barristers appearing in proceedings in the Family Division and family care centres under the Children (Northern Ireland) Order 1995, the Adoption (Northern Ireland) Order 1987 and the Hague Convention on the Civil Aspects of International Child Abduction will not be required to wear wigs or gowns unless, by reason of the exceptional nature of the case, the judge in charge of the proceedings otherwise directs. In view of the nature of these proceedings, members of the Bar are encouraged not to wear wigs and gowns. Judges will not robe unless, exceptionally, the nature of the proceedings requires them to do so.

Dated this 11<sup>th</sup> day of May 2006

*Brian Kerr*

Lord Chief Justice





**MEMORANDUM**

TO All Members of the Bar

FROM Ms Noelle McGreenera QC – Chairperson

DATE 11 December 2006

RE **Wigs & Gowns**

1. Members will be aware that Practice Direction 4/2006 issued by the Lord Chief Justice on 11<sup>th</sup> May 2006 became effective from 5<sup>th</sup> September 2006. The Practice Direction makes clear that the judiciary in proceedings in the Family Division and Family Care Centres under the Children (Northern Ireland) Order 1995, the Adoption (Northern Ireland) Order 1987 and the Hague Convention on the Civil Aspects of International Child Abduction will no longer robe save in exceptional circumstances.
2. The Practice Direction provides that barristers will not be required to wear wigs or gowns unless, by reason of the exceptional nature of the case, the judge in charge of the proceedings otherwise directs. It encourages members of the Bar not to wear wigs and gowns in view of the nature of these proceedings.
3. When children are giving evidence, physically present in court, or participating in the hearing by way of video-link in proceedings in the Family Division and the Family Care Centre it will not be appropriate for members to wear wigs and gowns.
4. The Bar Council also endorses the agreed convention in respect of court dress for directions hearings or reviews in proceedings in the Family Division and Family Care Centres under the Children (Northern Ireland) Order 1995, the

Adoption (Northern Ireland) Order 1987 and the Hague Convention on the Civil Aspects of International Child Abduction and commends to members that robes should not be worn on such occasions.

5. Barristers have a responsibility, when dealing with any vulnerable witness, to ensure that those facing unfamiliar court procedures are put as much at ease as possible. For the avoidance of doubt the removal of wigs and gowns in the context of this guidance note will not be regarded by the Bar Council as inconsistent with the provisions of Rule 22 of the Code of Conduct.
6. The Bar Council remains committed to the wearing of a barrister's robes as a significant and tangible symbol of the unique role of the barrister in court proceedings and will support the wearing of wigs and gowns by members. It is the view of the Council that the fact that a Judge is not robed does not make it inappropriate for a barrister to robe.

Noelle McGreenera QC  
**Chairperson**

**BAR OF NORTHERN IRELAND**  
**PUPILLAGE GUIDELINES**

**The Education Committee  
of  
The Inn of Court of  
Northern Ireland**

**June 2015**

## **PUPILLAGE GUIDELINES**

The aim of these guidelines is to provide pupils with information as to what they should expect to gain from pupillage, to enhance their confidence in coping with the first stage of their professional lives, to help improve standards and to achieve greater consistency between the experience of one pupil and another whilst interfering as little as possible with what must vary for each individual. The aim is further to put pupillage on a less ad hoc basis without being overly prescriptive, as the nature of the practices of Pupil Masters will vary widely.

Rule 25 of the Code of Conduct for the Bar of Northern Ireland provides as follows:-

### “ 25 Pupillage

- 25.1 Save where the Benchers otherwise expressly provide, every person intending to practise at the Bar must enter into pupillage with a barrister in independent practice of not less than seven years' standing for a period of 12 months.
- 25.2 A person who has entered into pupillage should not accept instructions as a barrister or conduct any case until a period of 6 months pupillage has been completed, to the satisfaction of the Education Committee save that a pupil who has completed to the satisfaction of the Education Committee not less than 3 months pupillage may conduct on behalf of or at the request of his Master a case or part of a case before a Master of the Court of Judicature of Northern Ireland.
- 25.3 During pupillage and at all times thereafter the pupil must preserve the confidentiality of the affairs of all clients. Attention is drawn to Section 16.04, 16.06, 16.07 and Rule 14 of the Honourable Society of the Inn of Court.

25.4 The general obligations and functions of a Pupil Master are as follows:-

- (a) He should ensure that the pupil is well grounded in the rules of conduct and etiquette of the Bar;
- (b) to require the pupil to read papers and draft pleadings and other documents, including preparing opinion and require the pupil to accompany the pupil Master to Court on sufficient occasions so that the pupil has the opportunity to do all such work and gain all such experience as is appropriate for a person commencing practice in all types of work done by the pupil Master.
- (c) to require the pupil to attend sufficient consultations to enable the pupil to gain experience on how to conduct a consultation.
- (d) in the second six months of the pupillage he should take a direct interest in the work the pupil does alone and in particular, in relation to Court appearances by his pupil, to give assistance before he goes into Court and to give the opportunity for discussion afterwards.
- (e) in the second 6 months of the pupillage to take reasonable steps to ensure that the pupil does not carry out extensive extraneous work to the detriment of his pupillage.
- (f) if it is proper to do so and at the proper time, to provide the Certificate of Satisfactory Completion of the Pupillage.

25.5 Attention is drawn to the Bar of Northern Ireland Pupillage Guidelines June 2015

Appendix 7”

## **PUPILS**

Pupils should bear in mind the following matters:-

1. Pupil's duties - a pupil should be conscientious in receiving instruction from a Pupil Master and should be in a position to apply his/her full time efforts thereto (but see 5 below in relation to part-time employment or other work). This will normally involve being available every working day during term time at the direction of the Pupil Master. Every pupil should ensure that he is provided with, and retains, a copy of the Pupillage Checklist, familiarise himself/herself with contents and use it during Pupillage
2. Primary Duties of the individual barrister – Rule 4 of the Code of Conduct sets out the primary duties of an individual barrister. These are core principles. Compliance with the same is central to maintaining the highest standards at the Bar.
3. Relationship with Pupil Master - It is important that if at all possible the pupil meets the Pupil Master prior to the commencement of the pupillage. The pupil should expect the Pupil Master to clarify what is expected by the Pupil Master on a day to day basis. It is important that the pupil is open with the Pupil Master and that at the appropriate time the pupil raises all and any questions that occur to him/her no matter how trivial they may seem. The pupil may at all times rely upon the Pupil Master to take the lead.
4. Content of Work - The pupil should expect to receive a good grounding in the procedural and tactical aspects of practice at the Bar. Pupils should make particular reference to the “Pupillage Checklists”. The pupil should expect to be allowed to read the Pupil Master’s opinions and draft pleadings and to have the opportunity of discussing them with him. Practice in drafting pleadings and writing opinions are important parts of pupillage and pupils should expect the Pupil Master to discuss their drafts with them and make suggestions for improvement.

The pupil should expect to attend consultations with his/her Pupil Master and should ascertain from the Pupil Master before attending any consultation what exactly is expected from him/her before or during it. Pupils should expect to read the instructions and all other papers in relation to a consultation in advance.

The pupil should expect to see as much as possible of the Pupil Master's work both in and out of Court and should also expect and be prepared to attend and observe cases in Courts where the Pupil Master does not regularly practise. When attending Court with their Pupil Master pupils should normally expect to travel with the Pupil Master but this will sometimes depend on individual circumstances.

5. Part time employment or other work – Pupils are reminded of Rule 5.01 of the Code of Conduct and Appendix 14. Rule 5.01 states:-

*“a barrister in independent practice must ensure that his primary occupation is that of practice as a barrister and must not engage in any other occupation which is inconsistent with his practice at the Bar. In particular, he should not engage in any other employment without first obtaining a consent in writing of the Benchers of the Inn and informing the Bar Council in writing of the fact that such consent has been obtained. Any application to undertake work outside the Bar should be made in accordance with the Guidance set out in Appendix 14 of the Code..”*

6. Advice and assistance – Members of the Bar Council and the Professional Conduct Committee of the Bar are prepared and willing to give advice and assistance on any matter in relation to pupillage in the strictest confidence and, in particular, where a pupil has a problem which for any reason he/she feels unable to raise with his/her Pupil Master. Names of members of the Bar Council and Professional Conduct Committee can be obtained from the Chief Executive's Office.
7. Continuing education – Various lectures and courses are organised in the Bar Library throughout the year. These provide an excellent opportunity to learn and ask

questions. Pupils are encouraged to make a particular point of attending such events.

### **PUPIL MASTERS**

Pupil Masters will be aware of the provisions of Rule 25 set out above and in addition should bear the following in mind:-

1. The Pupil Master should encourage a relationship between himself and his pupil whereby the pupil is encouraged to discuss problems and receive information on all matters relating to practice and etiquette. It is for the Pupil Master to take the lead in the relationship and direct the pupillage.  
It is for the Pupil Master to ascertain the nature and extent of the knowledge and experience of the pupil and shape the pupillage accordingly.
2. The Pupil Master will be aware that the pupil will learn much by the experience of watching the Pupil Master running his practice and will conduct himself accordingly.
3. The Pupil Master should arrange for his pupil to spend time with a colleague or colleagues who practise in any areas which do not form part of the Pupil Master's own practice. In this regard the Pupil Master will be guided by the Pupillage Checklists.
4. Pupil Masters are encouraged to take an ongoing interest in the practice of their pupil after the completion of Pupillage. It is often during the first few years of actual practice that advice and assistance are most needed. Pupil Masters should encourage their former pupils to advise and assist the current pupils both before and after completion of Pupillage.
5. Pupillage checklists are guidelines for areas of work to be covered during pupillage. The checklist is not exhaustive. It is expected that Pupil Masters will



ensure that pupils have a working knowledge of the practice and procedures in most if not all of these areas.

6. Members of the Bar Council and the Professional Conduct Committee are available to Pupil Masters should confidential advice or guidance be felt necessary. The names of members can be obtained from the Chief Executive's Office.

**PUPILLAGE**  
**CHECKLISTS**

## **High Court - Civil**

### **Paperwork**

- (a) Basic principles of High Court pleading in common law claims [personal injury, contract] to include drafting of:-
  - (i) Endorsement for Writ of Summons including service outside jurisdiction;
  - (ii) Statement of claim;
  - (iii) Defence;
  - (iv) Reply to Defence;
  - (v) Counterclaim;
  - (vi) Third Party Notice and Third Party Statement of Claim;
  - (vii) Notice for Particulars and Replies thereto;
  - (viii) Notice to Admit Facts and Interrogatories;
  - (ix) Notice of Appeal to Court of Appeal
  
- (b) Practice and Procedure in Motion Court, familiarity with typical Orders sought including Applications in relation to Summary Judgment and Setting Aside, Remittal, Removal, Particulars, Specific Discovery, Inspection facilities, Interrogatories and Leave to Amend. Drafting of:
  - (i) Summons, and
  - (ii) grounding Affidavits;
  - (iii) Replying Affidavits;
  - (iv) Notice of Appeal from decision of Master to High Court Judge
  
- (c) Opinions on Liability and Quantum.
- (d) Direction of Proofs.

### **Attendance at Court**

- (a) Conduct and presentation of High Court Action and Civil Bill Appeal to include opening, examination in chief, cross examination and re-examination of witnesses of fact and opinion, closing of case, legal submissions, basic advocacy and rules of procedure;
- (b) Conduct of Interlocutory Applications before the Master;
- (c) Conduct of Assessment of Damages hearings;
- (d) Pre-trial consultations.

The pupil should get to know the time limits prescribed by the Rules of Supreme Court, the Limitation [NI] Order 1989 and be familiar with the Guidelines for the Assessment of General Damages.

### **County Court and District Judge's Court - Civil**

#### Paperwork

- [a] Basic principles of County Court pleading in common law claims [personal injury, trespass to the person and contract] to include drafting of:-
  - (i) Civil Bill endorsement of claim;
  - (ii) Counterclaim;
  - (iii) Third Party Notice;
  - (iv) Notice for Particulars and Replies thereto;
  - (v) Notice to Admit Facts and Interrogatories,
  - (vi) Interlocutory Notices and grounding Affidavits;
  - (vii) Notice of Appeal.
- [b] Opinions on Liability and Quantum;
- [c] Direction of Proofs.

#### Attendance at Court

- [a] Conduct and presentation of Civil Bill hearing to include opening, examination in chief, cross examination and re-examination of witnesses of fact and opinion, closing of case, legal submissions, basic advocacy, rules of procedure;
- [b] Interlocutory Applications. Familiarity with typical Orders sought including Applications in relation to amendment, joinder of additional parties, discovery by parties and non-parties, specific discovery, inspection facilities, interrogatories and leave to issue Third Party Proceedings;
- [c] Assessment of Damages;
- [d] Small Claims Arbitration;
- [e] Applications in respect of listing and adjournments.

Additional: Pupils are to familiarise themselves with:-

- [a] County Court Rules generally with particular attention to procedural time limits;
- [b] The Limitation (Northern Ireland) Order 1989;
- [c] Damages – Guidelines for the Assessment of General Damages

### **Judicial Review**

Paperwork

- [a] Pleadings including:-
  - (i) Order 53 Statement;
  - (ii) Grounding Affidavits;
  - (iii) Notice of Motion;
  - (iv) Replying Affidavits;
  - (v) Rejoinder Affidavits;
  - (vi) Notice of Appeal.
- [b] Opinions on Merits.
- [c] Skeleton Arguments

Attendance at Court

- [a] Application for Leave;
- [b] Mentions/Directions/Interlocutory Applications/Amendment;
- [c] Substantive hearing.

Additional

Pupils should have a working knowledge of basic practice and procedures and of:-

- [a] Order 53 of the Rules of the Supreme Court;
- [b] Grounds for Review
- [c] Relief – certiorari, mandamus, prohibition and declaration;

- [d] Human Rights Act 1998;
- [e] Principles underlying discretion exercised by Court;
- [f] Time limits;
- [g] Orders for Costs;
- [h] Right of Appeal/Renewal of Application

### **Costs and Fees**

- [a] The pupil should have a good knowledge of typical cost orders in general common law practice and be otherwise familiar with:
  - [i] High Court/Motion Court [Order 62 Rules of Supreme Court] and County Court/District Judge's Court [Order 55 of County Court Rules] - costs in cause, costs of application, Plaintiff's/Defendants costs in cause, costs above and below, costs thrown away, costs of day, half costs/ reduced costs penalty orders.
  - [ii] Bullock and Sanderson Orders.
  - [iii] Appeal costs.
  - [iv] Costs in event of payment in or lodgment, offers of payment, Calderbank letters.
  - [v] Legal Aid taxation and costs orders.
- [b] Role and jurisdiction of Taxing Master. Applications for taxation.
- [c] Statutory scales for County Court proceedings. Certification by Judge in Equity suits. Taxation by County Court/District Judge.
- [d] Criminal Legal Aid. Certification for Counsel at Crown Court and Petty Sessions, time-limit requirements, taxation.
- [e] Counsel's fees, familiarity with scales [statutory and recommended], Supreme Court Taxing Office Practice Directions in respect of Counsel's fees for Pleadings and Interlocutory Matters, County Court Practice Directions, Criminal Legal Aid "rates", preparation and submission of Report of Case to Legal Aid Department, practices of marking fees, the "brief fee", refreshers, expenses and allowances.

- [f] Adherence to requirements of Section 32 of Code of Conduct [Fees and Remuneration].
- [g] Defaulting fee payment recovery procedures.

### Attendances at Court

Hearings before Taxing Master: Taxation by County Court/District Judge.

## **Chancery Division**

### PAPERWORK

1. Bankruptcy Master e.g. bankruptcy application, application to set aside statutory demand.
2. County Court: see Arts.12, 14-17 Of County Courts (NI) Order 1980: eg..Equity Civil Bill; Ejectment Civil Bill; Title Jurisdiction Civil Bill; Equity Civil Bill for Partition; Construction Civil Bill, Civil Bill for arrears of rent; Married Women's Property Act summons and affidavit; Third Party Notice; Counterclaim.
3. Chancery Court/Chancery Master
  - [a] Pleadings:
    - (i) Writ of Summons, Statement of Claim, Defence, Counterclaim, Reply, Third party proceedings and contribution notice, Notice for Particulars, Replies to Particulars, Interrogatories.
    - (ii) Originating Summons/Organizing Notice of Motion and affidavits.
    - (iii) Construction Summons.
    - (iv) Summons for judgment under O14 or O86 RSC.
    - (v) Draft Orders.
    - (vi) Company petitions e.g. winding up petition; Art. 452 Companies (NI) Order 1986 petition.
    - (vii) Mortgagee summons, case law and practice directions.
    - (viii) Injunction – interlocutory and full, ex parte and inter partes: Notice of Motion, Affidavit and Draft Order.
  - [b] Practice Directions.
  - [c] Opinions on Merits and Quantum.
  - [d] Direction of proofs.
  - [e] Notice and grounds of appeal to Court of Appeal.

- [f] Interlocutory applications e.g. discovery, particulars.

ATTENDANCE AT COURT:

- [a] Chancery Court & Master;
- [b] Bankruptcy Master
- [c] County Court.

**Criminal Law**

PAPERWORK

1. Indictment
2. Notice and Grounds of Appeal – From Magistrates' Court  
From Crown Court
3. Advice on plea, evidence and disclosure.
4. Direction of proofs.
5. Defence Statement for Magistrates' Court and for Crown Court.
6. Third Party disclosure application.
7. Skeleton Argument e.g. abuse of process/ human rights issues.
8. Be familiar with bail application form in High Court prepared by solicitor.

ATTENDANCE AT COURT

- [1] Crown Court/High Court/Court of Appeal
  - [a] Arraignment.
  - [b] Bail application.
  - [c] Plea.
  - [d] Voir Dire.
  - [e] Trial : Jury and non-Jury.
  - [f] Appeal against sentence or conviction.
  - [g] Miscellaneous Applications e.g. disclosure, abuse of process.
  - [h] Video link proceedings.



- [2] Magistrates' Court
  - [a] Remand and application for bail.
  - [b] PE and PI.
  - [c] Plea.
  - [d] Trial.
  - [e] County Court appeal against conviction or sentence.
  - [f] Miscellaneous Applications e.g. disclosure, abuse of process.
  - [g] Video link proceedings.

### **Commercial Court**

#### **PAPERWORK**

1. Pleadings: Writ of Summons, Statement of Claim, Defence, Counterclaim, Reply, Third party proceedings and contribution notice, Notice for Particulars, Replies to Particulars, Interrogatories.
2. Opinions on Merits and Quantum.
3. Direction of proofs.
4. Minutes of meeting of experts and/or joint consultation as directed by Commercial Judge.
5. Scott schedules.
6. Skeleton arguments.
7. Notice and grounds of appeal to Court of Appeal.
8. Interlocutory applications e.g. discovery, particulars, Khanna summons.
9. Practice Directions, in particular new direction in relation to Expert Reports.

#### **ATTENDANCE AT COURT**

1. Commercial Action
2. Commercial Review and interlocutory applications.
3. Joint Consultation with/without experts present.

## Matrimonial

### Paperwork

1. Divorce (Judicial Separation & Nullity)
  - [a] grounds
  - [b] draft petition
  - [c] answer
  - [d] cross – petition
  - [e] reply
  
2. Ancillary relief
  - [a] Application and Summons
  - [b] Advice on proofs
  - [c] Requests for further information and documents and answers
  - [d] Affidavits in support of application and answer
  - [e] Calderbank letter
  
3. Injunctions
  - [a] Mareva
  - [b] Anton Pillar
  
4. Financial provision
  - [a] agreement
  - [b] child support
  - [c] maintenance
  - [d] Mesher orders
  
5. Practice directions

### Attendance at Court - County Court, High Court , Master

1. Presentation of petition
2. Ancillary relief hearing
3. Review before hearing (Master)
4. Interlocutory applications
5. Injunction applications
  - [a] non – molestation , ouster
  - [b] Mareva
  - [c] Anton Pillar

## **Family**

### **Paperwork**

#### Children (NI) Order 1995

1. Jurisdiction and transfer of proceedings
2. Statement of evidence
  - [a] substance of oral evidence
  - [b] copy documents
  - [c] copy expert's reports
3. Financial provision
  - [a] child support
  - [b] lump sums
  - [c] periodical payments
4. Interim/full care and supervision orders
5. Adoption
6. Role of Guardian ad litem
7. Wardship – originating summons
8. Appeals

#### **Attendance at Court** - High Court, County Court, Family Care Centre, Family Proceedings Court

1. Children (NI) Order 1995 – Article 8 orders
  - [a] residence
  - [b] contact
  - [c] prohibited steps
  - [d] specific issue
2. Application for directions
3. Financial provision – application in above mentioned matters
4. Application for adoption
  - [a] order freeing for adoption
  - [b] grounds for dispensing with parental consent
5. Wardship application
6. Appeals

## **Tribunals/Employment**

### **Paperwork**

1. Application (IT1)
2. Time limits
3. Notice of appearance
4. Notice of Hearing
5. Direction of Proofs
6. Interlocutories
  - [a] notice for particulars and replies
  - [b] statutory questionnaire and answer
  - [c] answers to questions
  - [d] witness statements
  - [e] discovery
7. Settlement
  - [a] conciliation arrangement (under Labour Relations Agency)
  - [b] compromise agreement
  
8. Challenging a decision
  - [a] review – grounds
  - [b] appeal to Northern Ireland Court of Appeal – on point of law
  - [c] judicial review to High Court

### **Attendance at Hearing**

1. Industrial Tribunal – contract of employment e.g. unfair dismissal, discrimination on grounds of sex , disability, race, Trade Union membership etc
2. Fair Employment Tribunal – discrimination in
  - [a] politics
  - [b] religion
3. Preliminary hearing
4. Directions hearing
5. Interlocutory applications e.g. discovery
6. Contested hearing

NB. Please be aware that many other Tribunals exist in specialised areas that are too numerous to list here.

## **Conduct and Etiquette**

Code of Conduct

Modes of address

Conduct in and out of Court

Counsel's duty to lay client

Counsel's duty to Legal Aid Department

Acceptance of Instructions

Duty to return Brief if unable to continue to accept instructions

Relations between Counsel and Solicitor

Relations between Counsel and Counsel

Counsel's duty to Court, conduct at and in Court

# Bar Library

## Circulation Rules

(version 8)

*These Rules are made by the Library Committee under the Regulations of the Inn of Court of Northern Ireland and may be revised from time to time*

***(Last revised and agreed by the Library Committee April 2015)***

### **GENERAL**

1. Each item required must be issued properly and the loan recorded, even if only required for use in the Bar Library. This is necessary for the accurate tracing of items.

The Member must provide his/her Library number to the member of Library Staff to enable the loan to be recorded on the circulation system.

2. Members are responsible for each item they borrow, for ensuring that it is properly discharged from their loan record, and for any fines or charges accruing against their name. For this reason, the "passing on" of books between members is discouraged, as the originating borrower will remain responsible.
3. Members are prohibited from "passing on" books to non-members of the Bar Library.

### **LOAN CATEGORIES**

4. There are three categories of loan in the Bar Library:-
  - (a) overnight loan: due back before 5pm the next working day (eg Issue Desk stock, Halsbury etc, noted "OVERNIGHT LOAN" on the spine)
  - (b) three day loan: due back before 5pm on the day as per table below:-

Day borrowed	Monday	Tuesday	Wednesday	Thursday	Friday
Day due back	Thursday	Friday	Monday next week	Monday next week	Monday next week

- (c) restricted loan: at an hourly rate. If no other copy of the book is available, the reference or key copy may be borrowed for use within the RCJ only. It may not be removed from the building and must be returned before 5pm the same working day. Members borrowing a restricted copy must agree with staff at the time of borrowing how many hours they may keep it.

**Restricted copies may not be retained overnight.**

**NB**

Overnight and three day loan periods are affected by statutory or public holidays when the Library is closed, in which case the loan periods will be extended to include closed days. The rules outlined above are not affected by general recess periods when the Library continues to operate as normal.

**RENEWALS**

5. Items may be renewed unless
- (a) they have been requested by another member, or
  - (b) they have reached their maximum renewal limit (which varies upon the type of material and the demands upon it), or
  - (c) their return has been requested by Library staff to ensure free circulation of stock.

Fines will accrue in the way described below (para 5) on items which have not been renewed or if a renewal was refused, once they fall overdue.

Items may be renewed in person or by leaving a message on 9056 2472 or by email on [enquiries@barlibrary.com](mailto:enquiries@barlibrary.com).

**LEVYING OF FINES AND MISSING ITEMS**

6. Fines will be charged on all overdue items, and are levied as soon as an item becomes overdue. The fine rate depends upon the loan period:-
- (a) overnight loan - £1.00 per day, chargeable from the first day overdue
  - (b) three day loan - £1.00 on the first day overdue, and a further £1.00 on every third day the library is open thereafter
  - (c) reference - £1.00 per hour or part hour after the designated time of return

Fines are not charged over weekends or periods when the Library is closed.

7. An overdue notice will be produced and emailed the first day an item falls overdue. Members should return or renew the item in question immediately. Failure to comply will result in a final notice on the second day. If the item in question is still not returned by the close of business on the second day overdue, the member will be deemed to be in default. Further borrowing rights will be withdrawn from the third day overdue until all overdue items are returned to the Library. Renewing books on loan to a defaulting borrower will not be allowed; they must be returned.

8. Any member who assists a defaulting member whose own borrowing rights have been suspended (see Rule 6 above), by borrowing books on behalf of the defaulter, will be deemed an accessory and be liable for disciplinary action. Both will be referred to the Library Committee which will decide the course of action to be followed.
9. If an item is lost, this must be notified to the Librarian at once so that appropriate steps may be taken. Opportunity will be afforded to locate missing items, but lost items remain the responsibility of the borrower, and they must be properly renewed throughout this period. Loan terms and overdue procedures (as in paras 4 - 6 above) continue to apply.

If after a period of 28 days from notification the lost item has not been returned or the matter has not been otherwise resolved, the Librarian will seek replacement of the lost item. Fines will cease to accrue after the 28<sup>th</sup> day overdue. If the item is still available, an invoice will be raised for the full cost of replacement, including any fines or charges incurred. The Librarian may decide, if a future edition is pending, to delay purchase until the updated text is available. The borrower will be notified of this. Once the invoice has been raised, the loan transaction will be terminated and the item marked as "lost and paid for" in the Library catalogue.

If the item is out of print or not easily replaced (eg one volume or part of a set of reports not sold as single volumes) the Librarian will inform the borrower. In these circumstances it is imperative that every effort is made to locate lost items. If the item cannot be found, the Librarian will discuss reparation with the borrower. There may be no other option but to purchase a full set of volumes. If necessary, the matter will be referred to the Library Committee.

10. A refund of the replacement cost paid, less a £5 administrative charge, may be granted at the discretion of the Library Committee on any lost book for which a replacement cost has been paid if subsequently found and returned in good condition.

### **COLLECTION OF FINES**

11. Fines must be paid when requested by a member of Library Staff.

A general sweep up of fines will take place during the last week of every term when all fine records will be discharged from OLIB and the debt transferred to the Finance Office to invoice through Bar Library Accounts

All Members will be notified that this exercise has taken place and advised to check their invoices on receipt.

A copy of the discharged fine record will be made available to Finance Staff should any queries arise.

The Finance Office will manage debts owed in line with the terms of the current Debtors' Policy.

### **MISCELLANEOUS**

12. Members must return any item of Library stock when requested to do so by Library staff whether to meet the needs of other members or to ensure availability and free circulation of materials. Renewing such items will not be allowed.



13. Any queries or problems arising out of the application of the Circulation Rules shall be dealt with in the first instance by the Librarian (or, in her absence, the Assistant Librarian). Matters may be referred to the Library Committee for adjudication or interpretation.
14. Persistent abuse of the Library or failure to abide by these Rules will result in the matter being brought to the Library Committee for possible referral to the Professional Conduct Committee.

## **House Rules: Old Bar Library: Revised February 2009**

### **General Rules**

1. Smoking is not permitted in the Old Bar Library.
2. There is no allocated seating in the Old Bar Library. Members are prohibited from leaving any papers, materials or any other belongings beyond the close of business other than in their allocated lockers.
3. Other than at functions, no food can be consumed in the Old Bar Library.
4. The Bar Council operates a cashless system. CCBE cards or temporary cards will be accepted at all members' payment points. Cards can be purchased and recharged at the Infineer machine located in the Visitors' Reception area. Solicitors must also purchase cards to avail of the photocopying service.
5. The check-in-point for all visitors to the consultation rooms is the Reception Desk off the main corridor to the great hall. All visitors will be required to sign a Visitors' Book recording their entry time and their departure time. Visitors must be escorted to and from consultation rooms or other venues within the building by Counsel concerned or a member of Bar Library staff. No visitor should be unaccompanied beyond the Reception Desk.

### **Circulation**

No item of Library stock may be removed from the Library without it being checked out by Library staff at the Issue Desk. Members should familiarise themselves with the Library Circulation Rules.

### **Downstairs Library**

1. The downstairs Library is reserved for members undertaking quiet research. It must not be used for consultations, negotiations or dictation.
2. Mobile phones must be switched to silent mode. Members wishing to take or make telephone calls should do so in an area other than the downstairs.
3. Bags and trolleys must not be placed on top of desks.

### **Members' Meeting Room**

1. Only beverages purchased in the Members' Meeting Room may be consumed there.
2. Members must discard all cups etc in the bins provided.

### **Inn of Court**

1. Members are prohibited from accessing the Inn of Court area unless they are attending a function or need to consult the books shelved in this area. Members are asked to check the books out through the Issue Desk and use them in another area of the Library.
2. Members are prohibited from using the Inn of Court area for work.

### **Robing Rooms**

Robing facilities should be left clear and tidy at all times. No items may be stored in the Robing Rooms other than in the lockers provided.

### **IT Rules**

The following network activities are prohibited:

1. Misuse of the bandwidth. Bandwidth use will be monitored to protect improper downloading.
2. Any activity that infringes or misappropriates the intellectual property rights of others.
3. Using the Bar Library network to advertise, transmit, store, post, display, or otherwise make available pornography or obscene speech or material.
4. Using the Bar Library network as a means to transmit or post defamatory, harassing, abusive or threatening language.
5. Illegal or unauthorised access to other computers and networks.
6. Distribution of Internet viruses or other destructive activities.
7. Engaging in other activities that the Bar Council deems to be harmful to its subscribers, operations, reputations or customer relations.



Représentant les avocats d'Europe  
Representing Europe's lawyers

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# CODE OF CONDUCT FOR EUROPEAN LAWYERS

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Conseil des barreaux européens - Council of Bars and Law Societies of Europe  
*association internationale sans but lucratif*

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This Code of Conduct for European Lawyers was originally adopted at the CCBE Plenary Session held on 28 October 1988, and subsequently amended during the CCBE Plenary Sessions on 28 November 1998, 6 December 2002 and 19 May 2006. The Code includes an Explanatory Memorandum which was updated during the CCBE Plenary Session on 19 May 2006.

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## **1. PREAMBLE**

### **1.1. The Function of the Lawyer in Society**

In a society founded on respect for the rule of law the lawyer fulfills a special role. The lawyer's duties do not begin and end with the faithful performance of what he or she is instructed to do so far as the law permits. A lawyer must serve the interests of justice as well as those whose rights and liberties he or she is trusted to assert and defend and it is the lawyer's duty not only to plead the client's cause but to be the client's adviser. Respect for the lawyer's professional function is an essential condition for the rule of law and democracy in society.

A lawyer's function therefore lays on him or her a variety of legal and moral obligations (sometimes appearing to be in conflict with each other) towards:

- the client;
- the courts and other authorities before whom the lawyer pleads the client's cause or acts on the client's behalf;
- the legal profession in general and each fellow member of it in particular;
- the public for whom the existence of a free and independent profession, bound together by respect for rules made by the profession itself, is an essential means of safeguarding human rights in face of the power of the state and other interests in society.

### **1.2. The Nature of Rules of Professional Conduct**

1.2.1. Rules of professional conduct are designed through their willing acceptance by those to whom they apply to ensure the proper performance by the lawyer of a function which is recognised as essential in all civilised societies. The failure of the lawyer to observe these rules may result in disciplinary sanctions.

1.2.2. The particular rules of each Bar or Law Society arise from its own traditions. They are adapted to the organisation and sphere of activity of the profession in the Member State concerned and to its judicial and administrative procedures and to its national legislation. It is neither possible nor desirable that they should be taken out of their context nor that an attempt should be made to give general application to rules which are inherently incapable of such application.

The particular rules of each Bar and Law Society nevertheless are based on the same values and in most cases demonstrate a common foundation.

### 1.3. The Purpose of the Code

1.3.1. The continued integration of the European Union and European Economic Area and the increasing frequency of the cross-border activities of lawyers within the European Economic Area have made necessary in the public interest the statement of common rules which apply to all lawyers from the European Economic Area whatever Bar or Law Society they belong to in relation to their cross-border practice. A particular purpose of the statement of those rules is to mitigate the difficulties which result from the application of "double deontology", notably as set out in Articles 4 and 7.2 of Directive 77/249/EEC and Articles 6 and 7 of Directive 98/5/EC.

1.3.2. The organisations representing the legal profession through the CCBE propose that the rules codified in the following articles:

- be recognised at the present time as the expression of a consensus of all the Bars and Law Societies of the European Union and European Economic Area;
- be adopted as enforceable rules as soon as possible in accordance with national or EEA procedures in relation to the cross-border activities of the lawyer in the European Union and European Economic Area;
- be taken into account in all revisions of national rules of deontology or professional practice with a view to their progressive harmonisation.

They further express the wish that the national rules of deontology or professional practice be interpreted and applied whenever possible in a way consistent with the rules in this Code.

After the rules in this Code have been adopted as enforceable rules in relation to a lawyer's cross-border activities the lawyer will remain bound to observe the rules of the Bar or Law Society to which he or she belongs to the extent that they are consistent with the rules in this Code.

### 1.4. Field of Application *Ratione Personae*

This Code shall apply to lawyers as they are defined by Directive 77/249/EEC and by Directive 98/5/EC and to lawyers of the Observer Members of the CCBE.

### 1.5. Field of Application *Ratione Materiae*

Without prejudice to the pursuit of a progressive harmonisation of rules of deontology or professional practice which apply only internally within a Member State, the following rules shall apply to the cross-border activities of the lawyer within the European Union and the European Economic Area. Cross-border activities shall mean:

- (a) all professional contacts with lawyers of Member States other than the lawyer's own;
- (b) the professional activities of the lawyer in a Member State other than his or her own, whether or not the lawyer is physically present in that Member State.

### 1.6. Definitions

In this Code:

"Member State" means a member state of the European Union or any other state whose legal profession is included in Article 1.4.

"Home Member State" means the Member State where the lawyer acquired the right to bear his or her professional title.

"Host Member State" means any other Member State where the lawyer carries on cross-border activities.

"Competent Authority" means the professional organisation(s) or authority(ies) of the Member State concerned responsible for the laying down of rules of professional conduct and the administration of discipline of lawyers.

"Directive 77/249/EEC" means Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services.

"Directive 98/5/EC" means Directive 98/5/EC of the European Parliament and of the Council of 16 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.



## 2. GENERAL PRINCIPLES

### 2.1. Independence

2.1.1. The many duties to which a lawyer is subject require the lawyer's absolute independence, free from all other influence, especially such as may arise from his or her personal interests or external pressure. Such independence is as necessary to trust in the process of justice as the impartiality of the judge. A lawyer must therefore avoid any impairment of his or her independence and be careful not to compromise his or her professional standards in order to please the client, the court or third parties.

2.1.2. This independence is necessary in non-contentious matters as well as in litigation. Advice given by a lawyer to the client has no value if the lawyer gives it only to ingratiate him- or herself, to serve his or her personal interests or in response to outside pressure.

### 2.2. Trust and Personal Integrity

Relationships of trust can only exist if a lawyer's personal honour, honesty and integrity are beyond doubt. For the lawyer these traditional virtues are professional obligations.

### 2.3. Confidentiality

2.3.1. It is of the essence of a lawyer's function that the lawyer should be told by his or her client things which the client would not tell to others, and that the lawyer should be the recipient of other information on a basis of confidence. Without the certainty of confidentiality there cannot be trust. Confidentiality is therefore a primary and fundamental right and duty of the lawyer.

The lawyer's obligation of confidentiality serves the interest of the administration of justice as well as the interest of the client. It is therefore entitled to special protection by the State.

2.3.2. A lawyer shall respect the confidentiality of all information that becomes known to the lawyer in the course of his or her professional activity.

2.3.3. The obligation of confidentiality is not limited in time.

2.3.4. A lawyer shall require his or her associates and staff and anyone engaged by him or her in the course of providing professional services to observe the same obligation of confidentiality.

### 2.4. Respect for the Rules of Other Bars and Law Societies

When practising cross-border, a lawyer from another Member State may be bound to comply with the professional rules of the Host Member State. Lawyers have a duty to inform themselves as to the rules which will affect them in the performance of any particular activity.

Member organisations of the CCBE are obliged to deposit their codes of conduct at the Secretariat of the CCBE so that any lawyer can get hold of the copy of the current code from the Secretariat.

### 2.5. Incompatible Occupations

2.5.1. In order to perform his or her functions with due independence and in a manner which is consistent with his or her duty to participate in the administration of justice a lawyer may be prohibited from undertaking certain occupations.

2.5.2. A lawyer who acts in the representation or the defence of a client in legal proceedings or before any public authorities in a Host Member State shall there observe the rules regarding incompatible occupations as they are applied to lawyers of the Host Member State.

2.5.3. A lawyer established in a Host Member State in which he or she wishes to participate directly in commercial or other activities not connected with the practice of the law shall respect the rules regarding forbidden or incompatible occupations as they are applied to lawyers of that Member State.

### 2.6. Personal Publicity

2.6.1. A lawyer is entitled to inform the public about his or her services provided that the information is accurate and not misleading, and respectful of the obligation of confidentiality and other core values of the profession.

2.6.2. Personal publicity by a lawyer in any form of media such as by press, radio, television, by electronic commercial communications or otherwise is permitted to the extent it complies with the requirements of 2.6.1.

## 2.7. The Client's Interest

Subject to due observance of all rules of law and professional conduct, a lawyer must always act in the best interests of the client and must put those interests before the lawyer's own interests or those of fellow members of the legal profession.

## 2.8. Limitation of Lawyer's Liability towards the Client

To the extent permitted by the law of the Home Member State and the Host Member State, the lawyer may limit his or her liabilities towards the client in accordance with the professional rules to which the lawyer is subject.

# 3. RELATIONS WITH CLIENTS

## 3.1. Acceptance and Termination of Instructions

3.1.1. A lawyer shall not handle a case for a party except on that party's instructions. The lawyer may, however, act in a case in which he or she has been instructed by another lawyer acting for the party or where the case has been assigned to him or her by a competent body.

The lawyer should make reasonable efforts to ascertain the identity, competence and authority of the person or body who instructs him or her when the specific circumstances show that the identity, competence and authority are uncertain.

3.1.2. A lawyer shall advise and represent the client promptly, conscientiously and diligently. The lawyer shall undertake personal responsibility for the discharge of the client's instructions and shall keep the client informed as to the progress of the matter with which the lawyer has been entrusted.

3.1.3. A lawyer shall not handle a matter which the lawyer knows or ought to know he or she is not competent to handle, without cooperating with a lawyer who is competent to handle it.

A lawyer shall not accept instructions unless he or she can discharge those instructions promptly having regard to the pressure of other work.

3.1.4. A lawyer shall not be entitled to exercise his or her right to 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.

## 3.2. Conflict of Interest

3.2.1. A lawyer may not advise, represent or act on behalf of two or more clients in the same matter if there is a conflict, or a significant risk of a conflict, between the interests of those clients.

3.2.2. A lawyer must cease to act for both or all of the clients concerned when a conflict of interests arises between those clients and also whenever there is a risk of a breach of confidence or where the lawyer's independence may be impaired.

3.2.3. A lawyer must also refrain from acting for a new client if there is a risk of breach of a confidence entrusted to the lawyer by a former client or if the knowledge which the lawyer possesses of the affairs of the former client would give an undue advantage to the new client.

3.2.4. Where lawyers are practising in association, paragraphs 3.2.1 to 3.2.3 above shall apply to the association and all its members.

## 3.3. Pactum de Quota Litis

3.3.1. A lawyer shall not be entitled to make a *pactum de quota litis*.

3.3.2. By "*pactum de quota litis*" is meant an agreement between a lawyer and the client entered into prior to final conclusion of a matter to which the client is a party, by virtue of which the client undertakes to pay the lawyer a share of the result regardless of whether this is represented by a sum of money or by any other benefit achieved by the client upon the conclusion of the matter.

3.3.3. "*Pactum de quota litis*" does not include an agreement that fees be charged in proportion to the value of a matter handled by the lawyer if this is in accordance with an officially approved fee scale or under the control of the Competent Authority having jurisdiction over the lawyer.

## 3.4. Regulation of Fees

A fee charged by a lawyer shall be fully disclosed to the client, shall be fair and reasonable, and shall comply with the law and professional rules to which the lawyer is subject.

## 3.5. Payment on Account

If a lawyer requires a payment on account of his or her fees and/or disbursements such payment should not exceed a reasonable estimate of the fees and probable disbursements involved.

Failing such payment, a lawyer may withdraw from the case or refuse to handle it, but subject always to paragraph 3.1.4 above.

### **3.6. Fee Sharing with Non-Lawyers**

- 3.6.1. A lawyer may not share his or her fees with a person who is not a lawyer except where an association between the lawyer and the other person is permitted by the laws and the professional rules to which the lawyer is subject.
- 3.6.2. The provisions of 3.6.1 above shall not preclude a lawyer from paying a fee, commission or other compensation to a deceased lawyer's heirs or to a retired lawyer in respect of taking over the deceased or retired lawyer's practice.

### **3.7. Cost of Litigation and Availability of Legal Aid**

- 3.7.1. The lawyer should at all times strive to achieve the most cost effective resolution of the client's dispute and should advise the client at appropriate stages as to the desirability of attempting a settlement and/or a reference to alternative dispute resolution.
- 3.7.2. A lawyer shall inform the client of the availability of legal aid where applicable.

### **3.8. Client Funds**

- 3.8.1. Lawyers who come into possession of funds on behalf of their clients or third parties (hereinafter called "client funds") have to deposit such money into an account of a bank or similar institution subject to supervision by a public authority (hereinafter called a "client account"). A client account shall be separate from any other account of the lawyer. All client funds received by a lawyer should be deposited into such an account unless the owner of such funds agrees that the funds should be dealt with otherwise.
- 3.8.2. The lawyer shall maintain full and accurate records showing all the lawyer's dealings with client funds and distinguishing client funds from other funds held by the lawyer. Records may have to be kept for a certain period of time according to national rules.
- 3.8.3. A client account cannot be in debit except in exceptional circumstances as expressly permitted in national rules or due to bank charges, which cannot be influenced by the lawyer. Such an account cannot be given as a guarantee or be used as a security for any reason. There shall not be any set-off or merger between a client account and any other bank account, nor shall

the client funds in a client account be available to defray money owed by the lawyer to the bank.

- 3.8.4. Client funds shall be transferred to the owners of such funds in the shortest period of time or under such conditions as are authorised by them.
- 3.8.5. The lawyer cannot transfer funds from a client account into the lawyer's own account for payment of fees without informing the client in writing.
- 3.8.6. The Competent Authorities in Member States shall have the power to verify and examine any document regarding client funds, whilst respecting the confidentiality or legal professional privilege to which it may be subject.

### **3.9. Professional Indemnity Insurance**

- 3.9.1. Lawyers shall be insured against civil legal liability arising out of their legal practice to an extent which is reasonable having regard to the nature and extent of the risks incurred by their professional activities.
- 3.9.2. Should this prove impossible, the lawyer must inform the client of this situation and its consequences.

## **4. RELATIONS WITH THE COURTS**

### **4.1. Rules of Conduct in Court**

A lawyer who appears, or takes part in a case, before a court or tribunal must comply with the rules of conduct applied before that court or tribunal.

### **4.2. Fair Conduct of Proceedings**

A lawyer must always have due regard for the fair conduct of proceedings.

### **4.3. Demeanour in Court**

A lawyer shall while maintaining due respect and courtesy towards the court defend the interests of the client honourably and fearlessly without regard to the lawyer's own interests or to any consequences to him- or herself or to any other person.

#### 4.4. False or Misleading Information

A lawyer shall never knowingly give false or misleading information to the court.

#### 4.5. Extension to Arbitrators etc.

The rules governing a lawyer's relations with the courts apply also to the lawyer's relations with arbitrators and any other persons exercising judicial or quasi-judicial functions, even on an occasional basis.

### 5. RELATIONS BETWEEN LAWYERS

#### 5.1. Corporate Spirit of the Profession

5.1.1. The corporate spirit of the profession requires a relationship of trust and co-operation between lawyers for the benefit of their clients and in order to avoid unnecessary litigation and other behaviour harmful to the reputation of the profession. It can, however, never justify setting the interests of the profession against those of the client.

5.1.2. A lawyer should recognise all other lawyers of Member States as professional colleagues and act fairly and courteously towards them.

#### 5.2. Co-operation among Lawyers of Different Member States

5.2.1. It is the duty of a lawyer who is approached by a colleague from another Member State not to accept instructions in a matter which the lawyer is not competent to undertake. The lawyer should in such case be prepared to help that colleague to obtain the information necessary to enable him or her to instruct a lawyer who is capable of providing the service asked for.

5.2.2. Where a lawyer of a Member State co-operates with a lawyer from another Member State, both have a general duty to take into account the differences which may exist between their respective legal systems and the professional organisations, competences and obligations of lawyers in the Member States concerned.

#### 5.3. Correspondence between Lawyers

5.3.1. If a lawyer intends to send communications to a lawyer in another Member State, which the sender wishes to remain confidential or without prejudice he or she should clearly express this intention prior to communicating the documents.

5.3.2. If the prospective recipient of the communications is unable to ensure their status as confidential or without prejudice he or she should inform the sender accordingly without delay.

#### 5.4. Referral Fees

5.4.1. A lawyer may not demand or accept from another lawyer or any other person a fee, commission or any other compensation for referring or recommending the lawyer to a client.

5.4.2. A lawyer may not pay anyone a fee, commission or any other compensation as a consideration for referring a client to him- or herself.

#### 5.5. Communication with Opposing Parties

A lawyer shall not communicate about a particular case or matter directly with any person whom he or she knows to be represented or advised in the case or matter by another lawyer, without the consent of that other lawyer (and shall keep the other lawyer informed of any such communications).

#### 5.6. (Deleted by decision of the Plenary Session in Dublin on 6 December 2002)

#### 5.7. Responsibility for Fees

In professional relations between members of Bars of different Member States, where a lawyer does not confine him- or herself to recommending another lawyer or introducing that other lawyer to the client but instead him- or herself entrusts a correspondent with a particular matter or seeks the correspondent's advice, the instructing lawyer is personally bound, even if the client is insolvent, to pay the fees, costs and outlays which are due to the foreign correspondent. The lawyers concerned may, however, at the outset of the relationship between them make special arrangements on this matter. Further, the instructing lawyer may at any time limit his or her personal responsibility to the amount of

the fees, costs and outlays incurred before intimation to the foreign lawyer of the instructing lawyer's disclaimer of responsibility for the future.

#### **5.8. Continuing Professional Development**

Lawyers should maintain and develop their professional knowledge and skills taking proper account of the European dimension of their profession.

#### **5.9. Disputes amongst Lawyers in Different Member States**

- 5.9.1. If a lawyer considers that a colleague in another Member State has acted in breach of a rule of professional conduct the lawyer shall draw the matter to the attention of that colleague.
- 5.9.2. If any personal dispute of a professional nature arises amongst lawyers in different Member States they should if possible first try to settle it in a friendly way.
- 5.9.3. A lawyer shall not commence any form of proceedings against a colleague in another Member State on matters referred to in 5.9.1 or 5.9.2 above without first informing the Bars or Law Societies to which they both belong for the purpose of allowing both Bars or Law Societies concerned an opportunity to assist in reaching a settlement.

## **EXPLANATORY MEMORANDUM**

This Explanatory Memorandum was prepared at the request of the CCBE Standing Committee by the CCBE's deontology working party, who were responsible for drafting the first version of the Code of Conduct itself. It seeks to explain the origin of the provisions of the Code, to illustrate the problems which they are designed to resolve, particularly in relation to cross-border activities, and to provide assistance to the Competent Authorities in the Member States in the application of the Code. It is not intended to have any binding force in the interpretation of the Code. The Explanatory Memorandum was updated on the occasion of the CCBE Plenary Session on 19 May 2006.

The original versions of the Code are in the French and English languages. Translations into other Community languages are prepared under the authority of the national delegations.

#### ***Commentary on Article 1.1 – The Function of the Lawyer in Society***

The Declaration of Perugia, adopted by the CCBE in 1977, laid down the fundamental principles of professional conduct applicable to lawyers throughout the EC. The provisions of Article 1.1 reaffirm the statement in the Declaration of Perugia of the function of the lawyer in society which forms the basis for the rules governing the performance of that function.

#### ***Commentary on Article 1.2 – The Nature of Rules of Professional Conduct***

These provisions substantially restate the explanation in the Declaration of Perugia of the nature of rules of professional conduct and how particular rules depend on particular local circumstances but are nevertheless based on common values.

#### ***Commentary on Article 1.3 – The Purpose of the Code***

These provisions introduce the development of the principles in the Declaration of Perugia into a specific Code of Conduct for lawyers throughout the EU and the EEA, and lawyers of the Observer Members of the CCBE, with particular reference to their cross-border activities (defined in Article 1.5). The provisions of Article 1.3.2 lay down the specific intentions of the CCBE with regard to the substantive provisions in the Code.

### **Commentary on Article 1.4 – Field of Application Ratione Personae**

The rules are stated to apply to all lawyers as defined in the Lawyers Services Directive of 1977 and the Lawyers Establishment Directive of 1998, and lawyers of the Observer Members of the CCBE. This includes lawyers of the states which subsequently acceded to the Directives, whose names have been added by amendment to the Directives. The Code accordingly applies to all the lawyers represented on the CCBE, whether as full Members or as Observer Members, namely:

Austria	Rechtsanwalt;
Belgium	avocat / advocaat / Rechtsanwalt;
Bulgaria	advokat;
Croatia	odvjetnik;
Cyprus	dikegóros;
Czech Republic	advokát;
Denmark	advokat;
Estonia	vandeadvokaat;
Finland	asianajaja / advokat;
FYROMacedonia	advokat;
France	avocat;
Germany	Rechtsanwalt;
Greece	dikegóros;
Hungary	ügyvéd;
Iceland	lögmaður;
Ireland	barrister, solicitor;
Italy	avvocato;
Latvia	zvērīnāts advokāts;
Liechtenstein	Rechtsanwalt;
Lithuania	advokatas; Luxembourg avocat / Rechtsanwalt;
Malta	avukat, prokuratur legali;
Netherlands	advocaat;
Norway	advokat;
Poland	adwokat, radca prawny;
Portugal	advogado;
Romania	avocat;
Slovakia	advokát / advokátka;
Slovenia	odvetnik / odvetnica;
Spain	abogado / advocat / abokatu / abogado;
Sweden	advokat;
Switzerland	Rechtsanwalt / Anwalt / Fürsprech / Fürsprecher / avocat / avvocato /advokat;
Turkey	avukat;
Ukraine	advocate;
United Kingdom	advocate, barrister, solicitor.

It is also hoped that the Code will be acceptable to the legal professions of other non-member states in Europe and elsewhere so that it could also be applied by appropriate conventions between them and the Member States.

### **Commentary on Article 1.5 – Field of Application Ratione Materiae**

The rules are here given direct application only to “cross-border activities”, as defined, of lawyers within the EU and the EEA and lawyers of the Observer Members of the CCBE - see above on Article 1.4, and the definition of “Member State” in Article 1.6. (See also above as to possible extensions in the future to lawyers of other states.) The definition of cross-border activities would, for example, include contacts in state A even on a matter of law internal to state A between a lawyer of state A and a lawyer of state B; it would exclude contacts between lawyers of state A in state A of a matter arising in state B, provided that none of their professional activities takes place in state B; it would include any activities of lawyers of state A in state B, even if only in the form of communications sent from state A to state B.

### **Commentary on Article 1.6 – Definitions**

This provision defines a number of terms used in the Code, “Member State”, “Home Member State”, “Host Member State”, “Competent Authority”, “Directive 77/249/EEC” and “Directive 98/5/EC”.

The reference to “where the lawyer carries on cross-border activities” should be interpreted in the light of the definition of “cross-border activities” in Article 1.5.

### **Commentary on Article 2.1 – Independence**

This provision substantially reaffirms the general statement of principle in the Declaration of Perugia.

### **Commentary on Article 2.2 – Trust and Personal Integrity**

This provision also restates a general principle contained in the Declaration of Perugia.

### **Commentary on Article 2.3 – Confidentiality**

This provision first restates, in Article 2.3.1, general principles laid down in the Declaration of Perugia and recognised by the ECJ in the *AM&S* case (157/79). It then, in Articles 2.3.2 to 4, develops them into a specific rule relating to the protection of confidentiality. Article 2.3.2 contains the basic rule requiring respect for confidentiality. Article 2.3.3 confirms that the obligation remains binding on the lawyer even if he or she ceases to act for the client in question. Article 2.3.4 confirms that the lawyer must not only respect the obligation of confidentiality him- or herself but must require all members and employees of his or her firm to do likewise.

### **Commentary on Article 2.4 – Respect for the Rules of Other Bars and Law Societies**

Article 4 of the Lawyers Services Directive contains the provisions with regard to the rules to be observed by a lawyer from one Member State providing services on an occasional or temporary basis in another Member State by virtue of Article 49 of the consolidated EC treaty, as follows:

- (a) activities relating to the representation of a client in legal proceedings or before public authorities shall be pursued in each Host Member State under the conditions laid down for lawyers established in that state, with the exception of any conditions requiring residence, or registration with a professional organisation, in that state;
- (b) a lawyer pursuing these activities shall observe the rules of professional conduct of the Host Member State, without prejudice to the lawyer's obligations in the Member State from which he or she comes;
- (c) when these activities are pursued in the UK, "rules of professional conduct of the Host Member State" means the rules of professional conduct applicable to solicitors, where such activities are not reserved for barristers and advocates. Otherwise the rules of professional conduct applicable to the latter shall apply. However, barristers from Ireland shall always be subject to the rules of professional conduct applicable in the UK to barristers and advocates. When these activities are pursued in Ireland "rules of professional conduct of the Host Member State" means, in so far as they govern the oral presentation of a case in court, the rules of professional conduct applicable to barristers. In all other cases the rules of professional conduct applicable to solicitors shall apply. However, barristers and advocates from the UK shall

always be subject to the rules of professional conduct applicable in Ireland to barristers; and

- (d) a lawyer pursuing activities other than those referred to in (a) above shall remain subject to the conditions and rules of professional conduct of the Member State from which he or she comes without prejudice to respect for the rules, whatever their source, which govern the profession in the Host Member State, especially those concerning the incompatibility of the exercise of the activities of a lawyer with the exercise of other activities in that state, professional secrecy, relations with other lawyers, the prohibition on the same lawyer acting for parties with mutually conflicting interests, and publicity. The latter rules are applicable only if they are capable of being observed by a lawyer who is not established in the Host Member State and to the extent to which their observance is objectively justified to ensure, in that state, the proper exercise of a lawyer's activities, the standing of the profession and respect for the rules concerning incompatibility.

The Lawyers Establishment Directive contains the provisions with regard to the rules to be observed by a lawyer from one Member State practising on a permanent basis in another Member State by virtue of Article 43 of the consolidated EC treaty, as follows:

- (a) irrespective of the rules of professional conduct to which he or she is subject in his or her Home Member State, a lawyer practising under his home-country professional title shall be subject to the same rules of professional conduct as lawyers practising under the relevant professional title of the Host Member State in respect of all the activities the lawyer pursues in its territory (Article 6.1);
- (b) the Host Member State may require a lawyer practising under his or her home-country professional title either to take out professional indemnity insurance or to become a member of a professional guarantee fund in accordance with the rules which that state lays down for professional activities pursued in its territory. Nevertheless, a lawyer practising under his or her home-country professional title shall be exempted from that requirement if the lawyer can prove that he or she is covered by insurance taken out or a guarantee provided in accordance with the rules of the Home Member State, insofar as such insurance or guarantee is equivalent in terms of the conditions and extent of cover. Where the equivalence is only partial, the Competent Authority in the Host Member State may require that additional insurance or an additional guarantee be contracted to cover the elements which are not already covered by the insurance or guarantee contracted in accordance with the rules of the Home Member State (Article 6.3); and

- (c) a lawyer registered in a Host Member State under his or her home-country professional title may practise as a salaried lawyer in the employ of another lawyer, an association or firm of lawyers, or a public or private enterprise to the extent that the Host Member State so permits for lawyers registered under the professional title used in that state (Article 8).

In cases not covered by either of these Directives, or over and above the requirements of these Directives, the obligations of a lawyer under Community law to observe the rules of other Bars and Law Societies are a matter of interpretation of any relevant provision, such as the Directive on Electronic Commerce (2000/31/EC). A major purpose of the Code is to minimise, and if possible eliminate altogether, the problems which may arise from “double deontology”, that is the application of more than one set of potentially conflicting national rules to a particular situation (see Article 1.3.1).

#### ***Commentary on Article 2.5 – Incompatible Occupations***

There are differences both between and within Member States on the extent to which lawyers are permitted to engage in other occupations, for example in commercial activities. The general purpose of rules excluding a lawyer from other occupations is to protect the lawyer from influences which might impair the lawyer’s independence or his or her role in the administration of justice. The variations in these rules reflect different local conditions, different perceptions of the proper function of lawyers and different techniques of rule-making. For instance in some cases there is a complete prohibition of engagement in certain named occupations, whereas in other cases engagement in other occupations is generally permitted, subject to observance of specific safeguards for the lawyer’s independence.

Articles 2.5.2 and 3 make provision for different circumstances in which a lawyer of one Member State is engaging in cross-border activities (as defined in Article 1.5) in a Host Member State when he or she is not a member of the Host State legal profession.

Article 2.5.2 imposes full observation of Host State rules regarding incompatible occupations on the lawyer acting in national legal proceedings or before national public authorities in the Host State. This applies whether the lawyer is established in the Host State or not.

Article 2.5.3, on the other hand, imposes “respect” for the rules of the Host State regarding forbidden or incompatible occupations in other cases, but only where the lawyer who is established in the Host Member State wishes to participate directly in commercial or other activities not connected with the practice of the law.

#### ***Commentary on Article 2.6 – Personal Publicity***

The term “personal publicity” covers publicity by firms of lawyers, as well as individual lawyers, as opposed to corporate publicity organised by Bars and Law Societies for their members as a whole. The rules governing personal publicity by lawyers vary considerably in the Member States. Article 2.6 makes it clear that there is no overriding objection to personal publicity in cross-border practice. However, lawyers are nevertheless subject to prohibitions or restrictions laid down by their home professional rules, and a lawyer will still be subject to prohibitions or restrictions laid down by Host State rules when these are binding on the lawyer by virtue of the Lawyers Services Directive or the Lawyers Establishment Directive.

#### ***Commentary on Article 2.7 – The Client’s Interest***

This provision emphasises the general principle that the lawyer must always place the client’s interests before the lawyer’s own interests or those of fellow members of the legal profession.

#### ***Commentary on Article 2.8 – Limitation of Lawyer’s Liability towards the Client***

This provision makes clear that there is no overriding objection to limiting a lawyer’s liability towards his or her client in cross-border practice, whether by contract or by use of a limited company, limited partnership or limited liability partnership. However it points out that this can only be contemplated where the relevant law and the relevant rules of conduct permit - and in a number of jurisdictions the law or the professional rules prohibit or restrict such limitation of liability.

#### ***Commentary on Article 3.1 – Acceptance and Termination of Instructions***

The provisions of Article 3.1.1 are designed to ensure that a relationship is maintained between lawyer and client and that the lawyer in fact receives instructions from the client, even though these may be transmitted through a duly authorised intermediary. It is the responsibility of the lawyer to satisfy him- or herself as to the authority of the intermediary and the wishes of the client.

Article 3.1.2 deals with the manner in which the lawyer should carry out his or her duties. The provision that the lawyer shall undertake personal responsibility for the discharge of the instructions given to him or her



means that the lawyer cannot avoid responsibility by delegation to others. It does not prevent the lawyer from seeking to limit his or her legal liability to the extent that this is permitted by the relevant law or professional rules - see Article 2.8.

Article 3.1.3 states a principle which is of particular relevance in cross-border activities, for example when a lawyer is asked to handle a matter on behalf of a lawyer or client from another state who may be unfamiliar with the relevant law and practice, or when a lawyer is asked to handle a matter relating to the law of another state with which he or she is unfamiliar.

A lawyer generally has the right to refuse to accept instructions in the first place, but Article 3.1.4 states that, having once accepted them, the lawyer has an obligation not to withdraw without ensuring that the client's interests are safeguarded.

#### **Commentary on Article 3.2 – Conflict of Interest**

The provisions of Article 3.2.1 do not prevent a lawyer acting for two or more clients in the same matter provided that their interests are not in fact in conflict and that there is no significant risk of such a conflict arising. Where a lawyer is already acting for two or more clients in this way and subsequently there arises a conflict of interests between those clients or a risk of a breach of confidence or other circumstances where the lawyer's independence may be impaired, then the lawyer must cease to act for both or all of them.

There may, however, be circumstances in which differences arise between two or more clients for whom the same lawyer is acting where it may be appropriate for the lawyer to attempt to act as a mediator. It is for the lawyer in such cases to use his or her own judgement on whether or not there is such a conflict of interest between them as to require the lawyer to cease to act. If not, the lawyer may consider whether it would be appropriate to explain the position to the clients, obtain their agreement and attempt to act as mediator to resolve the difference between them, and only if this attempt to mediate should fail, to cease to act for them.

Article 3.2.4 applies the foregoing provisions of Article 3 to lawyers practising in association. For example a firm of lawyers should cease to act when there is a conflict of interest between two clients of the firm, even if different lawyers in the firm are acting for each client. On the other hand, exceptionally, in the "chambers" form of association used by English barristers, where each lawyer acts for clients individually, it is possible for different lawyers in the association to act for clients with opposing interests.

#### **Commentary on Article 3.3 – Pactum de Quota Litis**

These provisions reflect the common position in all Member States that an unregulated agreement for contingency fees (*pactum de quota litis*) is contrary to the proper administration of justice because it encourages speculative litigation and is liable to be abused. The provisions are not, however, intended to prevent the maintenance or introduction of arrangements under which lawyers are paid according to results or only if the action or matter is successful, provided that these arrangements are under sufficient regulation and control for the protection of the client and the proper administration of justice.

#### **Commentary on Article 3.4 – Regulation of Fees**

Article 3.4 lays down three requirements: a general standard of disclosure of a lawyer's fees to the client, a requirement that they should be fair and reasonable in amount, and a requirement to comply with the applicable law and professional rules.

In many Member States machinery exists for regulating lawyers' fees under national law or rules of conduct, whether by reference to a power of adjudication by the Bar authorities or otherwise. In situations governed by the Lawyers Establishment Directive, where the lawyer is subject to Host State rules as well as the rules of the Home State, the basis of charging may have to comply with both sets of rules.

#### **Commentary on Article 3.5 – Payment on Account**

Article 3.5 assumes that a lawyer may require a payment on account of the lawyer's fees and/or disbursements, but sets a limit by reference to a reasonable estimate of them. See also on Article 3.1.4 regarding the right to withdraw.

#### **Commentary on Article 3.6 – Fee Sharing with Non-Lawyers**

In some Member States lawyers are permitted to practise in association with members of certain other approved professions, whether legal professions or not. The provisions of Article 3.6.1 are not designed to prevent fee sharing within such an approved form of association. Nor are the provisions designed to prevent fee sharing by the lawyers to whom the Code applies (see on Article 1.4 above) with other "lawyers", for example

lawyers from non-Member States or members of other legal professions in the Member States such as notaries.

#### ***Commentary on Article 3.7 – Cost of Litigation and Availability of Legal Aid***

Article 3.7.1 stresses the importance of attempting to resolve disputes in a way which is cost-effective for the client, including advising on whether to attempt to negotiate a settlement, and whether to propose referring the dispute to some form of alternative dispute resolution.

Article 3.7.2 requires a lawyer to inform the client of the availability of legal aid where applicable. There are widely differing provisions in the Member States on the availability of legal aid. In cross-border activities a lawyer should have in mind the possibility that the legal aid provisions of a national law with which the lawyer is unfamiliar may be applicable.

#### ***Commentary on Article 3.8 – Client Funds***

The provisions of Article 3.8 reflect the recommendation adopted by the CCBE in Brussels in November 1985 on the need for minimum regulations to be made and enforced governing the proper control and disposal of clients' funds held by lawyers within the Community. Article 3.8 lays down minimum standards to be observed, while not interfering with the details of national systems which provide fuller or more stringent protection for clients' funds.

The lawyer who holds clients' funds, even in the course of a cross-border activity, has to observe the rules of his or her home Bar. The lawyer needs to be aware of questions which arise where the rules of more than one Member State may be applicable, especially where the lawyer is established in a Host State under the Lawyers Establishment Directive.

#### ***Commentary on Article 3.9 – Professional Indemnity Insurance***

Article 3.9.1 reflects a recommendation, also adopted by the CCBE in Brussels in November 1985, on the need for all lawyers in the Community to be insured against the risks arising from professional negligence claims against them.

Article 3.9.2 deals with the situation where insurance cannot be obtained on the basis set out in Article 3.9.1.

#### ***Commentary on Article 4.1 – Rules of Conduct in Court***

This provision applies the principle that a lawyer is bound to comply with the rules of the court or tribunal before which the lawyer practises or appears.

#### ***Commentary on Article 4.2 – Fair Conduct of Proceedings***

This provision applies the general principle that in adversarial proceedings a lawyer must not attempt to take unfair advantage of his or her opponent. The lawyer must not, for example, make contact with the judge without first informing the lawyer acting for the opposing party or submit exhibits, notes or documents to the judge without communicating them in good time to the lawyer on the other side unless such steps are permitted under the relevant rules of procedure. To the extent not prohibited by law a lawyer must not divulge or submit to the court any proposals for settlement of the case made by the other party or its lawyer without the express consent of the other party's lawyer. See also on Article 4.5 below.

#### ***Commentary on Article 4.3 – Demeanour in Court***

This provision reflects the necessary balance between respect for the court and for the law on the one hand and the pursuit of the client's best interest on the other.

#### ***Commentary on Article 4.4 – False or Misleading Information***

This provision applies the principle that the lawyer must never knowingly mislead the court. This is necessary if there is to be trust between the courts and the legal profession.

#### ***Commentary on Article 4.5 – Extension to Arbitrators etc.***

This provision extends the preceding provisions relating to courts and other bodies exercising judicial or quasi-judicial functions.

### ***Commentary on Article 5.1 – Corporate Spirit of the Profession***

These provisions, which are based on statements in the Declaration of Perugia, emphasise that it is in the public interest for the legal profession to maintain a relationship of trust and cooperation between its members. However, this cannot be used to justify setting the interests of the profession against those of justice or of clients (see also on Article 2.7).

### ***Commentary on Article 5.2 – Co-operation among Lawyers of Different Member States***

This provision also develops a principle stated in the Declaration of Perugia with a view to avoiding misunderstandings in dealings between lawyers of different Member States.

### ***Commentary on Article 5.3 – Correspondence between Lawyers***

In certain Member States communications between lawyers (written or by word of mouth) are normally regarded as to be kept confidential as between the lawyers. This means that the content of these communications cannot be disclosed to others, cannot normally be passed to the lawyers' clients, and at any event cannot be produced in court. In other Member States, such consequences will not follow unless the correspondence is marked as "confidential".

In yet other Member States, the lawyer has to keep the client fully informed of all relevant communications from a professional colleague acting for another party, and marking a letter as "confidential" only means that it is a legal matter intended for the recipient lawyer and his or her client, and not to be misused by third parties.

In some states, if a lawyer wishes to indicate that a letter is sent in an attempt to settle a dispute, and is not to be produced in a court, the lawyer should mark the letter as "without prejudice".

These important national differences give rise to many misunderstandings. That is why lawyers must be very careful in conducting cross-border correspondence.

Whenever a lawyer wants to send a letter to a professional colleague in another Member State on the basis that it is to be kept confidential as between the lawyers, or that it is "without prejudice", the lawyer should ask in advance whether the letter can be accepted on that basis. A lawyer wishing that a communication should be accepted on such a

basis must express that clearly at the head of the communication or in a covering letter.

A lawyer who is the intended recipient of such a communication, but who is not in a position to respect, or to ensure respect for, the basis on which it is to be sent, must inform the sender immediately so that the communication is not sent. If the communication has already been received, the recipient must return it to the sender without revealing its contents or referring to it in any way; if the recipient's national law or rules prevent the recipient from complying with this requirement, he or she must inform the sender immediately.

### ***Commentary on Article 5.4 – Referral Fees***

This provision reflects the principle that a lawyer should not pay or receive payment purely for the reference of a client, which would risk impairing the client's free choice of lawyer or the client's interest in being referred to the best available service. It does not prevent fee-sharing arrangements between lawyers on a proper basis (see also on Article 3.6 above).

In some Member States lawyers are permitted to accept and retain commissions in certain cases provided the client's best interests are served, there is full disclosure to the client and the client has consented to the retention of the commission. In such cases the retention of the commission by the lawyer represents part of the lawyer's remuneration for the service provided to the client and is not within the scope of the prohibition on referral fees which is designed to prevent lawyers making a secret profit.

### ***Commentary on Article 5.5 – Communication with Opposing Parties***

This provision reflects a generally accepted principle, and is designed both to promote the smooth conduct of business between lawyers and to prevent any attempt to take advantage of the client of another lawyer.

### ***Commentary on Article 5.6 – Change of Lawyer***

Article 5.6 dealt with change of lawyer. It was deleted from the Code on 6 December 2002.

### ***Commentary on Article 5.7 – Responsibility for Fees***

These provisions substantially reaffirm provisions contained in the Declaration of Perugia. Since misunderstandings about responsibility for unpaid fees are a common cause of difference between lawyers of different Member States, it is important that a lawyer who wishes to exclude or limit his or her personal obligation to be responsible for the fees of a foreign colleague should reach a clear agreement on this at the outset of the transaction.

### ***Commentary on Article 5.8 – Continuing Professional Development***

Keeping abreast of developments in the law is a professional obligation. In particular it is essential that lawyers are aware of the growing impact of European law on their field of practice.

### ***Commentary on Article 5.9 – Disputes amongst Lawyers in Different Member States***

A lawyer has the right to pursue any legal or other remedy to which he or she is entitled against a colleague in another Member State. Nevertheless it is desirable that, where a breach of a rule of professional conduct or a dispute of a professional nature is involved, the possibilities of friendly settlement should be exhausted, if necessary with the assistance of the Bars or Law Societies concerned, before such remedies are exercised.



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**CHARTER OF CORE PRINCIPLES  
OF THE EUROPEAN LEGAL PROFESSION  
AND  
CODE OF CONDUCT  
FOR EUROPEAN LAWYERS**

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Conseil des barreaux européens - Council of Bars and Law Societies of Europe  
*association internationale sans but lucratif*

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The Council of Bars and Law Societies of Europe (CCBE) has as its principal object to represent its member bars and law societies, whether they are full members (i.e. those of the European Union, the European Economic Area and the Swiss Confederation), or associated or observer members, on all matters of mutual interest relating to the exercise of the profession of lawyer, the development of the law and practice pertaining to the rule of law and the administration of justice and substantive developments in the law itself, both at a European and international level (Article III 1.a. of the CCBE Statutes).

In this respect, it is the official representative of bars and law societies which between them comprise more than 700,000 European lawyers.

The CCBE has adopted two foundation texts, which are included in this brochure, that are both complementary and very different in nature.

The more recent one is the ***Charter of Core Principles of the European Legal Profession*** which was adopted at the plenary session in Brussels on 24 November 2006. The Charter is not conceived as a code of conduct. It is aimed at applying to all of Europe, reaching out beyond the member, associate and observer states of the CCBE. The Charter contains a list of ten core principles common to the national and international rules regulating the legal profession.

The Charter aims, inter alia, to help bar associations that are struggling to establish their independence; and to increase understanding among lawyers of the importance of the lawyer's role in Society; it is aimed both at lawyers themselves and at decision makers and the public in general.

The ***Code of Conduct for European Lawyers*** dates back to 28 October 1988. It has been amended three times; the latest amendment took place at the plenary session in Oporto on 19 May 2006. It is a binding text on all member States: all lawyers who are members of the bars of these countries (whether their bars are full, associate or observer members of the CCBE) have to comply with the Code in their cross-border activities within the European Union, the European Economic Area and the Swiss Confederation as well as within associate and observer countries.

These two texts include a commentary for the first one, and an explanatory memorandum for the second one.

It is unnecessary to emphasise the importance of the set of norms set out in these two documents, which are the basis of the deontology of the European legal profession, and which contribute to shaping the European lawyer and the European bar.

31 January 2008

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“In a society founded on respect for the rule of law the lawyer fulfils a special role. The lawyer’s duties do not begin and end with the faithful performance of what he or she is instructed to do so far as the law permits. A lawyer must serve the interests of justice as well as those whose rights and liberties he or she is trusted to assert and defend and it is the lawyer’s duty not only to plead the client’s cause but to be the client’s adviser. Respect for the lawyer’s professional function is an essential condition for the rule of law and democracy in Society.”

– the CCBE’s Code of Conduct for European Lawyers, article 1.1

There are core principles which are common to the whole European legal profession, even though these principles are expressed in slightly different ways in different jurisdictions. The core principles underlie the various national and international codes which govern the conduct of lawyers. European lawyers are committed to these principles, which are essential for the proper administration of justice, access to justice and the right to a fair trial, as required under the European Convention of Human Rights. Bars and law societies, courts, legislators, governments and international organisations should seek to uphold and protect the core principles in the public interest.

The core principles are, in particular:

- (a) the independence of the lawyer, and the freedom of the lawyer to pursue the client’s case;
- (b) the right and duty of the lawyer to keep clients’ matters confidential and to respect professional secrecy;
- (c) avoidance of conflicts of interest, whether between different clients or between the client and the lawyer;
- (d) the dignity and honour of the legal profession, and the integrity and good repute of the individual lawyer;
- (e) loyalty to the client;
- (f) fair treatment of clients in relation to fees;
- (g) the lawyer’s professional competence;
- (h) respect towards professional colleagues;
- (i) respect for the rule of law and the fair administration of justice; and
- (j) the self-regulation of the legal profession.

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<sup>1</sup> Adopted at the CCBE Plenary Session on 25.11.2006

1. On 25 November 2006 the CCBE unanimously adopted a “Charter of core principles of the European legal profession”. The Charter contains a list of ten principles common to the whole European legal profession. Respect for these principles is the basis of the right to a legal defence, which is the cornerstone of all other fundamental rights in a democracy.
2. The core principles express the common ground which underlies all the national and international rules which govern the conduct of European lawyers.
3. The Charter takes into account:
  - national professional rules from states throughout Europe, including rules from non-CCBE states, which also share these common principles of European legal practice<sup>3</sup>,
  - the CCBE’s Code of Conduct for European Lawyers,
  - the Principles of General Application in the International Bar Association’s International Code of Ethics<sup>4</sup>,
  - recommendation Rec (2000) 21 of 25 October 2000 of the Committee of Ministers of the Council of Europe to member states on the freedom of exercise of the profession of lawyer<sup>5</sup>,
  - the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana (Cuba), 27 August to 7 September 1990<sup>6</sup>,
  - the jurisprudence of the European Court of Human Rights and the European Court of Justice, and in particular the judgment of 19 February 2002 of the European Court of Justice in *Wouters v. Algemene Raad van de Nederlandse Orde van Advocaten* (C-309/99)<sup>7</sup>,
  - the Universal Declaration of Human Rights<sup>8</sup>, the European Convention on Human Rights<sup>9</sup>, and the European Union Charter of Funda-

2 Adopted at the CCBE Plenary Session on 11.05.2007

3 The national codes of conduct can be found on CCBE web site: <http://www.ccbe.eu/index.php?id=107&L=0>

4 IBA, IBA GENERAL PRINCIPLES FOR THE LEGAL PROFESSION, <http://www.ibanet.org/images/downloads/BIC/2006%20general%20principles%20for%20legal%20profession.pdf>

5 Council of Europe, Recommendation No R (2000) 21 of the Committee of Ministers, <https://wcd.coe.int/com.instranet.InstraServlet?Command=com.instranet.CmdBlobGet&DocId=370284&SecMode=1&Admin=0&Usage=4&InstranetImage=62250>

6 United Nations High Commissioner for Human Rights, Basic Principles on the Role of Lawyers, [http://www.unhchr.ch/html/menu3/b/h\\_comp44.htm](http://www.unhchr.ch/html/menu3/b/h_comp44.htm)

7 Eur-Lex, Official Journal of the European Communities, 4.5.2002, [http://eur-lex.europa.eu/LexUriServ/site/en/oj/2002/c\\_109/c\\_10920020504en00040005.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2002/c_109/c_10920020504en00040005.pdf)

8 United Nations, Universal Declaration of Human Rights, <http://www.un.org/Overview/rights.html>

9 Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms, <http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457->

mental Rights<sup>10</sup>,

- the European Parliament resolution on the legal professions and the general interest in the functioning of legal systems, 23 March 2006<sup>11</sup>.
4. The Charter is designed to serve as a pan-European document, reaching out beyond the member, associate and observer states of the CCBE. It is hoped that the Charter will be of help, for instance, to bar associations that are struggling to establish their independence in Europe's emerging democracies.
  5. It is hoped that the Charter will increase understanding among lawyers, decision makers and the public of the importance of the lawyer's role in society, and of the way in which the principles by which the legal profession is regulated support that role.
  6. The lawyer's role, whether retained by an individual, a corporation or the state, is as the client's trusted adviser and representative, as a professional respected by third parties, and as an indispensable participant in the fair administration of justice. By embodying all these elements, the lawyer, who faithfully serves his or her own client's interests and protects the client's rights, also fulfils the functions of the lawyer in Society - which are to forestall and prevent conflicts, to ensure that conflicts are resolved in accordance with recognised principles of civil, public or criminal law and with due account of rights and interests, to further the development of the law, and to defend liberty, justice and the rule of law.
  7. The CCBE trusts that judges, legislators, governments and international organisations will strive, along with bar associations, to uphold the principles set out in the Charter.
  8. The Charter is prefaced by an extract from the preamble to the Code of Conduct for European lawyers, including the assertion that: "Respect for the lawyer's professional function is an essential condition for the rule of law and democracy in Society." The rule of law is closely associated with democracy as currently understood in Europe.
  9. The Charter's introductory paragraph claims that the principles in the Charter are essential for the fair administration of justice, access to justice and the right to a fair trial, as required by the European Convention on Human Rights. Lawyers and their bar associations will continue to be in the forefront in campaigning for these rights, whether in Europe's new emerging democracies, or in the more established democracies where such rights may be threatened.

5C9014916D7A/0/EnglishAnglais.pdf

10 European Parliament, Charter of Fundamental Rights of the European Union, [http://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/text_en.pdf)

11 European Parliament, Resolution on the legal professions and the general interest in the functioning of legal systems, 23 March 2006, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2006-0108+0+DOC+XML+V0//EN>

***Principle (a) – the independence of the lawyer, and the freedom of the lawyer to pursue the client's case:***

A lawyer needs to be free - politically, economically and intellectually - in pursuing his or her activities of advising and representing the client. This means that the lawyer must be independent of the state and other powerful interests, and must not allow his or her independence to be compromised by improper pressure from business associates. The lawyer must also remain independent of his or her own client if the lawyer is to enjoy the trust of third parties and the courts. Indeed without this independence from the client there can be no guarantee of the quality of the lawyer's work. The lawyer's membership of a liberal profession and the authority deriving from that membership helps to maintain independence, and bar associations must play an important role in helping to guarantee lawyers' independence. Self-regulation of the profession is seen as vital in buttressing the independence of the individual lawyer. It is notable that in unfree societies lawyers are prevented from pursuing their clients' cases, and may suffer imprisonment or death for attempting to do so.

***Principle (b) – the right and duty of the lawyer to keep clients' matters confidential and to respect professional secrecy:***

It is of the essence of a lawyer's function that the lawyer should be told by his or her client things which the client would not tell to others - the most intimate personal details or the most valuable commercial secrets - and that the lawyer should be the recipient of other information on a basis of confidence. Without the certainty of confidentiality there can be no trust. The Charter stresses the dual nature of this principle - observing confidentiality is not only the lawyer's duty, - it is a fundamental human right of the client. The rules of "legal professional privilege" prohibit communications between lawyer and client from being used against the client. In some jurisdictions the right to confidentiality is seen as belonging to the client alone, whereas in other jurisdictions "professional secrecy" may also require that the lawyer keeps secret from his or her own client communications from the other party's lawyer imparted on the basis of confidence. Principle (b) encompasses all these related concepts - legal professional privilege, confidentiality and professional secrecy. The lawyer's duty to the client remains even after the lawyer has ceased to act.

***Principle (c) – avoidance of conflicts of interest, whether between different clients or between the client and the lawyer:***

For the proper exercise of his or her profession, the lawyer must avoid conflicts of interest. So a lawyer may not act for two clients in the same matter if there is a conflict, or a risk of conflict, between the interests of those clients. Equally a lawyer must refrain from acting for a new client if the lawyer is in possession of confidential information obtained from another current or former client. Nor must a lawyer take on a client if there is a conflict of interest between the client and the lawyer. If a conflict of interest arises in the course of acting

for a client, the lawyer must cease to act. It can be seen that this principle is closely linked to principles (b) (confidentiality), (a) (independence) and (e) (loyalty).

***Principle (d) – the dignity and honour of the legal profession, and the integrity and good repute of the individual lawyer:***

To be trusted by clients, third parties, the courts and the state, the lawyer must be shown to be worthy of that trust. That is achieved by membership of an honourable profession; the corollary is that the lawyer must do nothing to damage either his or her own reputation or the reputation of the profession as a whole and public confidence in the profession. This does not mean that the lawyer has to be a perfect individual, but it does mean that he or she must not engage in disgraceful conduct, whether in legal practice or in other business activities or even in private life, of a sort likely to dishonour the profession. Disgraceful conduct may lead to sanctions including, in the most serious cases, expulsion from the profession.

***Principle (e) – loyalty to the client:***

Loyalty to the client is of the essence of the lawyer's role. The client must be able to trust the lawyer as adviser and as representative. To be loyal to the client, the lawyer must be independent (see principle (a)), must avoid conflicts of interest (see principle (c)), and must keep the client's confidences (see principle (b)). Some of the most delicate problems of professional conduct arise from the interaction between the principle of loyalty to the client and principles which set out the lawyer's wider duties – principle (d) (dignity and honour), principle (h) (respect towards professional colleagues) and in particular principle (i) (respect for the rule of law and the fair administration of justice). In dealing with such issues the lawyer must make it clear to the client that the lawyer cannot compromise his or her duties to the court and to the administration of justice in order to put forward a dishonest case on behalf of the client.

***Principle (f) – fair treatment of clients in relation to fees:***

A fee charged by a lawyer must be fully disclosed to the client, must be fair and reasonable, and must comply with the law and professional rules to which the lawyer is subject. Although professional codes (and principle (c) in this Charter) stress the importance of avoiding conflicts of interest between lawyer and client, the matter of the lawyer's fees seems to present an inherent danger of such a conflict. Accordingly, the principle dictates the necessity of professional regulation to see that the client is not overcharged.

***Principle (g) – the lawyer's professional competence:***

It is self-evident that the lawyer cannot effectively advise or represent the client unless the lawyer has the appropriate professional education and training. Recently, post-qualification training (continuing professional development) has gained increasing emphasis as a response to rapid rates of change

in law and practice and in the technological and economic environment. Professional rules often stress that a lawyer must not take on a case which he or she is not competent to deal with.

***Principle (h) – respect towards professional colleagues:***

This principle represents more than an assertion of the need for courtesy – although even that is important in the highly sensitive and highly contentious matters in which lawyers are frequently involved on behalf of their respective clients. The principle relates to the role of the lawyer as intermediary, who can be trusted to speak the truth, to comply with professional rules and to keep his or her promises. The proper administration of justice requires lawyers to behave with respect to each other so that contentious matters can be resolved in a civilised way. Similarly it must be in the public interest for lawyers to deal in good faith with each other and not to deceive. Mutual respect between professional colleagues facilitates the proper administration of justice, assists in the resolution of conflicts by agreement, and is in the client's interest.

***Principle (i) – respect for the rule of law and the fair administration of justice:***

We have characterised part of the role of the lawyer as acting as a participant in the fair administration of justice. The same idea is sometimes expressed by describing the lawyer as an “officer of the court” or as a “minister of justice”. A lawyer must never knowingly give false or misleading information to the court, nor should a lawyer ever lie to third parties in the course of his or her professional activities. These prohibitions frequently run counter to the immediate interests of the lawyer's client, and the handling of this apparent conflict between the interests of the client and the interests of justice presents delicate problems that the lawyer is professionally trained to solve. The lawyer is entitled to look to his or her bar association for assistance with such problems. But in the last analysis the lawyer can only successfully represent his or her client if the lawyer can be relied on by the courts and by third parties as a trusted intermediary and as a participant in the fair administration of justice.

***Principle (j) – the self-regulation of the legal profession:***

It is one of the hallmarks of unfree societies that the state, either overtly or covertly, controls the legal profession and the activities of lawyers. Most European legal professions display a combination of state regulation and self-regulation. In many cases the state, recognising the importance of the core principles, uses legislation to buttress them – for instance by giving statutory support to confidentiality, or by giving bar associations statutory power to make professional rules. The CCBE is convinced that only a strong element of self-regulation can guarantee lawyers' professional independence vis-à-vis the state, and without a guarantee of independence it is impossible for lawyers to fulfil their professional and legal role.

This Code of Conduct for European Lawyers was originally adopted at the CCBE Plenary Session held on 28 October 1988, and subsequently amended during the CCBE Plenary Sessions on 28 November 1998, 6 December 2002 and 19 May 2006. The Code also takes into account amendments to the CCBE Statutes formally approved at an Extraordinary Plenary Session on 20 August 2007.

## **1. preamble**

### **1.1. the function of the lawyer in society**

In a society founded on respect for the rule of law the lawyer fulfils a special role. The lawyer's duties do not begin and end with the faithful performance of what he or she is instructed to do so far as the law permits. A lawyer must serve the interests of justice as well as those whose rights and liberties he or she is trusted to assert and defend and it is the lawyer's duty not only to plead the client's cause but to be the client's adviser. Respect for the lawyer's professional function is an essential condition for the rule of law and democracy in society.

A lawyer's function therefore lays on him or her a variety of legal and moral obligations (sometimes appearing to be in conflict with each other) towards:

- the client;
- the courts and other authorities before whom the lawyer pleads the client's cause or acts on the client's behalf;
- the legal profession in general and each fellow member of it in particular;
- the public for whom the existence of a free and independent profession, bound together by respect for rules made by the profession itself, is an essential means of safeguarding human rights in face of the power of the state and other interests in society.

### **1.2. the nature of rules of professional Conduct**

1.2.1. Rules of professional conduct are designed through their willing acceptance by those to whom they apply to ensure the proper performance by the lawyer of a function which is recognised as essential in all civilised societies. The failure of the lawyer to observe these rules may result in disciplinary sanctions.

1.2.2. The particular rules of each Bar or Law Society arise from its own traditions. They are adapted to the organisation and sphere of activity of the profession in the Member State concerned and to its judicial and administrative procedures and to its national legislation. It is neither



possible nor desirable that they should be taken out of their context nor that an attempt should be made to give general application to rules which are inherently incapable of such application.

The particular rules of each Bar and Law Society nevertheless are based on the same values and in most cases demonstrate a common foundation.

### 1.3. the purpose of the Code

1.3.1. The continued integration of the European Union and European Economic Area and the increasing frequency of the cross-border activities of lawyers within the European Economic Area have made necessary in the public interest the statement of common rules which apply to all lawyers from the European Economic Area whatever Bar or Law Society they belong to in relation to their cross-border practice. A particular purpose of the statement of those rules is to mitigate the difficulties which result from the application of "double deontology", notably as set out in Articles 4 and 7.2 of Directive 77/249/EEC and Articles 6 and 7 of Directive 98/5/EC.

1.3.2. The organisations representing the legal profession through the CCBE propose that the rules codified in the following articles:

- be recognised at the present time as the expression of a consensus of all the Bars and Law Societies of the European Union and European Economic Area;
- be adopted as enforceable rules as soon as possible in accordance with national or EEA procedures in relation to the cross-border activities of the lawyer in the European Union and European Economic Area;
- be taken into account in all revisions of national rules of deontology or professional practice with a view to their progressive harmonisation.

They further express the wish that the national rules of deontology or professional practice be interpreted and applied whenever possible in a way consistent with the rules in this Code.

After the rules in this Code have been adopted as enforceable rules in relation to a lawyer's cross-border activities the lawyer will remain bound to observe the rules of the Bar or Law Society to which he or she belongs to the extent that they are consistent with the rules in this Code.

### 1.4. field of application *Ratione Personae*

This Code shall apply to lawyers as they are defined by Directive 77/249/EEC and by Directive 98/5/EC and to lawyers of the Associate and Observer Members of the CCBE.

### 1.5. field of application *Ratione Materiae*

Without prejudice to the pursuit of a progressive harmonisation of rules of deontology or professional practice which apply only internally within a Member State, the following rules shall apply to the cross-border activities of the lawyer within the European Union and the European Economic Area. Cross-border activities shall mean:

- (a) all professional contacts with lawyers of Member States other than the lawyer's own;
- (b) the professional activities of the lawyer in a Member State other than his or her own, whether or not the lawyer is physically present in that Member State.

### 1.6. Definitions

In this Code:

"Member State" means a member state of the European Union or any other state whose legal profession is included in Article 1.4.

"Home Member State" means the Member State where the lawyer acquired the right to bear his or her professional title.

"Host Member State" means any other Member State where the lawyer carries on cross-border activities.

"Competent Authority" means the professional organisation(s) or authority(ies) of the Member State concerned responsible for the laying down of rules of professional conduct and the administration of discipline of lawyers.

"Directive 77/249/EEC" means Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services.

"Directive 98/5/EC" means Directive 98/5/EC of the European Parliament and of the Council of 16 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.

## 2. general principles

### 2.1. independence

- 2.1.1. The many duties to which a lawyer is subject require the lawyer's absolute independence, free from all other influence, especially such as may arise from his or her personal interests or external pressure. Such independence is as necessary to trust in the process of justice as the impartiality of the judge. A lawyer must therefore avoid any impairment

of his or her independence and be careful not to compromise his or her professional standards in order to please the client, the court or third parties.

- 2.1.2. This independence is necessary in non-contentious matters as well as in litigation. Advice given by a lawyer to the client has no value if the lawyer gives it only to ingratiate him- or herself, to serve his or her personal interests or in response to outside pressure.

## **2.2. trust and personal integrity**

Relationships of trust can only exist if a lawyer's personal honour, honesty and integrity are beyond doubt. For the lawyer these traditional virtues are professional obligations.

## **2.3. Confidentiality**

- 2.3.1 It is of the essence of a lawyer's function that the lawyer should be told by his or her client things which the client would not tell to others, and that the lawyer should be the recipient of other information on a basis of confidence. Without the certainty of confidentiality there cannot be trust. Confidentiality is therefore a primary and fundamental right and duty of the lawyer.

The lawyer's obligation of confidentiality serves the interest of the administration of justice as well as the interest of the client. It is therefore entitled to special protection by the State.

- 2.3.2. A lawyer shall respect the confidentiality of all information that becomes known to the lawyer in the course of his or her professional activity.
- 2.3.3. The obligation of confidentiality is not limited in time.
- 2.3.4. A lawyer shall require his or her associates and staff and anyone engaged by him or her in the course of providing professional services to observe the same obligation of confidentiality.

## **2.4. respect for the rules of other Bars and law societies**

When practising cross-border, a lawyer from another Member State may be bound to comply with the professional rules of the Host Member State. Lawyers have a duty to inform themselves as to the rules which will affect them in the performance of any particular activity.

Member organisations of the CCBE are obliged to deposit their codes of conduct at the Secretariat of the CCBE so that any lawyer can get hold of the copy of the current code from the Secretariat.

## **2.5. incompatible occupations**

- 2.5.1. In order to perform his or her functions with due independence and in

a manner which is consistent with his or her duty to participate in the administration of justice a lawyer may be prohibited from undertaking certain occupations.

2.5.2. A lawyer who acts in the representation or the defence of a client in legal proceedings or before any public authorities in a Host Member State shall there observe the rules regarding incompatible occupations as they are applied to lawyers of the Host Member State.

2.5.3. A lawyer established in a Host Member State in which he or she wishes to participate directly in commercial or other activities not connected with the practice of the law shall respect the rules regarding forbidden or incompatible occupations as they are applied to lawyers of that Member State.

## **2.6. personal publicity**

2.6.1. A lawyer is entitled to inform the public about his or her services provided that the information is accurate and not misleading, and respectful of the obligation of confidentiality and other core values of the profession.

2.6.2. Personal publicity by a lawyer in any form of media such as by press, radio, television, by electronic commercial communications or otherwise is permitted to the extent it complies with the requirements of 2.6.1.

## **2.7. the Client's interest**

Subject to due observance of all rules of law and professional conduct, a lawyer must always act in the best interests of the client and must put those interests before the lawyer's own interests or those of fellow members of the legal profession.

## **2.8. limitation of lawyer's liability towards the Client**

To the extent permitted by the law of the Home Member State and the Host Member State, the lawyer may limit his or her liabilities towards the client in accordance with the professional rules to which the lawyer is subject.

# **3. relations with Clients**

## **3.1. acceptance and termination of instructions**

3.1.1. A lawyer shall not handle a case for a party except on that party's instructions. The lawyer may, however, act in a case in which he or she has been instructed by another lawyer acting for the party or where the case has been assigned to him or her by a competent body.

The lawyer should make reasonable efforts to ascertain the identity,

competence and authority of the person or body who instructs him or her when the specific circumstances show that the identity, competence and authority are uncertain.

- 3.1.2. A lawyer shall advise and represent the client promptly, conscientiously and diligently. The lawyer shall undertake personal responsibility for the discharge of the client's instructions and shall keep the client informed as to the progress of the matter with which the lawyer has been entrusted.
- 3.1.3. A lawyer shall not handle a matter which the lawyer knows or ought to know he or she is not competent to handle, without cooperating with a lawyer who is competent to handle it.

A lawyer shall not accept instructions unless he or she can discharge those instructions promptly having regard to the pressure of other work.

- 3.1.4. A lawyer shall not be entitled to exercise his or her right to 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.

## **3.2. Conflict of Interest**

- 3.2.1. A lawyer may not advise, represent or act on behalf of two or more clients in the same matter if there is a conflict, or a significant risk of a conflict, between the interests of those clients.
- 3.2.2. A lawyer must cease to act for both or all of the clients concerned when a conflict of interests arises between those clients and also whenever there is a risk of a breach of confidence or where the lawyer's independence may be impaired.
- 3.2.3. A lawyer must also refrain from acting for a new client if there is a risk of breach of a confidence entrusted to the lawyer by a former client or if the knowledge which the lawyer possesses of the affairs of the former client would give an undue advantage to the new client.
- 3.2.4. Where lawyers are practising in association, paragraphs 3.2.1 to 3.2.3 above shall apply to the association and all its members.

## **3.3. *Pactum de Quota Litis***

- 3.3.1. A lawyer shall not be entitled to make a pactum de quota litis.
- 3.3.2. By "pactum de quota litis" is meant an agreement between a lawyer and the client entered into prior to final conclusion of a matter to which the client is a party, by virtue of which the client undertakes to pay the lawyer a share of the result regardless of whether this is represented by a sum of money or by any other benefit achieved by the client upon the conclusion of the matter.

3.3.3. "Pactum de quota litis" does not include an agreement that fees be charged in proportion to the value of a matter handled by the lawyer if this is in accordance with an officially approved fee scale or under the control of the Competent Authority having jurisdiction over the lawyer.

#### **3.4. regulation of fees**

A fee charged by a lawyer shall be fully disclosed to the client, shall be fair and reasonable, and shall comply with the law and professional rules to which the lawyer is subject.

#### **3.5. payment on account**

If a lawyer requires a payment on account of his or her fees and/or disbursements such payment should not exceed a reasonable estimate of the fees and probable disbursements involved.

Failing such payment, a lawyer may withdraw from the case or refuse to handle it, but subject always to paragraph 3.1.4 above.

#### **3.6. fee sharing with non-lawyers**

3.6.1. A lawyer may not share his or her fees with a person who is not a lawyer except where an association between the lawyer and the other person is permitted by the laws and the professional rules to which the lawyer is subject.

3.6.2. The provisions of 3.6.1 above shall not preclude a lawyer from paying a fee, commission or other compensation to a deceased lawyer's heirs or to a retired lawyer in respect of taking over the deceased or retired lawyer's practice.

#### **3.7. Cost of litigation and availability of legal aid**

3.7.1. The lawyer should at all times strive to achieve the most cost-effective resolution of the client's dispute and should advise the client at appropriate stages as to the desirability of attempting a settlement and/or a reference to alternative dispute resolution.

3.7.2. A lawyer shall inform the client of the availability of legal aid where applicable.

#### **3.8. Client funds**

3.8.1. Lawyers who come into possession of funds on behalf of their clients or third parties (hereinafter called "client funds") have to deposit such money into an account of a bank or similar institution subject to supervision by a public authority (hereinafter called a "client account"). A client account shall be separate from any other account of the lawyer. All client funds received by a lawyer should be deposited into such an account unless the owner of such funds agrees that the funds should be dealt with otherwise.

- 3.8.2. The lawyer shall maintain full and accurate records showing all the lawyer's dealings with client funds and distinguishing client funds from other funds held by the lawyer. Records may have to be kept for a certain period of time according to national rules.
- 3.8.3. A client account cannot be in debit except in exceptional circumstances as expressly permitted in national rules or due to bank charges, which cannot be influenced by the lawyer. Such an account cannot be given as a guarantee or be used as a security for any reason. There shall not be any set-off or merger between a client account and any other bank account, nor shall the client funds in a client account be available to defray money owed by the lawyer to the bank.
- 3.8.4. Client funds shall be transferred to the owners of such funds in the shortest period of time or under such conditions as are authorised by them.
- 3.8.5. The lawyer cannot transfer funds from a client account into the lawyer's own account for payment of fees without informing the client in writing.
- 3.8.6. The Competent Authorities in Member States shall have the power to verify and examine any document regarding client funds, whilst respecting the confidentiality or legal professional privilege to which it may be subject.
- 3.9. professional indemnity insurance**
- 3.9.1. Lawyers shall be insured against civil legal liability arising out of their legal practice to an extent which is reasonable having regard to the nature and extent of the risks incurred by their professional activities.
- 3.9.2. Should this prove impossible, the lawyer must inform the client of this situation and its consequences.

## **4. relations with the Courts**

### **4.1. rules of Conduct in Court**

A lawyer who appears, or takes part in a case, before a court or tribunal must comply with the rules of conduct applied before that court or tribunal.

### **4.2. fair Conduct of proceedings**

A lawyer must always have due regard for the fair conduct of proceedings.

### **4.3. demeanour in Court**

A lawyer shall while maintaining due respect and courtesy towards the court defend the interests of the client honourably and fearlessly with-

out regard to the lawyer's own interests or to any consequences to him- or herself or to any other person.

#### **4.4. false or misleading information**

A lawyer shall never knowingly give false or misleading information to the court.

#### **4.5. extension to arbitrators etc.**

The rules governing a lawyer's relations with the courts apply also to the lawyer's relations with arbitrators and any other persons exercising judicial or quasi-judicial functions, even on an occasional basis.

## **5. relations Between lawyers**

### **5.1. Corporate spirit of the profession**

5.1.1. The corporate spirit of the profession requires a relationship of trust and co-operation between lawyers for the benefit of their clients and in order to avoid unnecessary litigation and other behaviour harmful to the reputation of the profession. It can, however, never justify setting the interests of the profession against those of the client.

5.1.2. A lawyer should recognise all other lawyers of Member States as professional colleagues and act fairly and courteously towards them.

### **5.2. Co-operation among lawyers of different member states**

5.2.1. It is the duty of a lawyer who is approached by a colleague from another Member State not to accept instructions in a matter which the lawyer is not competent to undertake. The lawyer should in such case be prepared to help that colleague to obtain the information necessary to enable him or her to instruct a lawyer who is capable of providing the service asked for.

5.2.2. Where a lawyer of a Member State co-operates with a lawyer from another Member State, both have a general duty to take into account the differences which may exist between their respective legal systems and the professional organisations, competences and obligations of lawyers in the Member States concerned.

### **5.3. Correspondence between lawyers**

5.3.1. If a lawyer intends to send communications to a lawyer in another Member State, which the sender wishes to remain confidential or without prejudice he or she should clearly express this intention prior to communicating the first of the documents.

5.3.2. If the prospective recipient of the communications is unable to ensure their status as confidential or without prejudice he or she should inform



the sender accordingly without delay.

#### **5.4. referral fees**

- 5.4.1. A lawyer may not demand or accept from another lawyer or any other person a fee, commission or any other compensation for referring or recommending the lawyer to a client.
- 5.4.2. A lawyer may not pay anyone a fee, commission or any other compensation as a consideration for referring a client to him- or herself.

#### **5.5. Communication with opposing parties**

A lawyer shall not communicate about a particular case or matter directly with any person whom he or she knows to be represented or advised in the case or matter by another lawyer, without the consent of that other lawyer (and shall keep the other lawyer informed of any such communications).

#### **5.6. (deleted by decision of the plenary session in dublin on 6 december 2002)**

#### **5.7. responsibility for fees**

In professional relations between members of Bars of different Member States, where a lawyer does not confine him- or herself to recommending another lawyer or introducing that other lawyer to the client but instead him- or herself entrusts a correspondent with a particular matter or seeks the correspondent's advice, the instructing lawyer is personally bound, even if the client is insolvent, to pay the fees, costs and outlays which are due to the foreign correspondent. The lawyers concerned may, however, at the outset of the relationship between them make special arrangements on this matter. Further, the instructing lawyer may at any time limit his or her personal responsibility to the amount of the fees, costs and outlays incurred before intimation to the foreign lawyer of the instructing lawyer's disclaimer of responsibility for the future.

#### **5.8. Continuing professional development**

Lawyers should maintain and develop their professional knowledge and skills taking proper account of the European dimension of their profession.

#### **5.9. disputes amongst lawyers in different member states**

- 5.9.1. If a lawyer considers that a colleague in another Member State has acted in breach of a rule of professional conduct the lawyer shall draw the matter to the attention of that colleague.
- 5.9.2. If any personal dispute of a professional nature arises amongst lawyers in different Member States they should if possible first try to settle it in a

friendly way.

- 5.9.3. A lawyer shall not commence any form of proceedings against a colleague in another Member State on matters referred to in 5.9.1 or 5.9.2 above without first informing the Bars or Law Societies to which they both belong for the purpose of allowing both Bars or Law Societies concerned an opportunity to assist in reaching a settlement.

This Explanatory Memorandum was prepared at the request of the CCBE Standing Committee by the CCBE's deontology working party, who were responsible for drafting the first version of the Code of Conduct itself. It seeks to explain the origin of the provisions of the Code, to illustrate the problems which they are designed to resolve, particularly in relation to cross-border activities, and to provide assistance to the Competent Authorities in the Member States in the application of the Code. It is not intended to have any binding force in the interpretation of the Code. The Explanatory Memorandum was adopted on 28 October 1988 and updated on the occasion of the CCBE Plenary Session on 19 May 2006. The Explanatory Memorandum also takes into account amendments to the CCBE Statutes formally approved at an Extraordinary Plenary Session on 20 August 2007. The list of professions in the commentary on article 1.4 is subject to modification.

The original versions of the Code are in the French and English languages. Translations into other Community languages are prepared under the authority of the national delegations.

#### ***Commentary on Article 1.1 – The Function of the Lawyer in Society***

The Declaration of Perugia, adopted by the CCBE in 1977, laid down the fundamental principles of professional conduct applicable to lawyers throughout the EC. The provisions of Article 1.1 reaffirm the statement in the Declaration of Perugia of the function of the lawyer in society which forms the basis for the rules governing the performance of that function.

#### ***Commentary on Article 1.2 – The Nature of Rules of Professional Conduct***

These provisions substantially restate the explanation in the Declaration of Perugia of the nature of rules of professional conduct and how particular rules depend on particular local circumstances but are nevertheless based on common values.

#### ***Commentary on Article 1.3 – The Purpose of the Code***

These provisions introduce the development of the principles in the Declaration of Perugia into a specific Code of Conduct for lawyers throughout the EU the EEA and Swiss Confederation, and lawyers of the Associate and Observer Members of the CCBE, with particular reference to their cross-border activities (defined in Article 1.5). The provisions of Article 1.3.2 lay down the specific intentions of the CCBE with regard to the substantive provisions in the Code.

#### ***Commentary on Article 1.4 – Field of Application *ratione personae****

The rules are stated to apply to all lawyers as defined in the Lawyers Services Directive of 1977 and the Lawyers Establishment Directive of 1998, and lawyers of the Associate and Observer Members of the CCBE. This includes lawyers of the states which subsequently acceded to the Directives, whose names have been added by amendment to the Directives. The Code accordingly applies to all the lawyers represented on the CCBE, whether as full Members, Associ-

ate Members or Observer Members, namely:

Albania	Avokat
Armenia	Pastaban
Austria	Rechtsanwalt;
Belgium	avocat / advocaat / Rechtsanwalt;
Bulgaria	advokat;
Croatia	odvjetnik;
Cyprus	dikegóros;
Czech Republic	advokát;
Denmark	advokat;
Estonia	vandeadvokaat;
Finland	asianajaja / advokat;
FYROMacedonia	advokat;
France	avocat;
Georgia	Advokati / Advokatebi
Germany	Rechtsanwalt;
Greece	dikegóros;
Hungary	ügyvéd;
Iceland	lögmaður;
Ireland	barrister, solicitor;
Italy	avvocato;
Latvia	zvērīnāts advokāts;
Liechtenstein	Rechtsanwalt;
Lithuania	advokatas;
Luxembourg	avocat / Rechtsanwalt;
Malta	avukat, prokuratur legali;
Montenegro	advokat;
Moldova	Avocat
Netherlands	advocaat;
Norway	advokat;
Poland	adwokat, radca prawny;
Portugal	advogado;
Romania	avocat;
Serbia	advokat;
Slovakia	advokát / advokátka;
Slovenia	odvetnik / odvetnica;
Spain	abogado / advocat / abokatu / avogado;
Sweden	advokat;
Switzerland	Rechtsanwalt / Anwalt / Fürsprech / Fürsprecher / avocat / avvocato /advokat;
Turkey	avukat;
Ukraine	advokat;
United Kingdom	advocate, barrister, solicitor.

It is also hoped that the Code will be acceptable to the legal professions of other non-member states in Europe and elsewhere so that it could also be

applied by appropriate conventions between them and the Member States.

#### ***Commentary on Article 1.5 – Field of Application ratione materiae***

The rules are here given direct application only to “cross-border activities”, as defined, of lawyers within the EU, the EEA and Swiss Confederation and lawyers of the Associate and Observer Members of the CCBE - see above on Article 1.4, and the definition of “Member State” in Article 1.6. (See also above as to possible extensions in the future to lawyers of other states.) The definition of cross-border activities would, for example, include contacts in state A even on a matter of law internal to state A between a lawyer of state A and a lawyer of state B; it would exclude contacts between lawyers of state A in state A of a matter arising in state B, provided that none of their professional activities takes place in state B; it would include any activities of lawyers of state A in state B, even if only in the form of communications sent from state A to state B.

#### ***Commentary on Article 1.6 – Definitions***

This provision defines a number of terms used in the Code, “Member State”, “Home Member State”, “Host Member State”, “Competent Authority”, “Directive 77/249/EEC” and “Directive 98/5/EC”. The reference to “where the lawyer carries on cross-border activities” should be interpreted in light of the definition of “cross-border activities” in Article 1.5.

#### ***Commentary on Article 2.1 – Independence***

This provision substantially reaffirms the general statement of principle in the Declaration of Perugia.

#### ***Commentary on Article 2.2 – Trust and Personal Integrity***

This provision also restates a general principle contained in the Declaration of Perugia.

#### ***Commentary on Article 2.3 – Confidentiality***

This provision first restates, in Article 2.3.1, general principles laid down in the Declaration of Perugia and recognised by the ECJ in the AM&S case (157/79). It then, in Articles 2.3.2 to 4, develops them into a specific rule relating to the protection of confidentiality. Article 2.3.2 contains the basic rule requiring respect for confidentiality. Article 2.3.3 confirms that the obligation remains binding on the lawyer even if he or she ceases to act for the client in question. Article 2.3.4 confirms that the lawyer must not only respect the obligation of confidentiality him- or herself but must require all members and employees of his or her firm to do likewise.

#### ***Commentary on Article 2.4 – Respect for the Rules of Other Bars and Law Societies***

Article 4 of the Lawyers Services Directive contains the provisions with regard to the rules to be observed by a lawyer from one Member State providing services on an occasional or temporary basis in another Member State by

virtue of Article 49 of the consolidated EC treaty, as follows:

- (a) activities relating to the representation of a client in legal proceedings or before public authorities shall be pursued in each Host Member State under the conditions laid down for lawyers established in that state, with the exception of any conditions requiring residence, or registration with a professional organisation, in that state;
- (b) a lawyer pursuing these activities shall observe the rules of professional conduct of the Host Member State, without prejudice to the lawyer's obligations in the Member State from which he or she comes;
- (c) when these activities are pursued in the UK, "rules of professional conduct of the Host Member State" means the rules of professional conduct applicable to solicitors, where such activities are not reserved for barristers and advocates. Otherwise the rules of professional conduct applicable to the latter shall apply. However, barristers from Ireland shall always be subject to the rules of professional conduct applicable in the UK to barristers and advocates. When these activities are pursued in Ireland "rules of professional conduct of the Host Member State" means, in so far as they govern the oral presentation of a case in court, the rules of professional conduct applicable to barristers. In all other cases the rules of professional conduct applicable to solicitors shall apply. However, barristers and advocates from the UK shall always be subject to the rules of professional conduct applicable in Ireland to barristers; and
- (d) a lawyer pursuing activities other than those referred to in (a) above shall remain subject to the conditions and rules of professional conduct of the Member State from which he or she comes without prejudice to respect for the rules, whatever their source, which govern the profession in the Host Member State, especially those concerning the incompatibility of the exercise of the activities of a lawyer with the exercise of other activities in that state, professional secrecy, relations with other lawyers, the prohibition on the same lawyer acting for parties with mutually conflicting interests, and publicity. The latter rules are applicable only if they are capable of being observed by a lawyer who is not established in the Host Member State and to the extent to which their observance is objectively justified to ensure, in that state, the proper exercise of a lawyer's activities, the standing of the profession and respect for the rules concerning incompatibility.

The Lawyers Establishment Directive contains the provisions with regard to the rules to be observed by a lawyer from one Member State practising on a permanent basis in another Member State by virtue of Article 43 of the consolidated EC treaty, as follows:

- (a) irrespective of the rules of professional conduct to which he or she is subject in his or her Home Member State, a lawyer practising under

his home-country professional title shall be subject to the same rules of professional conduct as lawyers practising under the relevant professional title of the Host Member State in respect of all the activities the lawyer pursues in its territory (Article 6.1);

- (b) the Host Member State may require a lawyer practising under his or her home-country professional title either to take out professional indemnity insurance or to become a member of a professional guarantee fund in accordance with the rules which that state lays down for professional activities pursued in its territory.

Nevertheless, a lawyer practising under his or her home-country professional title shall be exempted from that requirement if the lawyer can prove that he or she is covered by insurance taken out or a guarantee provided in accordance with the rules of the Home Member State, insofar as such insurance or guarantee is equivalent in terms of the conditions and extent of cover. Where the equivalence is only partial, the Competent Authority in the Host Member State may require that additional insurance or an additional guarantee be contracted to cover the elements which are not already covered by the insurance or guarantee contracted in accordance with the rules of the Home Member State (Article 6.3); and

- (c) a lawyer registered in a Host Member State under his or her home-country professional title may practise as a salaried lawyer in the employ of another lawyer, an association or firm of lawyers, or a public or private enterprise to the extent that the Host Member State so permits for lawyers registered under the professional title used in that state (Article 8).

In cases not covered by either of these Directives, or over and above the requirements of these Directives, the obligations of a lawyer under Community law to observe the rules of other Bars and Law Societies are a matter of interpretation of any relevant provision, such as the Directive on Electronic Commerce (2000/31/EC). A major purpose of the Code is to minimise, and if possible eliminate altogether, the problems which may arise from "double deontology", that is the application of more than one set of potentially conflicting national rules to a particular situation (see Article 1.3.1).

### ***Commentary on Article 2.5 – Incompatible Occupations***

There are differences both between and within Member States on the extent to which lawyers are permitted to engage in other occupations, for example in commercial activities. The general purpose of rules excluding a lawyer from other occupations is to protect the lawyer from influences which might impair the lawyer's independence or his or her role in the administration of justice. The variations in these rules reflect different local conditions, different perceptions of the proper function of lawyers and different techniques of rule-making. For instance in some cases there is a complete prohibition of engage-

ment in certain named occupations, whereas in other cases engagement in other occupations is generally permitted, subject to observance of specific safeguards for the lawyer's independence.

Articles 2.5.2 and 3 make provision for different circumstances in which a lawyer of one Member State is engaging in cross-border activities (as defined in Article 1.5) in a Host Member State when he or she is not a member of the Host State legal profession.

Article 2.5.2 imposes full observation of Host State rules regarding incompatible occupations on the lawyer acting in national legal proceedings or before national public authorities in the Host State. This applies whether the lawyer is established in the Host State or not.

Article 2.5.3, on the other hand, imposes "respect" for the rules of the Host State regarding forbidden or incompatible occupations in other cases, but only where the lawyer who is established in the Host Member State wishes to participate directly in commercial or other activities not connected with the practice of the law.

#### ***Commentary on Article 2.6 – Personal Publicity***

The term "personal publicity" covers publicity by firms of lawyers, as well as individual lawyers, as opposed to corporate publicity organised by Bars and Law Societies for their members as a whole. The rules governing personal publicity by lawyers vary considerably in the Member States. Article 2.6 makes it clear that there is no overriding objection to personal publicity in cross-border practice. However, lawyers are nevertheless subject to prohibitions or restrictions laid down by their home professional rules, and a lawyer will still be subject to prohibitions or restrictions laid down by Host State rules when these are binding on the lawyer by virtue of the Lawyers Services Directive or the Lawyers Establishment Directive.

#### ***Commentary on Article 2.7 – The Client's Interest***

This provision emphasises the general principle that the lawyer must always place the client's interests before the lawyer's own interests or those of fellow members of the legal profession.

#### ***Commentary on Article 2.8 – Limitation of Lawyer's Liability towards the Client***

This provision makes clear that there is no overriding objection to limiting a lawyer's liability towards his or her client in cross-border practice, whether by contract or by use of a limited company, limited partnership or limited liability partnership. However it points out that this can only be contemplated where the relevant law and the relevant rules of conduct permit - and in a number of jurisdictions the law or the professional rules prohibit or restrict such limitation of liability.



### ***Commentary on Article 3.1 – Acceptance and Termination of Instructions***

The provisions of Article 3.1.1 are designed to ensure that a relationship is maintained between lawyer and client and that the lawyer in fact receives instructions from the client, even though these may be transmitted through a duly authorised intermediary. It is the responsibility of the lawyer to satisfy him- or herself as to the authority of the intermediary and the wishes of the client.

Article 3.1.2 deals with the manner in which the lawyer should carry out his or her duties. The provision that the lawyer shall undertake personal responsibility for the discharge of the instructions given to him or her means that the lawyer cannot avoid responsibility by delegation to others. It does not prevent the lawyer from seeking to limit his or her legal liability to the extent that this is permitted by the relevant law or professional rules - see Article 2.8.

Article 3.1.3 states a principle which is of particular relevance in cross-border activities, for example when a lawyer is asked to handle a matter on behalf of a lawyer or client from another state who may be unfamiliar with the relevant law and practice, or when a lawyer is asked to handle a matter relating to the law of another state with which he or she is unfamiliar.

A lawyer generally has the right to refuse to accept instructions in the first place, but Article 3.1.4 states that, having once accepted them, the lawyer has an obligation not to withdraw without ensuring that the client's interests are safeguarded.

### ***Commentary on Article 3.2 – Conflict of Interest***

The provisions of Article 3.2.1 do not prevent a lawyer acting for two or more clients in the same matter provided that their interests are not in fact in conflict and that there is no significant risk of such a conflict arising. Where a lawyer is already acting for two or more clients in this way and subsequently there arises a conflict of interests between those clients or a risk of a breach of confidence or other circumstances where the lawyer's independence may be impaired, then the lawyer must cease to act for both or all of them.

There may, however, be circumstances in which differences arise between two or more clients for whom the same lawyer is acting where it may be appropriate for the lawyer to attempt to act as a mediator. It is for the lawyer in such cases to use his or her own judgement on whether or not there is such a conflict of interest between them as to require the lawyer to cease to act. If not, the lawyer may consider whether it would be appropriate to explain the position to the clients, obtain their agreement and attempt to act as mediator to resolve the difference between them, and only if this attempt to mediate should fail, to cease to act for them.

Article 3.2.4 applies the foregoing provisions of Article 3 to lawyers practising in association. For example a firm of lawyers should cease to act when there is a conflict of interest between two clients of the firm, even if different lawyers in the firm are acting for each client. On the other hand, exceptionally, in the

“chambers” form of association used by English barristers, where each lawyer acts for clients individually, it is possible for different lawyers in the association to act for clients with opposing interests.

### ***Commentary on Article 3.3 – pactum de Quota litis***

These provisions reflect the common position in all Member States that an unregulated agreement for contingency fees (*pactum de quota litis*) is contrary to the proper administration of justice because it encourages speculative litigation and is liable to be abused. The provisions are not, however, intended to prevent the maintenance or introduction of arrangements under which lawyers are paid according to results or only if the action or matter is successful, provided that these arrangements are under sufficient regulation and control for the protection of the client and the proper administration of justice.

### ***Commentary on Article 3.4 – Regulation of Fees***

Article 3.4 lays down three requirements: a general standard of disclosure of a lawyer’s fees to the client, a requirement that they should be fair and reasonable in amount, and a requirement to comply with the applicable law and professional rules.

In many Member States machinery exists for regulating lawyers’ fees under national law or rules of conduct, whether by reference to a power of adjudication by the Bar authorities or otherwise. In situations governed by the Lawyers Establishment Directive, where the lawyer is subject to Host State rules as well as the rules of the Home State, the basis of charging may have to comply with both sets of rules.

### ***Commentary on Article 3.5 – Payment on Account***

Article 3.5 assumes that a lawyer may require a payment on account of the lawyer’s fees and/or disbursements, but sets a limit by reference to a reasonable estimate of them. See also on Article 3.1.4 regarding the right to withdraw.

### ***Commentary on Article 3.6 – Fee Sharing with Non-Lawyers***

In some Member States lawyers are permitted to practise in association with members of certain other approved professions, whether legal professions or not. The provisions of Article 3.6.1 are not designed to prevent fee sharing within such an approved form of association. Nor are the provisions designed to prevent fee sharing by the lawyers to whom the Code applies (see on Article 1.4 above) with other “lawyers”, for example lawyers from non-Member States or members of other legal professions in the Member States such as notaries.

### ***Commentary on Article 3.7 – Cost of Litigation and Availability of Legal Aid***

Article 3.7.1 stresses the importance of attempting to resolve disputes in a way which is cost-effective for the client, including advising on whether to attempt

to negotiate a settlement, and whether to propose referring the dispute to some form of alternative dispute resolution.

Article 3.7.2 requires a lawyer to inform the client of the availability of legal aid where applicable. There are widely differing provisions in the Member States on the availability of legal aid. In cross-border activities a lawyer should have in mind the possibility that the legal aid provisions of a national law with which the lawyer is unfamiliar may be applicable.

### ***Commentary on Article 3.8 – Client Funds***

The provisions of Article 3.8 reflect the recommendation adopted by the CCBE in Brussels in November 1985 on the need for minimum regulations to be made and enforced governing the proper control and disposal of clients' funds held by lawyers within the Community. Article 3.8 lays down minimum standards to be observed, while not interfering with the details of national systems which provide fuller or more stringent protection for clients' funds.

The lawyer who holds clients' funds, even in the course of a cross-border activity, has to observe the rules of his or her home Bar. The lawyer needs to be aware of questions which arise where the rules of more than one Member State may be applicable, especially where the lawyer is established in a Host State under the Lawyers Establishment Directive.

### ***Commentary on Article 3.9 – Professional Indemnity Insurance***

Article 3.9.1 reflects a recommendation, also adopted by the CCBE in Brussels in November 1985, on the need for all lawyers in the Community to be insured against the risks arising from professional negligence claims against them. Article 3.9.2 deals with the situation where insurance cannot be obtained on the basis set out in Article 3.9.1.

### ***Commentary on Article 4.1 – Rules of Conduct in Court***

This provision applies the principle that a lawyer is bound to comply with the rules of the court or tribunal before which the lawyer practises or appears.

### ***Commentary on Article 4.2 – Fair Conduct of Proceedings***

This provision applies the general principle that in adversarial proceedings a lawyer must not attempt to take unfair advantage of his or her opponent. The lawyer must not, for example, make contact with the judge without first informing the lawyer acting for the opposing party or submit exhibits, notes or documents to the judge without communicating them in good time to the lawyer on the other side unless such steps are permitted under the relevant rules of procedure. To the extent not prohibited by law a lawyer must not divulge or submit to the court any proposals for settlement of the case made by the other party or its lawyer without the express consent of the other party's lawyer. See also on Article 4.5 below.

### ***Commentary on Article 4.3 – Demeanour in Court***

This provision reflects the necessary balance between respect for the court and for the law on the one hand and the pursuit of the client's best interest on the other.

### ***Commentary on Article 4.4 – False or Misleading Information***

This provision applies the principle that the lawyer must never knowingly mislead the court. This is necessary if there is to be trust between the courts and the legal profession.

### ***Commentary on Article 4.5 – Extension to Arbitrators etc.***

This provision extends the preceding provisions relating to courts to other bodies exercising judicial or quasi-judicial functions.

### ***Commentary on Article 5.1 – Corporate Spirit of the Profession***

These provisions, which are based on statements in the Declaration of Perugia, emphasise that it is in the public interest for the legal profession to maintain a relationship of trust and cooperation between its members. However, this cannot be used to justify setting the interests of the profession against those of justice or of clients (see also on Article 2.7).

### ***Commentary on Article 5.2 – Co-operation among Lawyers of Different Member States***

This provision also develops a principle stated in the Declaration of Perugia with a view to avoiding misunderstandings in dealings between lawyers of different Member States.

### ***Commentary on Article 5.3 – Correspondence between Lawyers***

In certain Member States communications between lawyers (written or by word of mouth) are normally regarded as to be kept confidential as between the lawyers. This means that the content of these communications cannot be disclosed to others, cannot normally be passed to the lawyers' clients, and at any event cannot be produced in court. In other Member States, such consequences will not follow unless the correspondence is marked as "confidential".

In yet other Member States, the lawyer has to keep the client fully informed of all relevant communications from a professional colleague acting for another party, and marking a letter as "confidential" only means that it is a legal matter intended for the recipient lawyer and his or her client, and not to be misused by third parties.

In some states, if a lawyer wishes to indicate that a letter is sent in an attempt to settle a dispute, and is not to be produced in a court, the lawyer should mark the letter as "without prejudice".

These important national differences give rise to many misunderstandings.

That is why lawyers must be very careful in conducting cross-border correspondence.

Whenever a lawyer wants to send a letter to a professional colleague in another Member State on the basis that it is to be kept confidential as between the lawyers, or that it is “without prejudice”, the lawyer should ask in advance whether the letter can be accepted on that basis. A lawyer wishing that a communication should be accepted on such a basis must express that clearly in the communication or in a covering letter.

A lawyer who is the intended recipient of such a communication, but who is not in a position to respect, or to ensure respect for, the basis on which it is to be sent, must inform the sender immediately so that the communication is not sent. If the communication has already been received, the recipient must return it to the sender without revealing its contents or referring to it in any way; if the recipient’s national law or rules prevent the recipient from complying with this requirement, he or she must inform the sender immediately.

#### ***Commentary on Article 5.4 – Referral Fees***

This provision reflects the principle that a lawyer should not pay or receive payment purely for the reference of a client, which would risk impairing the client’s free choice of lawyer or the client’s interest in being referred to the best available service. It does not prevent fee-sharing arrangements between lawyers on a proper basis (see also on Article 3.6 above).

In some Member States lawyers are permitted to accept and retain commissions in certain cases provided: a) the client’s best interests are served, b) there is full disclosure to the client and c) the client has consented to the retention of the commission. In such cases the retention of the commission by the lawyer represents part of the lawyer’s remuneration for the service provided to the client and is not within the scope of the prohibition on referral fees which is designed to prevent lawyers making a secret profit.

#### ***Commentary on Article 5.5 – Communication with Opposing Parties***

This provision reflects a generally accepted principle, and is designed both to promote the smooth conduct of business between lawyers and to prevent any attempt to take advantage of the client of another lawyer.

#### ***Commentary on Article 5.6 – Change of Lawyer***

Article 5.6 dealt with change of lawyer. It was deleted from the Code on 6 December 2002.

#### ***Commentary on Article 5.7 – Responsibility for Fees***

These provisions substantially reaffirm provisions contained in the Declaration of Perugia. Since misunderstandings about responsibility for unpaid fees are a common cause of difference between lawyers of different Member States,

it is important that a lawyer who wishes to exclude or limit his or her personal obligation to be responsible for the fees of a foreign colleague should reach a clear agreement on this at the outset of the transaction.

***Commentary on Article 5.8 – Continuing Professional Development***

Keeping abreast of developments in the law is a professional obligation. In particular it is essential that lawyers are aware of the growing impact of European law on their field of practice.

***Commentary on Article 5.9 – Disputes amongst Lawyers in Different Member States***

A lawyer has the right to pursue any legal or other remedy to which he or she is entitled against a colleague in another Member State. Nevertheless it is desirable that, where a breach of a rule of professional conduct or a dispute of a professional nature is involved, the possibilities of friendly settlement should be exhausted, if necessary with the assistance of the Bars or Law Societies concerned, before such remedies are exercised.

**IN THE CROWN COURT IN NORTHERN IRELAND**

**TWO COUNSEL COMPLIANCE CERTIFICATE**

**IN THE MATTER OF RULE 17.05 and / or 20.11 OF THE BAR CODE OF  
CONDUCT**

To be completed in ALL cases where a 2 counsel certificate has issued

AND a Junior Counsel is leading

OR where one of the representatives is NOT Counsel.

CASE NAME R -v- \_\_\_\_\_

ICOS No. \_\_\_\_\_/\_\_\_\_\_

CROWN COURT AT \_\_\_\_\_

2 COUNSEL CERTIFICATE CC/\_\_\_\_\_

I \_\_\_\_\_ (Print name) hereby certify that-

1. I am satisfied through my own enquiries that the lay client has been given clear and unequivocal advice that he is entitled to representation by BOTH a Senior and Junior Counsel and that the lay client has made an **informed** decision not to be so represented.
2. I am satisfied that the other legal representative instructed to appear on behalf of the lay client is competent to satisfy the requirements and does satisfy the requirements for which the two counsel certificate was issued.

## Appendix 12

3. (Where acting as a leading Junior) I am satisfied that proper efforts have been made to instruct a Senior Counsel and that no Senior Counsel is available to properly represent the lay client under the terms of this certificate. I further confirm that I am acting as a leading Junior in compliance with my obligations under the code of conduct of the Bar of Northern Ireland.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Signed \_\_\_\_\_

### THIS FORM IS TO BE LODGED WITH:

1. Counsel's instructing solicitor.
2. The Lay Client.
3. The Court or The relevant Crown Court Judge prior to Arraignment.
4. Any other advocate instructed in the case.

Any failure by Counsel **properly** to satisfy themselves as to the above matters or to correctly certify same will be considered a breach of the Code of Conduct.



## APPENDIX 13

### GUIDANCE ON BANKRUPTCY AND ENTERING INTO INDIVIDUAL VOLUNTARY ARRANGEMENTS WITH CREDITORS.

- (a) At the earliest opportunity a barrister shall report the fact of bankruptcy or entering into an individual voluntary arrangement with creditors to the Secretary of the Professional Conduct Committee, pursuant to section 8.08 of the code.
- (b) A barrister shall submit to the Secretary of the PCC his or her Statement of Affairs on becoming bankrupt, in the first instance, to allow the PCC to examine the conduct leading to the bankruptcy.
- (c) The barrister is under an ongoing duty to report to the Secretary of the PCC any significant change in circumstances during the period of bankruptcy or the individual voluntary arrangement.
- (d) The barrister shall provide such further documents or information to the Secretary of the PCC as may be requested during the period of bankruptcy or the individual voluntary arrangement.
- (e) The Professional Conduct Committee shall assess the circumstances and conduct leading to the bankruptcy or the individual voluntary arrangement, on an individual basis, and shall determine whether the conduct and circumstances leading to the bankruptcy or the individual voluntary arrangement amount to professional misconduct, conduct unbecoming of a barrister or bring the profession into disrepute.
- (f) A barrister who is required by the Bar Council to notify all instructing Solicitors who are proposing to engage him or who have engaged him of the bankruptcy or the individual voluntary arrangement must keep a written record of all relevant notifications to solicitors.
- (g) The barrister is not required to notify all lay clients of the fact of bankruptcy or entering into an individual voluntary arrangement. However, the barrister shall exercise his discretion, in appropriate cases, whether to notify the lay client of such matters.
- (h) The barrister shall notify his professional indemnity insurers of the fact of bankruptcy or entering into an individual voluntary arrangement.
- (i) Where the barrister has been made bankrupt or has entered into an individual voluntary arrangement such a barrister has additional obligations under Section 6.01 of the code, before obtaining a practising certificate, to satisfy the requirements of the Professional Conduct Committee as to his suitability to practice.
- (j) There is no provision of the code of conduct to prevent barristers adjudicated bankrupt, or entering into an individual voluntary arrangement, from practising as a barrister. However, where the bankruptcy or the individual voluntary arrangement is not deemed to be incompatible with practice, members need to avoid any conflict of interest between the interests of the lay client and their own personal financial position, and ensure that every aspect of the lay client's interest is properly represented and protected without fear or favour in accordance with the Code of Conduct.



## APPENDIX 14

### GUIDELINES ON ENGAGING IN ANY OTHER OCCUPATION BY MEMBERS OF THE BAR AND STUDENTS OF THE INN

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#### BACKGROUND

1. Historically, relatively few Barristers in independent practice ever sought to engage in any other occupation. However, in more recent times it has become apparent that some members of the Bar and Students of the Inn are facing significant financial pressures. These pressures are most acute at the very junior end of the Bar where many members carry the burden of considerable debt resulting from the imposition of university fees and the absence of student maintenance grants.
2. It is considered necessary and appropriate, in order to ensure that the Bar remains a profession that is accessible to persons from all social and economic backgrounds, for the Bar to assist in easing the financial pressures upon its younger members and students of the Inn by facilitating those who wish to engage in appropriate work outside their practice as a barrister or during their pupillage or when they are a student of the Inn.
3. Permission to engage in any other occupation while practicing as a Barrister or during pupillage or while studying as a student of the Inn is primarily intended to assist and facilitate members of the Bar in their attempts to establish a viable practice at the Bar or to assist students to complete their studies in preparation for Call to the Bar. The primary purpose of the rule is not to enable members of the Bar to supplement their incomes by part-time work. The Bar is and should remain a full time profession for those established at the Bar.
4. For these reasons, it is anticipated that the bulk of applications for permission to engage in any other occupation will be made by students of the Inn, by pupil Barristers or by Barristers in the first few years after their call. As explained in paragraph 14 (b), such permission will, if granted, usually be for a fixed period of time and, although that period may be extended by application for renewal, it is unlikely that more than 3 such renewals will be granted.

#### THE CODE OF CONDUCT OF THE BAR OF NORTHERN IRELAND

5. The issue of work outside of one's practice as an independent barrister is addressed at Section 5.01 in the Code of Conduct. It provides as follows: -

*5.01 A barrister in independent practice must ensure that his primary occupation is that of practise as a barrister and must not engage in any other*

*occupation which is inconsistent with his practice at the Bar. In particular, he should not engage in any other profession or carry on or take part in any other trade or business without first obtaining a consent in writing of the Benchers of the Inn and informing the Bar Council in writing of the fact that such consent has been obtained.*

*As part of formulating these Guidelines it has been agreed that section 5.01 should now be changed to become :*

**5.01** A barrister in independent practice must ensure that his primary occupation is that of practise as a barrister and must not engage in any other occupation which is inconsistent with his practice at the Bar. In particular, he should not engage in any other employment without first obtaining a consent in writing of the Benchers of the Inn and informing the Bar Council in writing of the fact that such consent has been obtained. Any application to undertake work outside the Bar should be made in accordance with the Guidance set out at Appendix 14 of the Code."

6. Sections 3.03 and 3.04 of the Code of Conduct are also of relevance. They provide: -

**3.3** *A "barrister in independent practice" is a barrister who represents to the public generally that he is willing in return for the payment of fees to render legal services to a client provided that:*

*a) a barrister who is a Law Officer of the Crown shall be deemed to be a barrister in independent practice although he does not represent to the public generally that he is willing to render legal services to clients;*

*b) a barrister who is a Member of Parliament or a Member of the European Parliament (or any assembly/forum) or a lecturer/teacher of law at an institution of higher or further education or an author of legal text books or articles may be a barrister in independent practice notwithstanding that his practice may not be his primary occupation.*

**3.4** *An "employed barrister" is a barrister who in return for the payment of a salary is employed wholly or primarily for the purpose of providing legal services to an employer 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 has complied with the requirements of section 27.01 of the Code.*

## **RULES OF ADMISSION OF THE INN OF COURT OF NORTHERN IRELAND**

7. The issue of engaging in any occupation other than that of a student of the Inn is addressed at Paragraph 7 of the Rules of Admission. It provides as follows: -

*7 If before Call to the Bar a student wishes to engage in any occupation other than that of a student of the Inn he shall apply to the Inn through the Under Treasurer for permission to do so.*

## **PROCEDURE**

8. Under Section 5.01 of the Code of Conduct any member of the Bar who wishes to engage in work outside of practice as an independent barrister must secure the prior written consent of the Benchers of the Inn of Court. The same procedure is adopted in relation to applications made by Students of the Inn. For the avoidance of any doubt, neither Students of the Inn nor members of the Bar are required to secure such consent in respect of the occupations mentioned in Sections 3.03(a) or (b) of the Code of Conduct.
9. No Barrister or Student of the Inn should engage in work outside of practice as an independent Barrister or during pupillage or while studying as a Student of the Inn, save for the occupations specified in Sections 3.03(a) or (b) of the Code of Conduct, until the consent of the Benchers has been obtained.
10. Applications for consent must be submitted in the *pro forma* available from the Benchers through the Bar Council office.
11. Applications for consent shall be determined by a sub-committee of Benchers [‘the sub-committee’] elected by all the Benchers.
12. If the sub-committee decides to refuse consent, the applicant shall have a right of appeal [exercisable within 7 days of receipt of notification of refusal of consent] to a full meeting of the Benchers.
13. Both the sub-committee and the Benchers shall have the right, when considering any application or appeal, to request further details from the applicant and/or to interview the applicant.
14. Any consent granted shall be: -
  - a. based upon the information provided in the applicant’s application and any further information provided by him upon request and / or at interview;
  - b. subject to whatever conditions the sub-committee and / or the Benchers consider appropriate including, without prejudice to the generality of the foregoing, a condition regarding the length of time for which the applicant will be permitted to engage in work outside of his practice as an independent barrister. In general, any permission granted in the case of a Student of the Inn shall only be valid during the period prior to Call to the Bar. Similarly, any permission granted to a pupil Barrister shall only be valid during the course of

pupillage and any permission granted to a member of the Bar following the completion of pupillage shall usually remain valid for a period of no more than 12 months, subject to an application for renewal of the same. In respect of renewal applications, it is unlikely that more than 3 renewals will be granted to any applicant.

15. The applicant must inform the Benchers if, at any time, there is any material change in circumstances such as to render the information provided in the application, upon request, or at interview, inaccurate or incomplete in some material respect.
16. The Benchers, following consultation with the Bar Council, reserve the right to amend these guidelines as and when they deem it necessary and appropriate to do so.

### **GUIDELINES FOR APPLICANTS**

17. The purpose of these guidelines is to assist those Barristers who seek consent under Section 5.01 of the Code of Conduct or Students of the Inn who seek consent under Paragraph 7 of the Rules of Admission. They are intended as guidelines only, not as rigid rules, and it should be noted that the Benchers at all times retain a discretion to exercise their judgment in any particular application as they see fit, in light of the particular facts of that application, the provisions of the Code of Conduct, the Rules of Admission and any other relevant factors.
18. The occupation in which the Barrister or Student of the Inn intends to engage must not be inconsistent with practice at the Bar or with the status of a Student of the Inn. It must not, for example, take precedence over any aspect of work as a Barrister or any aspect of studies as a Student of the Inn. Practice at the Bar or studying as a Student of the Inn must at all times remain the applicant's primary occupation. Any outside occupation which interferes with a Barrister's ability generally to be available for work as a Barrister during business hours is unlikely to be considered consistent with practice at the Bar. Similarly, any outside occupation which interferes with a student's ability generally to engage fully in the studies leading up to Call to the Bar is unlikely to be considered to be consistent with the status of a Student of the Inn.
19. The other occupation must not be one which: -
  - a. conflicts with the applicant's duties as a Barrister or the applicant's status as a Student of the Inn;
  - b. confers upon the applicant any unfair advantage over the applicant's colleagues at the Bar;
  - c. might, if pursued by the applicant, bring the profession of Barrister into disrepute; or

- d. might, if pursued by the applicant, because of the nature of the work engaged in and the location, context and conditions in which the work is performed, reasonably cause members of the public or members of the profession to perceive that the work was inconsistent with a Barrister's duty to display high standards of integrity and to independently and professionally advise and represent clients to a high standard and to the best of his or her ability.

20. Any Barrister seeking consent to pursue another occupation under Section 5.01 should be aware that the disciplinary portion of the Code of Conduct applies to conduct outside the applicant's practice as a barrister and that, accordingly, the applicant must not, whilst pursuing any other permitted occupation, engage in activities which would render the applicant liable to disciplinary action under the Code of Conduct.

21. Without prejudice to the provisions of Paragraphs 18 and 19, there is no exhaustive list of other occupations in respect of which permission under Section 5.01 of the Code of Conduct or Paragraph 7 of the Rules of Admission will always be withheld. However, the following are examples of the classes of other occupations which are highly unlikely to be permitted in the case of Barristers: -

- a. working for, or providing services to, solicitors;
- b. working for, or providing services to, insurers, insurance agents, or brokers;
- c. working for, or providing services to, patent or trademark attorneys;
- d. working for, or providing services to, the Police or the Prison Service;
- e. working for, or providing services to, the Public Prosecution Service;
- f. working for, or providing services to, the Northern Ireland Court Service;
- g. working on an employed or self-employed basis at or about any court or tribunal building, the Bar Library, or the Law Society Building;
- h. working on an employed or self-employed basis in any capacity, which is likely to lead to the barrister being a witness in proceedings before any court or tribunal in Northern Ireland;
- i. working for an employers' or trade association or for a trade union.