

BAR
STANDARDS
BOARD

REGULATING BARRISTERS

International Practising Rules

Consultation paper

May 2011

INTERNATIONAL PRACTISING RULES

Part 1: Introduction and Background

1. The Bar Standards Board (BSB), the independent regulatory arm of the Bar Council, has committed itself to reviewing the Code of Conduct of the Bar of England and Wales (the Code). The Code sets out the regulatory rules which bind barristers.
2. The BSB has previously undertaken various consultation exercises reviewing the code as a whole. These include:
 - In June 2007 the BSB issued its first consultation paper on the review of the Code. This paper sought to set the agenda and to determine the priorities of the review. It raised fundamental questions in respect of the format and structure of the Code and in particular whether core duties should be introduced.
 - In March 2009 the BSB issued a consultation paper on proposed Conduct Rules. The Core Duties and other Rules set out the proposed ethical and professional standards with which a barrister must comply.
 - In March 2010 the BSB issued a consultation paper on the development of authorisation to practise arrangements as a result of requirements arising from the Legal Services Act 2007 (the 2007 Act). The consultation paper sought views on the proposed principles for the authorisation of barristers to practise as well as on proposals for the regulation of barristers not entitled to practise.
3. In January 2011 the BSB issued a final consultation paper that proposed a new Code of Conduct for the Bar based on the previous consultation exercises. That consultation has now closed and the BSB is considering the responses.
4. The purpose of this paper is to seek views specifically on the International Practice Rules, currently contained in Annexe A of the existing code. Amendments to these Rules were not included in the previous consultations on the general review of the Code but, subject to the responses to this consultation, it is intended to include some changes in the final version of the new Code.

Purpose of the revisions

5. The BSB has been considering revisions to the IPR in light of anomalies and anachronisms which have been identified since 2006.
6. This paper puts forward the BSB's proposals for changes to the IPR to address these anomalies by restating the rules in a clearer form, without radically altering the effect of the rules and without increasing the current prohibitions contained in the rules.

Responses to this consultation paper

7. A list of those to whom this consultation paper is being sent is attached at **Annex 5**. This list is not meant to be exclusive. Responses are welcomed from anyone who has evidence or views about the questions raised in this paper.
8. It would be helpful if responses could be as full as possible with detailed reasons given for your comments.
9. The BSB will summarise the responses received and will publish responses on its website. If you do not wish your response to be published, please make that clear when you reply to us.
10. Responses should arrive no later than **29 August 2011** and should be sent to kbath@barstandardsboard.org.uk. Alternatively responses can be posted to:

Kuljeet Bath
Bar Standards Board
289-293 High Holborn
London WC1V 7HZ

Part 2: Current position

11. The International Practising Rules (IPR), which are set out in Annexe A to the 8th edition of the Code, adapt the normal rules which apply to practising barristers to make them applicable to “International Work”. The Code’s definition of “International Work” makes distinctions based on:
 - i. Where the barrister substantially performs his instructions;
 - ii. the residence of his lay client; and
 - iii. where the instructions emanate from

12. The IPR sets out various restrictions and relaxations of the Code, including:
 - i. The disapplication of Code 401(a) for International work, which as a result permits the Bar to accept instructions directly from lay clients
 - ii. The disapplication of Code 602. This rule states that self-employed barristers are subject to the cab-rank rule which normally requires them to accept any suitable set of instructions. The present IPR by reason of its definition of “International Work” disapplies the cab-rank rule for:
 - Some but not all proceedings in England and Wales (depending on the residence of the lay client and where, geographically the instructions come from)
 - Some but not all foreign proceedings (depending on where the work is actually carried out).
 - iii. Rule 4 of the IPR relaxes and modifies various provisions of the the Code in relation to International Work substantially performed outside England and Wales (i.e. allowing a practising barrister to enter into any association with any lawyer, other than a member of another authorised body for the purpose of sharing any office, services or fees).
 - iv. Rules 5-7 deal with various miscellaneous matters.

Part 3: Proposed changes to the IPR

13. The BSB has been considering changes to the rules suggested by the Bar Council. The BSB considers that, although the ambit of the rules is generally well understood, the layout of the existing IPR made it difficult to determine the underlying principles. In particular the BSB are of the view that it is no longer sensible to make distinctions based on where work is undertaken and where the instructions emanate from. The present rules give rise to various anomalies and uncertainties which result in numerous queries. For example, whether or not the preparation of submissions to an overseas court for a client in England and Wales is international work depends on whether the work is done in this country or abroad. Similarly whether or not the cab rank rule applies can depend on where the work is done, and whether or not a solicitor must be involved, depends on where the instructions come from.

Q1: Do you agree that it is no longer sensible to make distinctions in the IPR based on where the work is done or where instructions come from?

New definitions

14. The proposed new rules no longer contain a definition of “International Work” but instead define “foreign work” and “foreign clients”. The introduction of these three definitions makes it easier to define the circumstances in which the cab rank and the professional client rules apply in a more logical and consistent way.
15. Foreign work is defined in Practising Rule 25, as (in summary) work relating to Court or other legal proceedings abroad or, if the matter is non-contentious, work subject to the law of a place outside England and Wales. The definition of “foreign clients” is taken from the “Centre of Main Interests” test from the law of cross-border insolvency, as this is an international and objective test, independent of the type of legal entity concerned. This definition has been further considered and refined in the European Court of Justice and the English Courts.¹ The definition of “foreign lawyers” is defined in accordance with the definition in the Courts and Legal Services Act 1990 (the 1990 Act).

Q2: Do you agree with removing the current definition of “international work” and replacing this with definitions of “foreign work”, “foreign lawyers” and “foreign clients”?

Q3: If so do you think the new definitions are adequate?

Application of the cab rank rule

16. It is proposed that the principle underlying the application of the cab rank rule should be that it should extend to all proceedings in England and Wales, whether

¹ See *Re Stanford International Bank Ltd* [2010] ECWA Civ 137

instructions come from English, Welsh or foreign lawyers in order to ensure access to justice for all, including any foreigners, who may seek it in our legal system. Conversely it should not apply to matters outside England and Wales, which ought logically to be governed by the professional rules of the country administering the local justice system, where the cab rank rule is largely unknown and its application is therefore not expected.

17. The application of this principle will mean that one category of instructions which a barrister can currently elect to accept will become obligatory under the new rules. Instructions from a foreign lawyer with a foreign lay client to advise (or appear in arbitrations or other non-court proceedings) in England and Wales will no longer be included in the definition of foreign work and will therefore be subject to the cab rank rule in the normal way. The BSB considers that this should improve access to justice in England and Wales.
18. On the other hand, two categories of instructions which are currently subject to the cab rank rule will no longer have to be accepted although it will still be permissible for barristers to do so. These categories are (a) instructions relating to foreign proceedings from a solicitor in England and Wales to do work for a foreign client and (b) instructions relating to foreign proceedings from any solicitor to do work for an English or Welsh client, in either case where the work is to be done substantially in England and Wales. The BSB considers that it is not relevant where the work is to be done and that this should no longer be a factor in deciding whether the work is “foreign work” and hence not subject to the cab rank rule.

Q4: Do you agree with the way in which the cab rank rule will be applied in the proposed rules?

Permissible work

19. In the majority of instances there will be no change to work that is permissible under the current rules. There is no currently permitted area of work which the new rules will prohibit.
20. The changes being introduced by the rules will involve making some work which is presently prohibited permissible. Work that is currently not permitted but is proposed to become so under the new rules includes:
 - i. Advocacy work preparatory to appearing in Court in England and Wales based on instructions from a foreign solicitor;
 - ii. advisory work, on an English (or Welsh) matter, with no instructing solicitor, where the instructions come directly from a foreign client in England and Wales; and
 - iii. any type of work, on a foreign matter, with no instructing solicitor, where the instructions come directly from a client in England and Wales, with the work being substantially performed in England and Wales.

21. The first change is the most significant but it must be very rare that such situations will arise in practice. The first change will allow barristers to accept instructions from a foreign lawyer to provide advocacy services preparatory to appearing in a court in England and Wales without an English or Welsh solicitor having already been instructed. The BSB is not proposing that the barrister should be able to appear in Court without an English or Welsh solicitor, but only that the barrister could start work, for example, on a skeleton argument, statement or affidavit and on the preparation of bundles in parallel with the search for a suitable English (or Welsh)-qualified solicitor, subject to the client or foreign lawyer bringing in such a solicitor by the time of appearing in Court. This will enable urgent work to be started without unnecessary delay and improve access to justice and the overall competitiveness of the legal profession in this jurisdiction. The requirement for a solicitor to be instructed will not apply to barristers who are entitled to do public access work.
22. The other two changes listed in paragraph 20 above remove anomalies in the circumstances in which barristers can do work when instructions come directly from clients. The first will allow a barrister to accept instructions to advise in relation to proceedings in England and Wales directly from a foreign lay client who sends instructions from within England and Wales. This will probably be relatively rare but as a barrister is already permitted to accept instructions to advise a foreign lay client if the instructions come from abroad, it is the BSB's view that it does not make sense to retain the distinction in the present IPR rule 1(b) although it recognises that this will mean that instructions from foreign and local clients will be treated differently in relation to similar work. The second change will remove the anomaly that a barrister (without a public access licence) currently cannot accept instructions on a foreign matter directly from a lay English client unless the work is to be performed abroad; the change will permit, but not oblige, a barrister to accept such instructions wherever the work is then performed. The BSB considers that the distinction in the present rules is no longer relevant.
23. At **Annex 2** there is a chart which summarises the old and new rules on the kinds of work which are permissible and obligatory.

Q5: Do you agree that these categories of work which were previously prohibited should become permissible under the new rules?

Part 4: Structure of the new rules

24. The draft rules are contained at **Annex 4**. At present the IPR can be found at annexe A of the existing Code of Conduct. In the new Code which has recently been consulted on, the rules will be included in the Practising Rules. Annex 3 is a marked up version of the Practising Rules highlighting how the changes to the IPR will fit into the new Code.
25. The new Code brings together all practising rules in one section and there is therefore not a separate annex on international practising rules. Instead the relevant provisions are included as exceptions to the rules they amend. The BSB has adopted this approach because it considers that it will be more convenient for users of the Code to have all the practising rules in one place rather than having also to refer to a separate annex. However, this may make it more difficult to get an overview of the rules which apply to foreign work and to work from foreign clients and lawyers. One way of meeting that difficulty would be to produce guidance.

Q6: Do you agree with the proposed approach of incorporating the international practising rules into the body of the Practising Rules?

Q7: Do you think guidance will be necessary to accompany the new rules?

Part 5: Content of the new rules

Definitions

26. The new definition of “foreign work” can be found at rule 25 of the Practising Rules, the definition of a “foreign lawyers” can be found within the definition of professional client in the definitions section of the new Code and “foreign clients” is also defined in the definitions section of the new Code.

Permitted work

27. Rule 24.1 of the practising rules relaxes the requirement to have a professional client in relation to work for court hearings in England and Wales. This will allow the barrister to do preparatory work. Any barrister would be able, but not obliged, to accept instructions from a foreign lawyer for an urgent hearing in England and Wales and commence preparatory work, such as producing a skeleton argument and preparing hearing bundles, provided the barrister ensures that the foreign lawyer instructs an English solicitor before the barrister appears in court. The rule makes it clear that a barrister may not appear in court unless a solicitor or other authorised litigator has been instructed to conduct the litigation. If the foreign lawyer does not take reasonable steps to engage a solicitor or litigator the barrister must cease to act and return the instructions.
28. Rule 24.3 enables a barrister to accept instructions direct from a foreign client provided that the legal services do not include the provision of advocacy services in England and Wales. This will allow barristers to provide advisory services on domestic matters direct to foreign clients wherever the instructions come from. Barristers who are entitled to do public access work may accept instructions from all clients for any type of work. Rule 24 does not apply to foreign work so barristers doing foreign work are not subject to any of the requirements regarding the involvement of a professional client.
29. Rule 26 sets out the limitations on the kind of work a self-employed barrister may do. The amendments make a minor changes to the exceptions for what is now foreign work. The amendment to rule 31.10 allows barristers employed by a foreign lawyer to provide legal services which consist of foreign work to clients of their employer irrespective of where the work is done.
31. Rule 62.2 of the Practice Rules, is an exception to the general prohibition contained in rule 59 dealing with associations with others. Rule 62.2 will allow a barrister who performs foreign work in an overseas office which he has established or joined in order to carry out foreign work, to share premises and enter into associations with any lawyer, including solicitors and members of other authorised bodies.

Fees and remuneration

32. There is a consequential amendment to rule 71.1 of the Practice Rules which allows the barrister to charge for any work undertaken, on any basis, or by any method the

barrister may think fit, provided that the method or basis, in the case of foreign work performed by the barrister at an office established by him outside of England and Wales is permitted by the law of the place where that office is situated.

Cab rank rule

33. Rules 75.12 to 75.14 deal with the application of the cab-rank rule to foreign work. The amendments exclude foreign work (previously international) work, instructions from a foreign lawyer to supply advocacy services in England and Wales and instructions from foreign clients from the scope of the cab rank rule.

Table of destinations

34. A table of destinations is attached at **annex 3** which shows where the current provisions in Annexe A of the Code are reflected, with amendments, in the draft new Code.

Q8: Do you agree with the content of the new rules?

Q9: Do you have any specific drafting comments?

Q10: Do you think there is anything further that needs to be included in the rules?

Next steps

35. The results of this consultation will be taken into account in revising the new draft Code and the resulting changes will be introduced at the same time as the new Code comes into effect. That is expected to be some time in 2012.

Equality and diversity

36. The Bar Standards Board is committed to promoting equality and diversity throughout the Bar and within our own organisation. We endeavour to ensure that our processes and procedures are fair, objective, transparent and free from unlawful discrimination. We are also keen to identify ways in which access to and progression within the Bar can be widened such that everyone who has the ability to succeed is able to do so regardless of race, gender, disability, religion or belief, sexual orientation, age or socioeconomic background.
37. In addition to the questions we have asked you to respond to, we would welcome contributions on any areas of the consultation paper which you consider might have implications for equality. For example, are any of the proposals likely to have a greater positive or negative effect on some groups compared to others? We would particularly welcome feedback on whether there are likely to be any negative consequences for any group arising from the proposed changes and how these could be mitigated, or if there are any opportunities to promote greater equality and diversity in the areas mentioned above.

Q11: Are any of the proposals likely to have a greater positive or negative effect on some groups compared to other? If so, how could this be mitigated?

ANNEX 1: LIST OF QUESTIONS

- Q1: Do you agree that it is no longer sensible to make distinctions in the IPR based on where the work is done or instructions come from?**
- Q2: Do you agree with removing the current definition of “international work” and replacing this with definitions of “foreign work”, “foreign lawyers” and “foreign clients”?**
- Q3: If so do you think the new definitions are adequate?**
- Q4: Do you agree with the way in which the cab rank rule will be applied in the proposed rules?**
- Q5: Do you agree that these categories of work which were previously prohibited should become permissible under the new rules?**
- Q6: Do you agree with the proposed approach of incorporating the international practising rules into the body of the practising rules?**
- Q7: Do you think guidance will be necessary to accompany the new rules?**
- Q8: Do you agree with the content of the new rules?**
- Q9: Do you have any specific drafting comments?**
- Q10: Do you think there is anything further that needs to be included in the rules?**
- Q11: Are any of the proposals likely to have a greater positive or negative effect on some groups compared to other? If so, how could this be mitigated?**

ANNEX 2

Matter	Type of work*	Solicitor	Client	where do the instructions come from?	where is the work substantially performed?	<----- Present position ----->			<----- Proposed new position ----->	
						Inter-national work today?	Present Position: commentary	N: not permitted	Any change under the new rules? Commentary	N: not permitted
								P: permitted not obliged		P: permitted not obliged
			O: obliged	O: obliged						
<i>* "Advisory": includes everything except advocacy services in E&W (including, e.g. appearing at an arbitration)</i>										
Instructions from a professional client										
English	Any	English	Any	from the solicitor	anywhere	N	Obliged; this is domestic work	O	No change	O
English	Advisory	Foreign	English	from the solicitor	anywhere	N	Permitted under Code para 401(a)(i), and obliged under para 602	O	No change	O
English	Advocacy	Foreign	Any	from the solicitor	anywhere	N	Effectively prohibited because there would be no one to conduct the litigation	N	Preparatory work only permissible #	P
English	Advisory	Foreign	Foreign	from the solicitor	anywhere	Y	Permitted under para 401(a)(i) but not subject to Cab Rank under IPR	P	Not included within "Foreign Work"; would become obligatory	O

Foreign	Any	Foreign	Foreign	from the solicitor	anywhere	Y	Permitted not obliged	P	No change	P
Foreign	Any	Any	Any	from the solicitor	abroad	Y	Permitted not obliged	P	No change	P
Foreign	Any	Any	English	from the solicitor	E&W	N	Obligated if competent	O	This would become Foreign Work	P
Foreign	Any	English	Foreign	from the solicitor	E&W	N	Must be rare	O	This would become Foreign Work	P
									# see New IPR Rule 9; obligation to bring in Eng sol ASAP	

Matter	Type of work*	Solicitor	Client	where do the instructions come from?	where is the work substantially performed?	<----- Present position ----->			<---- Proposed new position ---->	
						Inter-national work today?	Present Position: commentary	N: not permitted	Any change under the new rules? Commentary	N: not permitted
								P: permitted not obliged		P: permitted not obliged
						O: obliged	O: obliged			
<u>Instructions without a professional client</u>										
English	Advisory	None	Foreign	E&W	anywhere	N	Must be rare	N	This would become permissible	P

English	Advisory	None	Foreign	abroad	anywhere	Y	Permitted not obliged	P	No change	P
English	Advocacy	None	Foreign	anywhere	anywhere	N	Need a professional client	N	No change	N
Foreign	Any	None	English		E&W	N	Not permitted	N	This would become Foreign Work	P
Foreign	Any	None	Any		abroad	Y	Can take direct instructions	P	No change	P
Foreign	Any	None	Foreign	abroad	E&W	Y	Can take direct instructions	P	No change	P

Annex 3: IPR – Table of destinations

Current Code Paragraph	New draft Code Practising Rule
1	25
2	Not included – this is covered by Core Duties* ²
3	24 and 75.12
4(a)	62.2
4(b)	14.2 and 26
4(c)	71.1
4(d)	31.10
4(e)	8
5	22
6	14.2
7	Not included – this is covered by Core Duties*

² *Could be covered in guidance if thought necessary

ANNEX 4

THE CODE OF CONDUCT OF THE BAR OF ENGLAND AND WALES PRACTISING RULES

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- D. RULES APPLYING TO ALL BARRISTERS SUPPLYING LEGAL SERVICES

A. APPLICATION OF THESE RULES

1. These Rules apply to you if you are:

1.1 a barrister; or

1.2 a registered European lawyer, in which case:

- (a) rules 14, 18-21, 24, 26, 27, 49-52, 57 and 59 do not apply to you;
- (b) the remainder of these Rules apply to you in connection with all professional work undertaken by you in England and Wales as if you were a self-employed barrister or an employed barrister or a barrister who is a manager or employee of a recognised body, as the case may be, and as if references in these Rules to barristers included reference to registered European lawyers.

B. SCOPE OF PRACTICE

B1. No Practice without a Practising Certificate

2. You must not carry on any reserved legal activity unless you are authorised to do so.
3. If you do not hold a practising certificate:
 - 3.1 you may not practise as a barrister; and
 - 3.2 you are not authorised by the Bar Council to carry on any reserved activity.

4. For the purposes of this Code, and subject to rule [7] below, you practise as a barrister if:
 - 4.1 you supply legal services and in connection with the supply of such services:
 - (a) you hold yourself out or allow yourself to be held out as a barrister; or
 - (b) you carry on any reserved legal activity pursuant to authorisation from the Bar Council; or
 - 4.2 you act as a manager of a recognised body and as such you are required by the rules of that body's approved regulator to hold a practising certificate issued by the Bar Council.
5. For the purposes of this Code any reference to the supply of legal services includes an offer to supply such services.
6. Rule 3.1 above does not apply to you if you are a pupil in the non-practising six months of pupillage if and insofar as you accept a noting brief with the permission of your pupil-supervisor or head of chambers.
7. If you do not hold a practising certificate and you supply legal services in the manner provided for in rules 8, 9 or 10 below, then you shall not, by reason of supplying those services:
 - 7.1 be treated for the purposes of this Code as practising as a barrister; or
 - 7.2 be subject to the rules in the Conduct Rules or in these Rules applying only to practising barristers.
8. Rule 7 above applies to you if and insofar as:
 - 8.1 you are practising as a foreign lawyer; and
 - 8.2 you do not:
 - (a) give advice on English law; or

- (b) supply legal services in connection with any proceedings or contemplated proceedings in England and Wales (other than as an expert witness on foreign law).
- 9. Rule 7 above applies to you if:
 - 9.1 you are authorised by another Approved Regulator to carry on a reserved legal activity and currently permitted to practise by that Approved Regulator;
 - 9.2 you hold yourself out as a barrister; and
 - 9.3 before supplying legal services to any person or employer and when first dealing with any third party in the course of supplying legal services, you inform them fully and comprehensibly in writing that you are not practising as a barrister.
- 10. Rule 7 above applies to you provided that:
 - 10.1 you supplied legal services prior to [*commencement date*] pursuant to paragraph 206.1 or 206.2 of the 8th Edition of the Code; and
 - 10.2 if you supply any legal services in England and Wales, you were called to the Bar before 31 July 2000; and
 - 10.3 before [*date*] in each year, and promptly after any change in the details previously supplied to the Bar Council, you provide in writing to the Bar Council details of the current address(es) with telephone number(s) of the office or premises from which you do so, and:
 - (a) if you are employed, the name, address, telephone number and nature of the business of your employer; or
 - (b) if you are an employee or owner or manager of a recognised body, the name, address, email address, telephone number and the name of the recognised body and its approved regulator; and
 - 10.4 unless you only offer services to your employer or to the recognised body of which you are a manager or an employee you (or, if you are supplying legal services to clients of your employer or a recognised body of which you are a manager or an employee, that employer or body) are currently insured by insurers authorised to conduct such business against any and all claims in respect of civil liability for professional negligence arising out of or in connection with the supply of legal services for at least the first £250,000 of each and every claim, with an excess not exceeding £500.

B2. Practice with a Practising Certificate

11. Rules 12 to 22 below apply to you if you practise as a barrister.
12. You may only carry on reserved legal activities or supply other legal services in the following capacities:
 - 12.1 as a self-employed barrister, subject to the limitations imposed by rules 23 to 28 below;
 - 12.2 as an employed barrister, subject to the limitations imposed by rules 29 to 35 below; or
 - 12.3 as a manager or employee of a recognised body, subject to the limitations imposed by rules 36 to 41 below.
13. You may only practise or be involved with the supply of legal services in more than one capacity only in the following circumstances:
 - 13.1 in accordance with rule 42 below; or
 - 13.2 after:
 - (a) having notified the Bar Standards Board in writing of an intention so to do;
 - (b) having supplied the Bar Standards Board with such information as the Bar Standards Board requires in relation thereto; and
 - (c) having agreed with each employer or recognised body with which you are involved a protocol that enables you to avoid or resolve any conflict of interests or duties arising from practice and/or involvement in those capacities.
14. You may only supply legal services to the public if you are, or (if you are (i) an employed barrister or (ii) a barrister practising as a manager or employee of a recognised body) your employer or the body, as the case may be, is, covered by insurance against claims for professional negligence arising out of the supply of your services:
 - 14.1 insofar as you supply legal services in England and Wales, in such amount and upon such terms as are currently required by the Bar Standards Board; and/or
 - 14.2 insofar as if you supply legal services outside England and Wales, in an amount not less than:
 - (a) the minimum level of insurance cover required by law or by the rules of the Bar in the place where your services are supplied; or
 - (b) if there is no such minimum, in such amount and upon such terms as are currently required by the Bar Standards Board pursuant to rule 14.1 above.

15. If you are a registered European lawyer, you may only supply legal services to the public if you have delivered to the Bar Standards Board a copy of the current insurance policy or the current certificate of insurance relating to the insurance required by rule 14 above.
16. If you are a registered European lawyer, the Bar Standards Board may exempt you from the requirement imposed by rule 14 above:
 - 16.1 If you wish to apply for such an exemption, you must provide to the Bar Standards Board evidence to show that you are covered by insurance taken out or a guarantee provided in accordance with the rules of your home state.
 - 16.2 If the Bar Standards Board is satisfied that such insurance or guarantee is fully equivalent in terms of conditions and extent of cover to the cover required pursuant to rule 14, the Bar Standards Board may exempt you wholly from the requirement imposed by rule 14.
 - 16.3 If the Bar Standards Board is satisfied that the equivalence is only partial, the Bar Standards Board may require you to arrange additional insurance or an additional guarantee to cover the elements which are not already covered by the insurance or guarantee contracted by you in accordance with the rules of your Home State.
17. If you are a pupil who has completed or been exempted from the non-practising six months of pupillage, you may only supply legal services to the public or exercise any right which you have by reason of being a barrister if you have the permission of your pupil-supervisor or head of chambers.
18. If you are of less than three years' standing you may only supply legal services to the public or exercise any right of audience by virtue of authorisation by the Bar Council if your principal place of practice (or if you are practising in a dual capacity, each of your principal places of practice) is either:
 - 18.1 a chambers or annex of chambers which is also the principal place of practice of a qualified person who is readily available to provide guidance to you; or
 - 18.2 an office of an organisation of which an employee, partner, manager or director is a qualified person who is readily available to provide guidance to you.
19. For the purpose of rule 18 and 24.4 you shall be treated as being of a particular number of years' standing if you:
 - 19.1 have been entitled to practise and have practised as a barrister (other than as a pupil who has not completed pupillage in accordance with the Bar

Training Regulations) or as a person authorised by another approved regulator;

19.2 have made such practice your primary occupation; and

19.3 (subject to rule 20 below) have been entitled to exercise a right of audience before every court in relation to all proceedings

for a period (which need not be continuous and need not have been as a person authorised by the same approved regulator) of at least that number of years.

20. Any barrister who during any period before 31 July 2000 was entitled to exercise a right of audience as an employed barrister may for the purpose of rule 19.3 above count that period as if he had been entitled during that period to exercise a right of audience before every Court in relation to all proceedings provided that he:

20.1 notified the Bar Council in writing of his wish to do so before [*commencement date*]; and

20.2 either:

(a) has complied with any conditions (including any conditions as to further training) which the Bar Council or Bar Standards Board may require; or

(b) has been informed by the Bar Council or Bar Standards Board that he is not required to comply with any such conditions.

21. A person shall be a qualified person for the purpose of paragraph 18 if he:

21.1 has been entitled to practise and has practised as a barrister (other than as a pupil who has not completed pupillage in accordance with the Bar Training Regulations) or as a person authorised by another approved regulator for a period (which need not have been as a person authorised by the same approved regulator) of at least six years in the previous eight years; and

21.2 for the previous two years;

(a) has made such practice his primary occupation, and

(b) has been entitled to exercise a right of audience before every court in relation to all proceedings; and

- 21.3 is not acting as a qualified person in relation to more than two other people;
and
- 21.4 has not been designated by the Bar Standards Board as unsuitable to be a qualified person.
22. In respect of a barrister who is exercising a right to practise in a Member State other than the United Kingdom pursuant to the Establishment Directive, or in Scotland, or Northern Ireland pursuant to the European Communities (Lawyer's Practice) Regulations 2000, a person shall be a qualified person for the purpose of paragraph 18 if he:
- 22.1 has been designated by the Bar Standards Board as possessing qualifications and experience in that state or country which are equivalent to the qualifications and experience required by sub-paragraphs 18.1 and 18.2;
and
- 22.2 is not acting as a qualified person in relation to more than two other people;
and
- 22.3 has not been designated by the Bar Standards Board as unsuitable to be a qualified person.

B3. Scope of Practice as a Self-Employed Barrister

23. Rules 24 to 28 below apply to you if you are a self-employed barrister, whether or not you are acting for a fee, in relation to your practice as a self-employed barrister.
24. You may only supply legal services ~~(other than international work)~~ (other than foreign work) if you are appointed or instructed by the Court or instructed:
- 24.1 by a professional client (who may be an employee of the client), provided that, if you are instructed by a foreign lawyer to provide advocacy services in relation to court proceedings in England and Wales:
- (a) you must advise the foreign lawyer to take appropriate steps to instruct a solicitor or other authorised litigator to conduct the litigation and, if requested, take reasonable steps to assist the foreign lawyer to do so;
- (b) you must cease to act and return your instructions if it appears to you that the foreign lawyer is not taking reasonable steps to instruct a solicitor or other authorised litigator to conduct the litigation; and

- e(c) you must not appear in court unless a solicitor or other authorised litigator has been instructed to conduct the litigation; or
- 24.2 by a licensed access client, in which case you must comply with the Licensed Access Rules; or
- ~~24.1~~24.3 by a foreign client, provided that the legal services do not include the provision of advocacy services in England and Wales; or
- ~~24.2~~24.4 by or on behalf of any other lay client, provided that:
- (a) you are of more than three years' standing
 - (b) you have complied with such training requirements as may be imposed by the Bar Standards Board; and
 - (c) you have notified the Bar Standards Board that you hold yourself out as willing to accept instructions from lay clients,

in which case you must comply with the Public Access Rules.

25. "Foreign International work" means legal services of whatsoever nature relating to:~~means³ practice as a barrister:~~
- 25.1 court or other legal proceedings taking place or contemplated to take place outside England and Wales; or
- ~~25.1~~25.2 if no court or other legal proceedings are taking place or contemplated, any matter or contemplated matter subject to the law of a place outside England and Wales, where the work:
- ~~(a) — relates to matters or proceedings essentially arising taking place or contemplated outside England and Wales; and~~
 - ~~(b)~~(a) is to be substantially performed outside England and Wales; or
- ~~25.2 — where the lay client carries on business or usually resides outside England and Wales provided that:~~
- ~~25.3 — the instructions emanate from outside England and Wales; and~~
- ~~(a)~~(b) the work does not involve the barrister in providing advocacy services.
26. You must not in the course of your practice, except (i) as permitted by the Public Access Rules; or (ii) in relation to foreign work performed by you at an office outside England and Wales which you have established or joined primarily for the purposes of carrying out that particular foreign work or foreign work in general:~~international work substantially performed outside England and Wales:~~

³This definition is under review as part of a review of the International Practising Rules

- 26.1 undertake the management administration or general conduct of a lay client's affairs;
 - 26.2 conduct litigation (for example issuing any claim or process or instructing any expert witness or other person on behalf of your lay client or accepting personal liability for the payment of any such person);
 - 26.3 conduct correspondence or other work involving other parties save as permitted by rule 27 below;
 - 26.4 conduct a case in court if you have previously investigated or collected evidence for that case unless you reasonably believe that the investigation and collection of that evidence is unlikely to be challenged;
 - 26.5 attend at a police station without the presence of a solicitor to advise a suspect or interviewee as to the handling and conduct of police interviews unless you have complied with such training requirements as may be imposed by the Bar Standards Board in respect of such work;
 - 26.6 act as a supervisor for the purposes of section 84(2) of the Immigration and Asylum Act 1999; or
 - 26.7 conduct in court any criminal proceedings in which you have attended at a police station for any defendant in connection with those proceedings or any associated proceedings unless you reasonably believe that nothing said, done, heard or seen by you at the police station might require you to give evidence in those proceedings.
27. You may only conduct correspondence with other parties (in the form of letters, faxes, emails or the like) if you:
- 27.1 are satisfied that it is in the lay client's best interests that you do so and that you have adequate systems, experience and resources for managing appropriately such correspondence;
 - 27.2 have adequate insurance cover in the event that the lay client suffers any loss arising from the conduct of the correspondence for which you are responsible; and
 - 27.3 do not correspond directly with any party other than your lay client if you are aware that that party has a solicitor or barrister representing him.
28. You must not receive or handle client money securities or other assets other than by receiving payment of remuneration.

B4. Scope of Practice as an Employed Barrister

29. Rules 30 to 35 below apply to you if you are an employed barrister, in relation to your practice as an employed barrister.
30. You may only supply legal services whilst acting in the course of your employment.
31. You may only supply legal services to the following persons:
- 31.1 your employer;
 - 31.2 any employee, director or company secretary of your employer in a matter arising out of or relating to that person's employment;
 - 31.3 if your employer is a public authority (including the Crown or a Government department or agency or a local authority), another public authority on behalf of which your employer has made arrangements under statute or otherwise to supply any legal services or to perform any of that other public authority's functions as agent or otherwise;
 - 31.4 if you are employed by or in a Government department or agency, any Minister or Officer of the Crown;
 - 31.5 if you are employed by a trade association, any individual member of the association;
 - 31.6 if you are, or are performing the functions of, a justices' clerk, the justices whom you serve
 - 31.7 if you are employed by the Legal Services Commission, members of the public;
 - 31.8 if you are employed by or at a Legal Advice Centre, clients of the Legal Advice Centre;
 - 31.9 if you supply legal services free of charge, members of the public; or
 - 31.10 if your employer is a foreign lawyer ~~or foreign legal practice~~ and the legal services consist of ~~foreign work international work substantially performed outside England and Wales~~, any client of your employer.
32. You may exercise any right that you have to conduct litigation provided that:
- 32.1 if you are of less than one year's standing (or three years' standing if you are supplying litigation services to any person other than a person referred to in rules 31.1 to 31.5 above) your principal place of practice is an office which is also the principal place of practice of a qualified person who is able to provide guidance to you; and
 - 32.2 if you are of less than three years' standing, you complete at least six hours of continuing professional development on an approved litigation course during any year in which you are required to undertake continuing professional development by the Continuing Professional Development Regulations.

33. For the purpose of rule 32 above and rule 39 below you shall be treated as being of a particular number of years' standing if you:
- 33.1 have been entitled to practise and have practised as a barrister (other than as a pupil who has not completed pupillage in accordance with the Bar Training Regulations) or as a person authorised by another approved regulator;
 - 33.2 have made such practice your primary occupation; and
 - 33.3 have been entitled to exercise a right to conduct litigation in relation to every Court and all proceedings
- for a period (which need not be continuous and need not have been as a person authorised by the same approved regulator) of at least that number of years.
34. A person shall be a qualified person for the purpose of rule 32 above and rule 39 below if he:
- 34.1 has been entitled to practise and has practised as a barrister (other than as a pupil who has not completed pupillage in accordance with the Bar Training Regulations) or as a person authorised by another approved regulator for a period (which need not have been as a person authorised by the same approved regulator) of at least six years in the previous eight years;
 - 34.2 for the previous two years;
 - (a) has made such practice his primary occupation, and
 - (b) has been entitled to exercise a right to conduct litigation in relation to every Court and all proceedings;
 - 34.3 is not acting as a qualified person in relation to more than two other people; and
 - 34.4 has not been designated by the Bar Standards Board as unsuitable to be a qualified person.
35. You must not receive or handle client money securities or other assets other than by receiving payment of remuneration or where the money or other asset belongs to your employer.

B5. Scope of Practice as an Employee and/or Manager of a Recognised Body

36. Rules 37 to 40 below apply to you if you are a manager or employee of a Recognised Body in relation to your practice as such a manager or employee.

37. You may only supply legal services whilst acting in the course of your employment by, or your role as manager of, the recognised body.
38. You may only supply legal services to the following persons:
 - 38.1 the recognised body;
 - 38.2 any employee, director or company secretary of the recognised body in a matter arising out of or relating to that person's employment;
 - 38.3 any client of the recognised body; or
 - 38.4 if you supply legal services free of charge, members of the public.
39. You may exercise any right that you have to conduct litigation provided that:
 - 39.1 if you are of less than one year's standing (or three years' standing if you are supplying litigation services to any person other than a person referred to in rules 38.1 and 38.2 above) your principal place of practice is an office which is also the principal place of practice of a qualified person who is able to provide guidance to you; and
 - 39.2 if you are of less than three years' standing, you complete at least six hours of continuing professional development on an approved litigation course during any year in which you are required to undertake continuing professional development by the Continuing Professional Development Regulations.
40. You must comply with the rules of the approved regulator of the recognised body.
41. If you are an employee, but not a manager, of a recognised body, you must not receive or handle client money securities or other assets other than by receiving payment of remuneration or where the money or other asset belongs to that body.

B6. Scope of practice of a barrister called under Regulation 78

42. If you are called to the Bar under Regulation 78 of the Bar Training Regulations (temporary membership of the Bar), you may not practise as a barrister other than to conduct the case or cases specified in the certificate referred to in Regulation 78.

B7. Legal Advice Centres

43. You may supply legal services at a Legal Advice Centre on a voluntary or part time basis and, if you do so, you shall in connection with the supply of those services be treated for the purpose of this Code as if you were employed by the Legal Advice Centre.
44. If you are employed by a Legal Advice Centre:

- 44.1 you must not in any circumstances receive either directly or indirectly any fee or reward for the supply of any legal services to any client of the Legal Advice Centre other than a salary paid by the Legal Advice Centre;
- 44.2 you must ensure that any fees in respect of legal services supplied by you to any client of the Legal Advice Centre accrue and are paid to the Legal Advice Centre; and
- 44.3 you must not have any financial interest in the Legal Advice Centre.

B8. Barristers authorised by other Approved Regulators

- 45. If you are authorised by another Approved Regulator to carry on a reserved legal activity and currently permitted to practise by that Approved Regulator, you must not practise as a barrister.

C. PRACTICE RULES

C1. Practice Rules for all Practising Barristers

46. If you are a practising barrister, rules 47 to 56 below apply to you in respect of your practice as a barrister.

Overseas work⁴

47. In connection with any international work, you must comply with any applicable rule of conduct prescribed by the law or by any national or local Bar of (a) the place where the work is or is to be performed (b) the place where any proceedings or matters to which the work relates are taking place or contemplated, unless such rule is inconsistent with any requirement of Core Duties 1 to 4 and 7 of the Conduct Rules
48. If you solicit work in any jurisdiction outside England and Wales, you must not do so in a manner which would be prohibited if you were a member of the local Bar.

Pupils

49. If you are a pupil, you must:
- 49.1 comply with Part V of the Bar Training Regulations;
 - 49.2 apply yourself diligently to your pupillage;
 - 49.3 comply with Core Duty 5 of the Conduct Rules as if the clients of your pupil supervisor or of any person whom you accompany to court or whose papers you see were your clients.
50. If you are a pupil, you may not become or hold yourself out as a member of chambers or permit your name to appear anywhere as such a member.
51. If you are a pupil of an employed barrister or of a barrister who is a manager or employee of a recognised body, or if pursuant to Regulation 42 of the Bar Training Regulations you spend any period of external training with such a barrister or with a solicitor, you shall be treated for the purpose of the Code as if you were during that period employed by your employer or by the recognised body or by the solicitor's firm as the case may be.

Pupil-supervisors

⁴ Under review

52. If you are a pupil-supervisor, you must:
- 52.1 comply with Part V and Schedule C of the Bar Training Regulations; and
 - 52.2 take all reasonable steps to provide your pupil with adequate tuition supervision and experience.

Payment of Pupils

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

Dual Qualification

54. You must report promptly in writing to the Bar Standards Board and to the Inn(s) of Court of which you are a member if you become authorised by another approved regulator to carry on a reserved legal activity.

Ownership Interest in a Recognised Body

55. If you directly or indirectly have an ownership interest in a recognised body and are in practice other than as a manager or employee of that recognised body, you must:
- 55.1 notify the Bar Standards Board in writing of the ownership interest at, or as soon as reasonably practicable after, the time at which that interest is acquired or you start practising other than as a manager or employee of that Recognised Body, whichever is the later;
 - 55.2 disclose (or procure the disclosure by the recognised body of) the interest to:
 - (a) any client of the recognised body who instructs you; or
 - (b) any person whom you refer to the recognised body,either:
 - (c) prior to your receiving instructions to act for the client or making the referral, if you have the ownership interest at the time; or
 - (d) at the time of, or as soon as reasonably practicable after, your acquisition of that interest.

55.3 maintain (and make available to the Bar Standards Board on request) a record of referrals by you to the recognised body and of instructions received by you from the recognised body.

C2. Practice Rules for Self-Employed Barristers

56. If you are a self-employed barrister, rules 57 to 79 below apply to you in respect of your practice as a self-employed barrister.

Insurance

57. You must be entered as a member with BMIF, unless

57.1 you are a pupil who is covered under his pupil supervisor's insurance; or

57.2 you were called to the Bar under Regulation 78 of the Bar Training Regulations, in which case you must either be insured with BMIF or be covered by insurance against claims for professional negligence arising out of the supply of your services in England and Wales in such amount and upon such terms as are currently required by the Bar Council and have delivered to the Bar Council a copy of the current insurance policy or the current certificate of insurance issued by the insurer.

58. If you are entered as a member with BMIF, you must:

58.1 pay immediately when due the appropriate insurance premium required by BMIF for the purpose of insurance against claims for professional negligence for such amount and upon such terms as may be approved by the Bar Council from time to time; and

58.2 supply immediately upon being requested to do so such information as BMIF may from time to time require pursuant to its Rules.

Associations with others

59. Except as permitted in rules 60 to 63 below, you must not share office facilities or other premises and must not practise in any association with any person other than:

59.1 a self-employed barrister; or

59.2 any of the following:

- (a) a registered European lawyer;
- (b) subject to compliance with rules 63 to 65 below, a foreign lawyer (other than a European lawyer registered with the Law Society of England and Wales);
- (c) a barrister without a practising certificate;
- (d) a person who is:
 - (i) a lawyer from a jurisdiction other than England and Wales;
 - (ii) a retired judge; or
 - (iii) an employed barrister

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

60. If you share office facilities or other premises with any person or persons not falling within rule 59.1 or 59.2 above, you will not be treated as thereby practising in breach of rule 59, provided that:

- 60.1 there is complete separation of the services provided by you and the services provided by any person with whom you share the office facilities or premises;
- 60.2 nothing is done that might reasonably create the impression that there is any sharing of work, income or profits of the businesses;
- 60.3 you have effective arrangements in place to protect the confidentiality of clients' affairs;
- 60.4 there is no general referral arrangement or understanding between you and the person or persons with whom you are sharing; and
- 60.5 you have given prior notification in writing to the Bar Standards Board of the sharing, identifying the premises in question and the names and occupations of the persons or body with whom you are sharing.

61. If you share premises with other persons under rule 60, you must keep available for inspection by the Bar Standards Board a record of any work or clients referred to you by any such persons or referred to any such persons by you, and of the reasons for any referral made by you.
62. The restrictions in rule 59 above shall not apply:
- 62.1 where barristers share premises with any entity which is controlled by them and used as permitted for the purposes of and ancillary to their practice as self-employed barristers; or
- 62.2 in relation to [foreign work performed by you at an office outside England and Wales which you have established or joined primarily for the purpose of carrying out that particular foreign work or foreign work in general \(and, for the purposes of sharing such an office, or services or fees associated with such foreign work, you may enter into any association \(including partnership\) which is not otherwise prohibited by this Code with any lawyer, including a person authorised by another Approved Regulator to carry on a reserved legal activity\)](#)~~international work substantially performed outside England and Wales.~~

Foreign Lawyers

63. Before permitting a foreign lawyer to practise from chambers the head of chambers or if there is no head of chambers every member of chambers must:
- 63.1 obtain the written undertaking of the foreign lawyer to comply with the Code as if he were a self-employed barrister except in so far as any requirement of the Code conflicts with the rules of his own profession;
- 63.2 ensure that the foreign lawyer is covered by insurance against claims for professional negligence in such amount and upon such terms as are currently required by the Bar Standards Board;
- 63.3 provide the Bar Standards Board in writing with the name and details of the foreign lawyer and with a copy of the undertaking referred to in rule 63.1 above and a copy of the current insurance policy or certificate of insurance covering the foreign lawyer; and

- 63.4 obtain the consent in writing of the Bar Standards Board to the foreign lawyer so practising.
64. Thereafter for so long as the foreign lawyer is permitted to practise from chambers the head of chambers or if there is no head of chambers every member of chambers must:
- 64.1 satisfy himself that the foreign lawyer complies with and continues to comply with the undertaking referred to in rule 63.1 above;
- 64.2 ensure that the foreign lawyer remains covered by insurance in accordance with rule 63.2 above and that the Bar Council has a copy of the current insurance policy or certificate of insurance covering the foreign lawyer; and
- 64.3 inform the Bar Council of any failure by the foreign lawyer to comply with the undertaking referred to in rule 63.1 above which may be known to him.
65. You must not permit a foreign lawyer to practise or continue to practise from chambers of which you are a member if the consent of the Bar Standards Board to the foreign lawyer so practising has not been given or is at any time withdrawn.

Administration and conduct of self-employed practice

66. You must take all reasonable steps to ensure that:
- 66.1 your practice is efficiently and properly administered having regard to the nature of your practice;
- 66.2 proper records of your practice are kept; and
- 66.3 you comply with the Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988 as amended and in force from time to time and with any Withdrawal of Credit Direction issued by the Chairman of the Bar Council pursuant thereto⁵.
67. You must:

⁵ Under review

- 67.1 ensure that adequate records supporting the fees charged or claimed in a case are kept at least until the later of the following:
- (a) your fees have been paid; and
 - (b) any determination or assessment of costs in the case has been completed and the time for lodging an appeal against that assessment or determination has expired without any such appeal being lodged, or any such appeal has been finally determined;
- 67.2 provide your client with such records or details of the work you have done as may reasonably be required
- 67.3 deal with all complaints made to you promptly, courteously and in a manner which addresses the issues raised;
- 67.4 have and comply with an effective written complaints procedure and make copies of the procedure available to a client on request; and
- 67.5 meet all the requirements set out in the Chambers Complaints Rules.
68. You must take all reasonable steps to ensure that:
- 68.1 your chambers are administered competently and efficiently and are properly staffed;
- 68.2 proper arrangements are made in your chambers for dealing with pupils and pupillage and, in particular,
- (a) that all pupillage vacancies are advertised in the manner prescribed by the Pupillage Funding and Advertising Rules;
 - (b) that arrangements are made for the funding of pupils by chambers which comply with the Pupillage Funding and Advertising Rules;
- 68.3 proper arrangements are made in chambers for the management of conflicts of interest and for ensuring the confidentiality of clients' affairs;
- 68.4 all employees and staff in your chambers:
- (a) are competent to carry out their duties,

- (b) carry out their duties in a correct and efficient manner,
- (c) are made clearly aware of such provisions of this Code as may affect or be relevant to the performance of their duties

and all complaints against them are dealt with in the manner set out in rule 67 above;

68.5 all registered European lawyers and all foreign lawyers in your chambers comply with this Code insofar as applicable to them;

68.6 fee notes in respect of all work undertaken by all members of chambers and pupils and (unless expressly agreed with the individual) former members and pupils of chambers are sent expeditiously to clients and in the event of non-payment within a reasonable time, pursued efficiently; and

68.7 there are systems in place to check that:

- (a) all barristers practising from your chambers whether they are members of the chambers or not are entered as members with BMIF and have effected insurance in accordance with rule 14 above (other than any pupil who is covered under his pupil-master's insurance);
- (b) all barristers practising from your chambers comply with rule 66.3; and
- (c) every barrister practising from your chambers has a current practising certificate.

69. You must take all reasonable steps to ensure that your chambers complies with the following requirements:

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

69.2 [Provisions relating to equality and diversity which are being consulted on separately in the consultation on Proposed New Equality and Diversity Conduct and Practising Rules.]

70. For the purposes of rules 66, 68 and 69 , the steps which it is reasonable for you to take will depend on all the circumstances, which include, but are not limited to:

70.1 the arrangements in place in your chambers for the management of chambers; and

70.2 any role which you play in those arrangements.

Fees and remuneration

71. Subject to Core Duties 2 and 3 and rules 2.1R-2.5R of the Conduct Rules, you may charge for any work undertaken by you (whether or not it involves an appearance in Court) on any basis or by any method you think fit provided that such basis or method:

71.1 is permitted by law (i.e. the law of England and Wales or, in the case of foreign work performed by you at an office outside England and Wales which you have established or joined primarily for the purpose of carrying out that particular foreign work or foreign work in general, the law of the place where that office is situated~~international work substantially performed outside England and Wales, the law of the place where the work is performed~~); and

71.2 does not involve the payment of a wage or salary.

72. If you receive fees in respect of work done by another barrister, you must yourself and without delegating the responsibility to anyone else pay forthwith the whole of the fee in respect of that work to that other barrister.

73. Subject to rule 523, if you arrange for another barrister to undertake work for you (other than a pupil or a person who has asked to do the work in order to increase his own skill or experience), you must yourself and without delegating the responsibility to anyone else:

73.1 pay proper financial remuneration for the work done; and

73.2 make payment within a reasonable time and in any event within three months after the work has been done unless otherwise agreed in advance with the other person.

The Cab-Rank Rule

74. You must comply with the 'Cab-rank rule' and accordingly except only as otherwise provided in rules 0 and 79 below or in rule 4.22R of the Conduct Rules you must in any field in which you profess to practise in relation to work appropriate to your experience and seniority and irrespective of whether your client is paying privately or is publicly funded:

74.1 accept any brief to appear before a Court in which you profess to practise;

74.2 accept any instructions;

74.3 act for any person on whose behalf you are instructed;

and do so irrespective of (i) the party on whose behalf you are instructed (ii) the nature of the case and (iii) any belief or opinion which you may have formed as to the character reputation cause conduct guilt or innocence of that person.

75. Subject to rules 4.21 and 4.23 of the Conduct Rules you are not obliged to accept instructions:

75.1 requiring you to do anything other than during the course of your ordinary working year;

75.2 other than at a fee which is proper having regard to:

(a) the complexity length and difficulty of the case;

(b) your ability experience and seniority; and

(c) the expenses which you will incur;

75.3 to do any work under a conditional fee agreement;

75.4 save in a matter funded by the Legal Services Commission as part of the Community Legal Service or the Criminal Defence Service:

(a) unless and until your fees are agreed;

(b) if having required your fees to be paid before you accept the instructions those fees are not paid;

(c) from anyone other than a professional client who accepts liability for your fees;

75.5 in a matter where the lay client is also the professional client;

75.6 to do any work under the Contractual Terms on which Barristers offer their Services to Solicitors 2001 as amended and in force from time to time or on any other contractual terms;

75.7 where the potential liability for professional negligence in respect of the case could exceed the level of professional indemnity insurance which is reasonably available and likely to be available in the market for you to accept;

75.8 to investigate or collect evidence (save for taking proofs of evidence or preparing witness statements urgently as part of your conduct of the case at court);

75.9 to attend at a police station with or without a solicitor;

75.10 to conduct correspondence with other parties (save where reasonably necessary as part of the barrister's conduct of the case at court);

75.11 if you are a Queen's Counsel:

(a) to settle alone any document of a kind generally settled only by or in conjunction with a junior; or

(b) to act without a junior if you consider that the interests of the lay client require that a junior should also be instructed; ~~or~~

75.12 to do any ~~foreign~~international work;

75.13 in a matter where you are instructed by a foreign lawyer to supply advocacy services in England and Wales; or

~~75.12~~75.14 in a matter where you are instructed by a foreign client.-

76. A self-employed barrister may not refuse to accept instructions in reliance on 75.2 and 75.4 after the time has passed by when a fee would reasonably be expected to have been agreed in all of the circumstances of the case, including in particular the

date and nature of the instructions, the nature of the services comprised or requested in the instructions and the date on which the services are to be provided.

Acceptance of instructions

77. Subject to the Public Access Rules, compliance with which is deemed to amount to acceptance of public access instructions, you accept instructions only by communicating acceptance of them or by starting to perform any service comprised or requested in the instructions.
78. Any acceptance of instructions must be communicated in writing unless either a) acceptance in writing before performance of the services comprised or requested in the instructions is not reasonably practicable or b) the instructions are instructions which are supplementary to instructions that you have already accepted in writing.

Attendance of professional client

79. If you are instructed by a professional client:
- 79.1 you must not conduct a case in Court in the absence of your professional client or a representative of your professional client unless:
- (a) the Court rules that it is appropriate; or
 - (b) you are satisfied that the interests of the lay client and the interests of justice will not be prejudiced; but
- 79.2 if you attend Court in order to conduct a case in circumstances where no professional client or representative of a professional client is present, you may if necessary interview witnesses and take proofs of evidence.

C3. Practice Rules for Employed Barristers

80. If you are an employed barrister and you give an undertaking in the course of conducting litigation, any breach of that undertaking shall constitute professional misconduct.

C4. Practice Rules for Employees and/or Managers of Recognised Bodies

81. If you are an employee or a manager of a recognised body and you give an undertaking in the course of conducting litigation, any breach of that undertaking shall constitute professional misconduct.

C5. Practice Rules for Barristers Acting in a Dual Capacity

82. If you practise or are involved with the supply of legal services in more than one capacity pursuant to rule 13.2 above you must:
- 82.1 provide a copy of each protocol required by rule 13.2(c) to the Bar Standards Board on request;
 - 82.2 maintain (and make available to the Bar Standards Board on request) a record of referrals by you to the employer or recognised body and of instructions received by you from the employer or recognised body;
 - 82.3 refuse to accept instructions in any case where so acting gives rise to a potential conflict of interest;
 - 82.4 not work in more than one capacity in relation to the same case or issue for the same client at the same time; and
 - 82.5 disclose (or procure the disclosure by the recognised body of) the interest to the client in writing before you refer a client to your employer or recognised body or before accepting instructions from your employer or recognised body.

C6. Practice Rules for Registered European Lawyers

83. Rules 84 to 85 below apply to you if you are a registered European lawyer.
84. You must not hold yourself out to be a barrister.
85. You must in connection with all professional work undertaken in England and Wales:
- 85.1 use your home professional title;
 - 85.2 indicate the name of your home professional body or the Court before which you are entitled to practise in that Member State; and
 - 85.3 indicate that you are registered with the Bar Standards Board as a European lawyer.

D. RULES APPLYING TO ALL BARRISTERS SUPPLYING LEGAL SERVICES

86. If you supply, or offer to supply, legal services, you must not mislead, and must not cause or permit to be misled, any person to whom you supply, or offer to supply, legal services about:

86.1 the nature of the legal services which you are entitled to supply;

86.2 the basis on which you are entitled to supply those services

86.3 the extent to which you are regulated when providing those services or

86.4 the extent to which you are covered by insurance against claims for professional negligence

87. If you do not hold a practising certificate and you supply legal services (other than as provided for in rule 86.3 to an individual or to any other person other than your employer who would, if you were an authorised person, be entitled to bring a complaint pursuant to the Legal Ombudsman Scheme Rules⁶ then before supplying such services:

87.1 you must explain to the client:

- (a) (unless you are supplying legal services pursuant to rule 10 above) that you are not acting as a barrister;
- (b) that you are not subject to the Conduct Rules and other provisions of this Code applicable to practising barristers;
- (c) that the Bar Standards Board will only consider complaints about you which concern those of the Conduct Rules and other provisions of this Code which apply to you;

A complainant must be an individual; or ¹⁴ ¹⁵

(a) an enterprise which, at the time at which the complainant refers the complaint to the respondent, is a micro-enterprise within the meaning of Article 1 and Article 2(1) and (3) of the Annex to Commission Recommendation 2003/361/EC, as that Recommendation had effect at the date it was adopted;

(b) a charity with an annual income net of tax of less than £1 million at the time at which the complainant refers the complaint to the respondent;

(c) a club, association or organisation, the affairs of which are managed by its members or a committee or committees of its members, with an annual income net of tax of less than £1 million at the time at which the complainant refers the complaint to the respondent;

(d) a trustee of a trust with an asset value of less than £1 million at the time at which the complainant refers the complaint to the respondent;

(e) a personal representative of an estate of a person ; or

⁶ (f) a [residuary] beneficiary of an estate of a person.

(d) (unless you are covered by professional indemnity insurance) that you are not covered by professional indemnity insurance; and

(e) that the client has no right to complain to the Legal Ombudsman about the services you supply; and

87.2 you must obtain written confirmation from the client that you have given this explanation

88. This rule does not apply to you if you supply legal services:

(a) as an employee or manager of a recognised body

(b) as an employee or manager of a body subject to regulation by a professional body or regulator

(c) as provided for in rules [first six pupils on noting briefs][foreign lawyers] or [barristers also authorised by another approved regulator].

THE CODE OF CONDUCT OF THE BAR OF ENGLAND AND WALES

DEFINITIONS

In this Code, the following words and phrases have the meaning set out below:

(29)	foreign client	means a client who has his centre of main interests outside England and Wales, or who reasonably appears to you to have that characteristic
(31)	foreign work	has the meaning set out in paragraph (25) of the Practising Rules
(40)	International work	has the meaning set out in paragraph (25) of the Practising Rules
(1)	professional client	<p>means a solicitor or other professional person by whom a self-employed barrister is instructed that is to say:</p> <p>(a) a solicitor, a solicitors' firm, LLP or company, a person or body authorised to carry on the conduct of litigation, a Parliamentary agent, a patent agent, a European Patent Attorney, a trade mark agent, a Notary or a European lawyer registered with the Law Society of England and Wales;</p> <p>(b) a licensed conveyancer in a matter in which the licensed conveyancer is providing conveyancing services;</p> <p>(c) an employed barrister or registered European lawyer;</p> <p>(d) any practising barrister or registered European lawyer acting on his own behalf;</p> <p>(e) a foreign lawyer in a matter which does not involve the barrister supplying advocacy services;</p> <p>(f) a Scottish or Northern Irish Solicitor; or</p> <p>(g) the representative of any body (such as a Legal Advice Centre or Pro Bono or Free Representation Unit) which arranges for the supply of legal services to the public without a fee, and which has been and remains designated by the Bar Standards Board (subject to such conditions as may be imposed by the Bar Council or Bar Standards Board in relation to insurance or any other matter whatsoever) as suitable for the instruction of barristers, and which instructs a barrister to supply legal</p>

		services without a fee.
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ANNEX 5: LIST OF CONSULTEES

BAR STANDARDS BOARD COMMITTEES

Complaints Committee
Education and Training Committee
Qualifications Committee
Quality Assurance Committee

BAR ORGANISATIONS

Bar Council
Training for the Bar Committee
Professional Practice Committee
Remuneration Committee
Legal Services Committee
Employed Barristers' Committee
Young Barristers' Committee
International Relations Committee
European Committee
Equality and Diversity Committee

International Business Development Group
Circuits
All Specialist Bar Associations
Heads of Chambers
Inns of Court

OTHER ORGANISATIONS

Legal Ombudsman
Law Society
Solicitors Regulation Authority
Institute of Barristers Clerks
Legal Practice Management Associations
Institute of Legal Executives
Council for Licensed Conveyancers
Chartered Institute of Patent Agents
Institute of Trademark Attorneys
Institute of Paralegals
Intellectual Property Regulation Board

Ministry of Justice
Attorney General
Solicitor General
Crown Prosecution Service

Legal Services Commission
Office of Fair Trading

Which?

Consumer Focus

National Association of Citizens Advice Bureaux

Lord Chief Justice

Master of the Rolls

President of the Queen's Bench Division

President of the Family Division

Chancellor of the High Court