

**BAR
STANDARDS
BOARD**

REGULATING BARRISTERS

Review of the Code of Conduct

Consultation Paper on the proposed new Code of
Conduct for the Bar

January 2011

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CONSULTATION PAPER ON THE PROPOSED NEW CODE OF CONDUCT FOR THE BAR

PART 1: INTRODUCTION

1. The Bar Standard Board ('the Board'), 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. The aim of the review is to ensure that the rules governing barristers are fit for purpose in setting out the standards required of barristers to meet the needs of the public and to ensure the proper administration of justice.
2. The Board's Standards Committee is responsible for the review of the Code and the Committee in turn has established a small working group, comprising barrister and lay members, to undertake the detailed consideration that the review requires.
3. The purpose of this paper is to seek views on the new Code of Conduct for the Bar, attached at **Annex 1**. The new Code represents the culmination of a series of consultation exercises undertaken by the Board over the previous three years. These include:
 - i. In June 2007 the Board issued its first consultation paper on the review of the Code. This paper sought to set the agenda and to determine the priorities for 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.
 - ii. In March 2009 the Board 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. The outcomes of that consultation exercise are discussed at paragraphs 38-50 of this paper;
 - iii. In March 2010 the Board 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 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. Professional rules and new Practising Certificate Regulations have been prepared in the light of this consultation paper and are included in the revised Code of Conduct now being consulted upon.

The consultation documents and summaries of responses to them can be found on the Bar Standards Board website at www.barstandardsboard.org.uk

4. In addition to decisions arising from the specific consultation exercises listed above, the new Code incorporates and consolidates a number of additional regulatory developments that have arisen since the review of the Code began. These include (those in bold are already contained within the current Code):

- i. **The implementation of the Legal Services Act and the need for compliance with the Act's Regulatory Objectives¹;**
- ii. Revision to the rules relating to the acceptance and return of instructions²;
- iii. **Amendments in the light of the decisions to permit barristers to be managers of Recognised Bodies regulated by an organisation other than the Board;**
- iv. **Amendments as a result of the revision of the structure of the self-employed Bar;**
- v. **Amendment to the Public Access Rules following a review of the operation of these Rules by the Board;**
- vi. **Changes to the Code as a result of the establishment of the Legal Ombudsman, the independent body responsible for dealing with complaints against lawyers.**

Approach to the review

5. In addition to the need to ensure that the new Code meets the regulatory objectives of the Legal Services Act and the principles of good regulation, the Board has had in mind a number of other key principles:

- i. The new Code should build on the existing Code, which has served the public and the profession well, rather than look to 're-invent the wheel';
- ii. The language of the Code must be accessible to all;

¹ Part 1 paragraph 1 LSA 2007

² The subject of its own consultation paper in April 2008

- iii. The Code should be structured in a way that it is easily navigable and logical;
- iv. The Code should be sufficiently flexible to meet the changing demand and shape of the provision of legal services;
- v. The application of the provisions of the Code to all categories of barrister should be clear.

Related work

6. The Code of Conduct is the central pillar of regulation of the Bar and accordingly the majority of the work that the Board undertakes has implications for the content of the Code. It is worth highlighting a number of the areas of work that are currently underway and which may impact in the near future on the shape of the Code. Depending on the timing of these changes it may be possible to incorporate some or all of them within the new Code before it is published in its final form:

- i. The development of a quality assurance scheme for criminal advocates may give rise to specific professional rules requiring advocates to participate in the scheme;
- ii. The development of an entity regulation regime and its possible implications for self-employed barristers³;
- iii. Revision to the Complaints Rules as a result of a restructuring of the Complaints and Hearings Team;
- iv. The development of a Chambers monitoring regime;
- v. The continuation of the development of a Barrister's Register and the publication of data held about individual barristers, their entitlement to practise and, where appropriate, their disciplinary history;
- vi. The review of the CPD regime for the Bar;
- vii. Review of the rules on equality and diversity and related good practice guidelines which are being consulted on now⁴
- viii. Review of the International Practising Rules which will shortly be the subject of a separate consultation
- ix. Proposed introduction of standard contractual terms; the results of the consultation in 2010 are currently being considered
- x. Amendments to the Pupillage Funding and Advertising Rules following the pupillage review completed in 2010.
- xi. Review of disciplinary arrangements⁵

³ Dependent on the outcome of the consultation paper issued by the Board on 27 September 2010 "Regulating entities"

⁴ See Bar Standards Board website

Structure of the consultation paper

7. The Board has already consulted on the Conduct Rules and the new authorisation to practise regime and this consultation sets out the policy decisions reached in the light of the views expressed and the proposed rules to implement those decisions. The Board welcomes any comments on those rules. Other parts of the Code, notably some of the Practising Rules are new and the Board is seeking comments on both the policy and the draft rules.
8. The current Code contains a number of annexes to the Code. These annexes provide rules in relation to specific situations such as international practice or the right to conduct litigation as an employed barrister. They also set out more detailed rules in respect of particular Board procedures such as the Complaints Rules or the Disciplinary Tribunal Regulations. Some of these annexes have been incorporated into other parts of the Code or have been revised as part of the review of the Code. Other annexes are not being changed at this time and are therefore not included in the attached draft.
9. The paper aims to take the reader through the new Code in a logical manner, working through each of the parts of the Code, setting out the changes and asking targeted questions. In addition, questions are asked on the proposed structure of the new Code and its application as well as on its clarity of language and accessibility. Related Code issues that arise from discrete areas of the Board's work are also discussed and their impact on the Code explained. Finally, questions are asked on the equality and diversity impacts of the content of the new Code. Answers to these questions will help to inform the Board's Equality Impact Assessment of the Code.
10. As already mentioned the Board is also consulting on new Equality and Diversity provisions which will bring additional and specific equality and diversity rules into the Code of Conduct. Since these provisions are being consulted upon separately they are not contained with the Code of Conduct attached to this paper. They will be incorporated once the responses to the Equality and Diversity Code consultation paper have been analysed and the Code of Conduct provisions have been finalised.

Responses to this Consultation Paper

⁵ The Complaints Committee is to undertake a review some aspects of the disciplinary arrangements, including the standard of proof, in 2011

11. A list of those to whom this consultation paper is being sent is attached at **Annex 4**. 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.
12. It would be helpful if responses could be as full as possible with detailed reasons given for your comments.
13. The Board 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.
14. Responses should arrive no later than **21 April 2011** and should be sent to:

Code of Conduct Consultation Paper
Bar Standards Board
289-293 High Holborn
London WC1V 7HZ

Codeconsultation@barstandardsboard.org.uk

PART 2: FORMAT OF THE NEW CODE

Introduction to the format of the new Code

15. The existing Code has been revised a number of times, but the basic structure has not changed since 1981 when the first edition of the Code of Conduct was introduced.
16. Whilst in many cases, the new Code adopts or adapts rules from the existing Code, it is appropriate that the Board, as the independent regulator for the Bar, sets and defines its own rules and standards. Further, there has been some criticism that the existing Code is drafted in such a way that it is not sufficiently accessible to non-lawyers and, in parts, is not absolutely clear in its application to barristers. This concern has been compounded by the series of amendments made to the Code in March 2010 in relation to the permissibility of barristers to work in Recognised Bodies not regulated by the BSB and revisions to the structure of self-employed practice. These amendments have made the Code more complicated and harder to follow.
17. The new Code seeks to address these criticisms and aims to produce a clear and user friendly set of professional rules. To assist in ensuring that the Code is accessible to all, it will be reviewed by Plain English experts before being finalised.
18. To assist the reader a destination table is provided at **Annex 3**, which sets out where the provisions of the existing Code now appear, sometimes in a different form, in the new version. Where an existing provision has been deleted that is also made clear.

The proposed framework

19. The framework of the new Code builds on the structure of the Conduct Rules consulted upon in March 2009. These Rules adopted a core duties approach which sees the development of overarching principles of professional standards supported by secondary rules which amplify each duty, and which are further explained by guidance.
20. This approach has a number of benefits:
 - i. It creates a Code which is accessible to consumers and barristers alike;
 - ii. It provides a greater degree of clarity on the requirements that barristers are expected to meet;
 - iii. It avoids an unduly legalistic approach to the interpretation of the Code;

Outcomes focussed regulation

21. Before discussing the changes made to the Conduct Rules, it is useful to have regard to the growing support for movement towards outcomes focussed regulation rather than prescriptive rules and regulations.
22. The LSB has laid down that Licensing Authorities must follow such an approach in their regulation of ABSs. The Solicitors' Regulation Authority is in the process of developing a new Code of Conduct for solicitors which adopts an 'outcomes focussed' approach to professional rules. This approach involves less prescriptive and detailed rules and a greater emphasis on providing a broad regulatory framework which serves high level principles and outcomes. As a result there is an enhanced responsibility on the professional to ensure that they are interpreting these high level rules appropriately in order to satisfy the specified regulatory outcomes. The Board does not believe that a Code which merely set out desired outcomes and descriptive behaviours would be the best way to meet the regulatory objectives. The Conduct Rules, with high level Core Duties, moves some way in the direction of creating a regulatory framework which is outcome focused. The Board has sought to avoid unnecessary prescription and detail but considers that there are some circumstances in which clear rules are needed. It has therefore developed a Code of Conduct which balances high level rules with scope for professional judgment and interpretation, and more detailed rules where clients or the public interest would otherwise be at risk. Such an approach ensures that barristers clearly understand what the professional rules are but also allows sufficient scope for interpretation so that the rules are not unduly restrictive or prescriptive.
23. The Board will however continue to monitor the development of outcome focussed regulation and its application to its work.

Difference between the Conduct Rules and the Practising and other Rules

24. The new Code incorporates Conduct Rules and other rules (including the Practising Rules themselves as well as other rules such as those relating to the practising certificate arrangements and disciplinary procedures). It is worth discussing briefly the distinction between the different types of rules.
25. Firstly it should be made clear that the rules within the Conduct Rules and the rules elsewhere in the Code including the annexes all carry the same status. They are all professional rules and, where they apply, should be complied with.

26. The principal differences between the Conduct and the Practising Rules are in their degree of generality and their application. The Conduct Rules set out the high level rules which define the standards which barristers are expected to maintain. Most apply to all practising barristers with some, defined rules applying to all those Called to the Bar whether practising or not. A few apply only to self-employed barristers. The 'practising' rules are more detailed. They deal with specific circumstances in which more specific rules are needed in order to define what is acceptable behaviour in the interests of clients and the public. They are applied differently depending on the nature of the barrister's practice or status. There are therefore for example, specific practising rules in relation to practise as a self-employed barrister and particular rules in relation to the management of Chambers. The drafting and structure of the 'practising' rules should mean that there are no problems of application or interpretation.
27. In terms of structure, the Conduct Rules are arranged differently to the Practising Rules. The Conduct Rules are separated into overarching core duties with each duty supported and complemented by more detailed rules and illustrative guidance. The Practising Rules are ordered according to their application to particular categories of barrister with relevant rules grouped together. Most relate to more than one core duty which is why they have not been organised by core duty.
28. Other sections of the rules, such as the Bar Training Regulations, deal with qualification requirements; others, such as the Compliance Rules prescribe procedures to be followed in specified circumstances. The aim has been to bring all the rules together into one document.

Use and status of guidance

29. The Introduction at part 1 of the Code sets out the approach to the application and interpretation of guidance both within the Code as well as stand-alone guidance on particular professional conduct and standards issues.
30. The following paragraph looks in a little more detail at the use of guidance in the different sections of the new Code:
31. Guidance forms a central part of the Conduct Rules in providing interpretation and amplification of how the Core Duties and Rules will apply in practice. The Practising Rules are more specific and therefore need less interpretation but the Bar Standards Board also produces more general guidance from time to time on good practice and the kinds of issues which barristers should consider when seeking to apply the rules in various circumstances. The Introduction makes it clear that both the guidance contained in the Conduct Rules and guidance issued by the Board from time to time should be taken into account when interpreting and applying the Rules and will be taken into account in considering any allegation of a breach of a Core Duty or a rule. Following the guidance will therefore provide barristers with some protection and mitigation should disciplinary proceedings arise, but equally it will be open to barristers to demonstrate that they have complied with a rule even though they have not followed the guidance. Each case will fall to be determined on its individual facts and circumstances.

Q1: Do you agree with the approach adopted for guidance in the new Code?

Application of the new Code

32. It is clearly important that all barristers know which parts of the new Code apply to them. The Board has approached the application of the Code in the following way:
 - i. The Conduct Rules will generally apply to all practising barristers except for a few specific rules which are only relevant to self-employed barristers⁶;
 - ii. Certain provisions of the Conduct Rules will apply to all barristers in relation to their private as well as their professional lives, in particular the requirement not to act in a way which is likely to diminish public trust and confidence in the profession. Paragraphs 48-50 below discusses whether the requirement to

⁶ For example those rules relating to the Cab-rank rule (4.22R – 4.31R) and payment for work (2.4R – 2.7G) are limited in their application to the self-employed Bar

act with integrity and honesty should apply to all barristers, not just to practising barristers. The Conduct Rules sets out clearly which of the Rules apply to all barristers.

- iii. The Practising Rules have been structured in such a way so as to make it clear which of them applies to which category of barrister;
- iv. The application of the Rules in relation to those barristers who are managers or employees of Recognised Bodies regulated by an Approved Regulator other than the Board, for example a legal disciplinary practice regulated by the Solicitors' Regulation Authority, is more complicated. Section 52 of the Legal Services Act 2007 states that where there is a regulatory conflict between the rules of the entity regulator and the rules of the regulator of the individual authorised person, the rules of the entity regulator take precedence. In order to address this, the Code now includes the following principle of application:

“If:

- 1. You are employed by or a manager of a recognised body;*
- 2. You are subject to a requirement of the regulatory arrangements of the approved regulator of that recognised body; and*
- 3. That requirement conflicts with a requirement of this Code which, but for the operation of this rule, would apply to you,*

Then the requirement of this Code shall not apply to you”

The Code does not apply any rules to such managers and employees where it considers that to do so would create a regulatory conflict but it cannot rule out the possibility that such a conflict might arise in some circumstances. The Board believes that the proposed new rule will provide clarity over what a barrister should do if this situation arises.

Q2: Do you agree with the approach to the application of the Rules?

Q3: In particular, do you agree with the approach to the dis-application of Rules relating to barristers employed by or managers of a Recognised Body not regulated by the Bar Standards Board?

Q4: Do you think that our approach to regulatory conflicts is sufficient?

Q5: The Board does not believe that there are any regulatory conflicts. Do you agree or are there any conflicts that we have not identified?

Annexes to the Code

33. As mention in paragraph 8, some of the annexes have either been revised or their contents incorporated within the new Code. A number of the annexes remain unchanged and will be reviewed over time as and when the need arises. In the meantime, they will be incorporated unchanged into the new Code.

PART 3: THE CONTENT OF THE NEW CODE OF CONDUCT

34. The new Code of Conduct is broken down into the following sections:

Introduction.

Conduct Rules

The Conduct Rules.

Practice Rules

The Practising Rules.

Annexes to the Practising Rules (Applicable to Self-Employed Barristers)

- (a) The Licensed Access Rules [not included in the attached draft].
- (b) The Licensed Access Recognition Regulations [not included in the attached draft].
- (c) The Public Access Rules [not included in the attached draft].
- (d) The Terms of Work on which Barristers Offer their Services to Solicitors [not included in the attached draft; subject to review].
- (e) The Withdrawal of Credit Scheme 1988 [not included in the attached draft; subject to review].
- (f) The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001 [not included in the attached draft; subject to review].
- (g) The Chambers Complaints Rules [not included in the attached draft].
- (h) The Pupillage Funding and Advertising Rules [not included in the attached draft].

Licensing Rules

The Practising Certificate Rules.

The Registration of Employed Lawyers Rules.

Qualification Regulations

The Bar Training Regulations [not included in the attached draft].

The Continuing Professional Development Regulations [not included in the attached draft; subject to review].

Discipline Rules

The Compliance Rules.

Annexes to the Compliance Rules (Disciplinary Procedures)

- (a) The Complaints Rules [not included in the attached draft].
- (b) The Disciplinary Tribunals Regulations [not included in the attached draft].

- (c) The Hearings before the Visitors Rules [not included in the attached draft].
- (d) The Interim Suspension Rules [not included in the attached draft].
- (e) The Fitness to Practice Rules [not included in the attached draft].

Definitions

35. Some of the sections above will simply reflect the content of the current Rules, for example, the Bar Training Regulations and are not being consulted upon in this document. The Continuing Professional Development regulations will be considered in the light of the forthcoming recommendations from the CPD review and are therefore also not included in the draft Code of Conduct attached to this paper.

36. The remaining sections are included and are considered in more detail below:

Introduction

37. This section provides a basic introduction to the new Code and its purpose and application.

Q6: Do you have any comments on the introduction?

The Conduct Rules

38. The Board consulted on proposed Conduct Rules in March 2009. Responses were received from a wide range of respondents. Respondents broadly supported the approach to the Conduct Rules and welcomed the clarity that the new structure provided, both in terms of application and interpretation. There were a number of substantive points both in relation to drafting and content and these have now been considered in detail. A copy of the summary of the responses, the responses themselves and the issues that arose from the responses can be found in the consultation section of the Board's website – www.barstandardsboard.org.uk

39. In the light of those responses changes were made to the Rules and they have now been incorporated into the new Code. The Rules have also been considered by 'Plain English' experts and further amendments made on their advice.

Changes to the Conduct Rules

40. A number of drafting and formatting changes have been made to the Conduct Rules following analysis of the consultation responses. These include:
- i. The Rules now make it explicit that there is no order of precedence of the Core Duties (Conduct Rules, list of Core Duties);
 - ii. A Core Duty has been added to not behave in a way which is likely to diminish the trust and confidence which the public places in the profession (Core Duty 4);
 - iii. Fuller examples have been added of what would and would not constitute conduct likely to diminish public confidence (2.10G-2.12G);
 - iv. The guidance on acting in the best interests of the client has been substantially revised as the rules themselves are sufficiently clear and detailed guidance is therefore unnecessary.
 - v. A positive duty to co-operate with the regulator and the Legal Ombudsman has been added. More detailed rules about what this involves are included in the Compliance Rules. These rules include a requirement to provide information, to respond to correspondence and to deal with the regulator in an open, timely and co-operative manner (Compliance Rules 2-4.3).
41. In addition, there are four areas where substantial revision has been made not only to proposed content of the Code but also in relation to underlying policy. These are explained in more detail below.

Duty to report professional misconduct

42. The consultation paper on the Conduct Rules sought views on whether a positive duty should be introduced which requires barristers to report the professional misconduct of other members of the Bar. The stance in that paper was that such a duty should not be introduced because, amongst other things, it was not appropriate in an adversarial profession such as the Bar, as the duty could be used as a litigation tactic. Responses to the consultation paper broadly supported that stance. However, responses from consumer organisations such as the Board's Consumer Panel argued that the public interest required such a duty to be introduced. In its response the Panel stated:

“Without any expectation on a fellow professional to see and report unacceptable behaviour or standards, it is very hard for a lay client to know what exactly can be

expected of a barrister⁷, and the niceties of the Code. Clients therefore rely on others to check on the professional and ethical standards of their representative.”

It was further argued that other professions, such as the solicitor’s profession, have an effective reporting obligation.

43. In the light of the responses, the Board re-opened the debate on whether such a duty was necessary and appropriate for the Bar. In the light of those discussions, the Board has resolved to introduce in the Compliance Rules a positive duty to report serious misconduct⁸. However, this duty will be supported by a rule which makes it clear that a barrister must never report, or threaten to report, another barrister as a litigation tactic and by detailed guidance to assist the Bar in understanding when a report is, and is not, necessary or appropriate. The Board accepts that the inclusion of this requirement is controversial. However it is difficult to justify not requiring a professional to report serious misconduct by another professional when such misconduct could prejudice the interests of clients or the standing of the profession, and the Board could find no compelling argument that the Bar is in so unique a position as to justify the absence of any similar obligation on barristers.

Media comment

44. Barristers are currently prevented from expressing a personal opinion to the press or other media or in any other public statement on the facts or issues arising in any anticipated or current proceedings in which they appear (rule 709.1, Code of Conduct). This rule against media comment was amended in 2001, in light of human rights considerations, so that it specifically prohibits only statements of opinion, rather than media comment in general. Consequently, the rule is narrowly drafted and can sometimes be difficult to interpret. The Board has recently reviewed the rule and proposes not to replicate it in the new Code, but to replace it with guidance to barristers about how to exercise their professional judgement. The Board believes this would a proportionate response with regard to the public interest.
45. This approach reflects that taken by the Solicitors Regulation Authority, which replaced the equivalent prohibition in the Solicitors’ Advocacy Code with guidance in 2007. This change has had the effect that solicitor advocates are permitted to make personal comment in the media as to a client’s case, but barristers are not, even where they are

⁷ Though we would welcome this being spelt out in a client-care letter or leaflet

⁸ This duty will be contained in the Compliance Rules of the new Code, rather than in the Conduct Rules

instructed in the same case. This is anomalous. It is also anomalous that comment is allowed if it is made in an educational context. The Board has concluded that the continuation of the prohibition would be disproportionate and that it should be replaced by guidance on the points which barristers should consider in deciding whether or not to comment, such as the interests of the client, their duties to the court as well as maintaining their own independence.

Q 7: Do you agree that there should be no rule prohibiting media comment, and that guidance should be provided instead?

Equality and Diversity

46. The draft Conduct Rules included a positive duty to take reasonable steps to prevent discrimination by others in a barrister's professional dealings. It was accepted that this duty went beyond the law and beyond the professional obligations previously imposed on the barrister. Nevertheless, the Board decided that it was right to seek views on whether such a duty should be included.

47. However, a positive duty was seen by the majority of respondents as being impractical and unenforceable and it was argued that it was unfair to impose a duty on a barrister which extends beyond their own act or the acts of any person acting on their behalf or under their direction or authority. As a result the Board has removed this duty but has decided to reinforce the obligations on barristers to ensure that arrangements for which they are responsible give proper weight to equality and diversity. Accordingly, the Code introduces a positive duty on all practising barristers to take reasonable steps to ensure that, at their place of work, there is in force a written statement of policy on equality and diversity and a written plan for implementing that policy. Such a rule creates a practical and measurable requirement on all practising barristers and ensures that equality and diversity is embedded not only within the Rules themselves but also within the administration of an individual barrister's practice and procedures irrespective of whether they work in Chambers or in employment. The requirement also extends to the arrangements in any ProcureCo with which they are involved. What it is reasonable for a barrister to do will depend on the circumstances. A Head of Chambers or a manager of a recognised body will normally be expected to be able to ensure that a suitable policy and action plan are in place. A junior tenant or employee may only be able to ensure that proper procedures are followed in the areas of work for which they are personally responsible and that concerns about wider policies are raised with the appropriate people. The separate consultation on Equality and

Diversity proposes some additional requirements for Chambers, which will, if adopted following the consultation, be included in the final version of the Practising Rules.

Applying Core Duty 2 to barristers without practising certificates ('unregistered barristers')

48. The BSB has already consulted on making unregistered barristers subject to some duties in the Conduct Rules. This reflects the approach in the current Code. Following consultation it has agreed that Core Duty 4: 'You must not behave in a way which is likely to diminish the trust and confidence which the public places in you or the profession' should apply.
49. However, the Board now proposes that Core Duty 2 should also apply to unregistered barristers (if they supply legal services). Core Duty 2 states: 'you must act with integrity and honesty'. This duty will help to ensure that unregistered barristers maintain appropriate standards when working for employers or clients and they will be liable to be disbarred in the event of serious breach. In this way, Core Duty 2 complements Core Duty 4.
50. Core Duty 2 has two related rules – one set of which applies only to self-employed barristers (rules 2.4R-2.7G); the other applies to professional practice of a kind which is mainly relevant to advocacy (2.8R). These rules should not therefore apply to barristers without practising certificates.

Questions on the Conduct Rules

51. In the light of the above and policy decisions taken by the Board, the Conduct Rules have been revised accordingly. This consultation paper does not invite further comments on those decisions as they have already been the subject of detailed consultation. This paper seeks views on how those decisions have been reflected in the Rules and whether they are easy to understand and apply.
52. For ease of reference, the table below sets out, in addition to the issues identified above, the main paragraphs of the Conduct Rules that have been revised as a result of the responses to the consultation paper.

Paragraph	Issue

General Core Duties	An explicit reference to the fact that there is no order of importance for the Core Duties has been added
CD2	The application of CD2, the duty to act with integrity and honesty to barristers without practising certificates
CD4	The introduction of a core duty to not behave in a way which is likely to diminish the trust and confidence which the public places in you or the profession
2.10G	Fuller examples have been added of what would and would not constitute conduct likely to diminish public confidence
4.13G – 4.15G	The guidance on acting in the best interests of the client has been substantially revised as the rules themselves are sufficiently clear and detailed guidance is therefore unnecessary

Q8: Do you have any comments on the revised drafting of the Conduct Rules?

Q9: In particular, do you agree with the drafting of the rules in relation to:

- a) A duty to report misconduct**
- b) A duty to co-operate with the regulator and the Legal Ombudsman**
- c) Equality and diversity**
- d) The application of the Conduct Rules to self employed and employed practising barristers**
- e) Applying CD2 to barristers without practising certificates ('unregistered barristers')**

The Practising Rules

53. The Practising Rules set out the business and practice standards and requirements contained in the existing Code. Much of the content replicates the terms of the existing rules but the layout is markedly different.
54. The new Practising Rules seek to bring together into one section all of the existing rules relating to the requirements to practise as a barrister and the administrative requirements placed upon barristers. The rules also codify the Board's proposals in relation to authorisation to practise as a barrister, the principles of which were the subject of consultation in March 2010. These proposals are explained in more detail at paragraph 59.
55. Within the Practising Rules the following can now be found:
- i. The definition of 'practise' as a barrister (rule 4);
 - ii. The requirements to practise as a barrister (rules 11-22);
 - iii. International practice (subject to modification following separate consultation) (rule 25)
 - iv. The entitlement to carry out reserved legal activities as a barrister (rule 2);
 - v. The scope of practising as a self-employed or employed barrister, or as a manager or employee of a Recognised Body (rules 23-40) ;
 - vi. The rules relating to 'unregistered' barristers ie those who are Called to the Bar and supply unreserved legal services but who do not hold a practising certificate and may not practise as a barrister (rules 86-87.2);
 - vii. The general practice rules for barristers, such as:
 - a. Rules relating to the ownership interest in a Recognised Body (rule 55);
 - b. Specific practice rules for self employed and employed barristers and those barristers who are employees or managers of Recognised Bodies (rules 36-40) ;
 - c. Rules for barristers working under 'dual capacity' (rule 82);
 - d. Rules in respect of foreign lawyers (rules 63-65);
 - e. The general rules on the administration and conduct of self-employed practice (rules 66-70);
 - f. Fees and remuneration (rules 71-73);
 - g. The Cab Rank Rule (rule 74);
 - h. Registered European Lawyers (rules 83-85).

56. The Board believes that, by bringing together all the rules relating to practising as a barrister, it is easier for barristers in particular, but also the users of their services, to establish their status and their practising rights and for those responsible for the administration of Chambers to better understand the related professional requirements.

Q10: Do you agree with the proposed approach to the drafting of the Practising Rules?

Q11: Do you have any specific drafting comments?

Q12: Are there any omissions or unnecessary additions within the Practising Rules?

57. There are certain issues within the Practising Rules which require further discussion and explanation. These are:

- i. The changes in respect of authorisation to practise and in particular:
 - a. linking CPD to the renewal of practising certificates
 - b. disclosure of authorised practising rights on the Barristers' Register
 - c. regulation of barristers not entitled to practise
- ii. Dual authorisation – whether it should be permissible to hold a practising certificate from another authorised regulator and also be a practising barrister;
- iii. The application of the International Practice Rules;
- iv. The removal of the references to legal aid fees in the rule dealing with a proper professional fee for the purposes of the Cab Rank Rule;
- v. Proposals to make barristers share responsibility for ensuring that Chambers are properly managed;
- vi. The three year rule;
- vii. New contractual arrangements [subject to Board agreement

58. Paragraphs 59 to 104 deal with each in turn:

Authorisation to practise

59. The Board consulted in March 2010 upon proposals for the introduction of an authorisation to practise regime. Paragraph 13(2) of the Legal Services Act 2007 requires individuals wishing to provide reserved legal activities to be authorised to do so by the relevant approved regulator.

60. The BSB believes that to comply with the Act a strengthened approach to the practising certificate renewal process must be implemented, one which is more directly linked to compliance with the criteria that must be met in order to practise as a Barrister.
61. It was therefore proposed in the consultation paper that the process of renewing a practising certificate be changed to one which confirms the entitlement to practise. During this process Barristers would be asked to:
- Verify their current contact details
 - Verify their status and entitlement to exercise reserved legal activities and/or offer legal advice while holding oneself out as a barrister
 - Declare the number of CPD hours that they have completed in the previous year
 - Declare that they have obtained and paid for adequate indemnity insurance
 - Sign a declaration of truth
62. The authorisation to practise regime proposed by the Board has been developed further in the light of responses received to the consultation paper. A report on the outcomes of that consultation and the policy decisions reached can be found on the BSB's website (www.barstandardsboard.org.uk). The resulting changes to the Code are included in the new version now being consulted upon.
63. In most cases this paper does not seek to repeat the arguments for or against the introduction of these proposals but merely to record the decisions of the Board and to invite comments on how they have been codified within the Code of Conduct. There are however three issues, relating to: a) the link between CPD and the renewal of practising certificates; b) the information to be included in the Barristers' Register and c) the regulation of barristers not permitted to practise, where the position has changed significantly or developed further from the stance adopted in the original authorisation to practise consultation paper.
64. The policy decisions taken by the Board on other issues and the reasons for them can be found in the consultation section of the BSB website under 'authorisation to practise'. In particular they cover:
- Revision to the categories of practising certificates;
 - Renewal of authorisation to practise

- Categories of barristers with limited practising entitlements
- Closure of transitional arrangements in the current edition of the Code
- Arrangements for barristers currently practising under transitional rules at paragraphs 1102 and 1103 of the current Code

Linking CPD to the renewal of practising certificates

65. Under current arrangements, CPD requirements are not directly linked to obtaining practising certificates. The Board's view is that there are grounds for linking compliance with annual CPD requirements to requirements for the annual renewal of practising certificates. This would help to underline the importance of CPD, in the interests of clients who should be able to rely on their barrister's knowledge and skills being kept up-to-date. Barristers who persistently fail to comply with the CPD requirements should not be entitled to continue to practise. Barristers will therefore have to provide information on their CPD record when applying to renew their certificates. This will replace the separate return currently required. The draft practising certificate rules provide that one of the grounds on which the BSB may refuse to renew a practising certificate is if the barrister has not complied with the CPD requirements applicable to him.
66. The policy for the exercise of this discretion will be developed and published in the light of the recommendations from the current review of CPD which are expected in spring 2011. The purpose will be to provide an incentive for compliance, not to punish. All barristers will be given an opportunity to make up any CPD deficit before being at risk of not being able to renew their certificates. A system of warning letters will ensure that those who remain in default know exactly what they need to do to ensure that they continue to be eligible for a practising certificate. The arrangements will also be designed to ensure that the interests of existing clients with immediate needs are taken into account.

Q13: Do you agree with the above proposal to link CPD requirements to the renewal of practising certificates?

Disclosure of authorised practising rights and entitlements on the Barristers' Register

67. Respondents generally agreed that barristers' particular practising rights should be included on the Barristers' Register. The Board will therefore list the reserved services which a barrister is authorised to provide on practising certificates and on the Barristers' Register. The Board believes that this is in the public interest to ensure

clarity on the part of the public, consumers, employers and practitioners about what reserved legal activities barristers are entitled to undertake.

68. However, the practising certificate and the Register will not provide information on whether the barrister is still subject to the three year rule for exercising rights of audience and supplying services to the public or the equivalent rules for conducting litigation. This information will nevertheless continue to be required and held by the BSB which will refuse to issue a practising certificate if it has reason to believe that a barrister would be practising in breach of those rules. Breach of the rules would also be a disciplinary matter and in a serious case would amount to misconduct.
69. The Register will also provide details about barristers contact details and disciplinary record, if any. In future, it may include further information on advocacy level (if a grading system is introduced – see Board consultation on quality assurance of advocates as detailed at paragraph 147 below). It has been argued that, for data protection reasons, a barrister’s details should be included on the Register only with their consent. The Board rejects this argument. A Register which includes details of all those entitled to practise as barristers is an essential safeguard to enable potential clients to check the status and standing of someone they are proposing to employ. The Board considers that it can only meet the regulatory objectives if inclusion in the Register is compulsory.

Q14: Do you have any comments on the way in which the authorisation to practise arrangements have been reflected in the Code

Outstanding policy issues on authorisation to practise - the regulation of barristers not permitted to practise

70. The authorisation to practise consultation paper discussed those barristers who have been called to the Bar of England and Wales, but are not permitted to practise either because they have not completed pupillage or because they have not complied with the three year rule and therefore cannot provide services to the public as a barrister. Many such barristers do not provide any legal services; others do. The consultation was concerned only with those barristers who do not have practising certificates but who do provide certain unreserved legal activities. Historically, people within this group were known as ‘non-practising barristers’.

71. This is a substantial category of barristers, numbering several thousand, and it is likely to continue to grow, given commercial pressures on the market for pupillages. As there is no requirement on such barristers to register with the BSB, details are not available of the exact numbers involved. However, it is clear that decisions on the future regulation of these barristers will impact on a considerable number of those Called to the Bar.
72. The provision of legal advice and the representation of clients before tribunals and other bodies which do not require rights of audience are not reserved legal services. They can therefore be supplied by anyone. Many of those Called to the Bar but not permitted to practise as barristers will wish to use their training and skills to provide such services. This creates the risk of misleading clients who may believe that their lawyer is a fully qualified barrister and subject to the same rules as practising barristers. There are therefore rules preventing such barristers from holding themselves out as barristers when providing such services. Problems nevertheless occur.
73. The BSB recognises that terms such as ‘non-practising barrister (NPB)’ can cause confusion to the public and to employers. It also confusing for the barristers themselves as there is uncertainty about the type of legal activity they can undertake and what they can call themselves when doing so. For this reason, the Board proposed in the consultation paper to change the terminology to ‘barristers not permitted to practise’.
74. In addition, the consultation discussed various options as to how to deal with resulting concerns about the possible confusion for clients when dealing with people who are barristers but who are not entitled to practise as such. It ruled out the option of prohibiting barristers without practising certificates from providing unreserved legal services as being disproportionate. It also ruled out making them subject to similar rules as practising barristers as that would increase the potential confusion given that they would not have the same training as practising barristers. Instead it concluded that clarifying and modifying the current rules was the preferred approach. For example, it sought views on whether there should be clearer guidance on holding out or whether there should be a requirement on clients or potential clients to sign a disclaimer in a prescribed form in order to ensure that members of the public are properly informed of the status of barristers who are not permitted to practise as barristers⁹.

⁹ Which builds on the existing requirements in paragraph 206 and 808 of the Code of Conduct

Consultation paper responses

75. Responses on this issue varied enormously but one point where there was general consensus was over the disapproval of the proposed title of 'barrister not permitted to practise'. It was argued by many respondents as being more confusing and misleading than the current arrangements.
76. A number of suggested terms were provided by respondents, including:
- 'non-licensed barrister'
 - 'non-certified barrister'
 - 'barrister without a practising certificate'
 - 'barrister with limited practising rights'.
 - 'partially qualified barrister'
77. An additional safeguard was proposed that a barrister without the right to practise should be allowed to use the word 'barrister' when providing legal services only when those services are provided to an employer, when employed in another regulated profession (e.g. solicitors' firms) or when providing services to companies or other non-consumer bodies.
78. A number of respondents pointed out that the FSA requires the addition of the words 'regulated by the FSA' on business cards, suggesting that the BSB could introduce a similar requirement for barristers.
79. In the light of the responses, the Board has reviewed its original proposed terminology for barristers who are not permitted to practise. The Board welcomes the suggested alternative titles but has decided to opt for the title '**unregistered barrister**'. Such a title links in to the operation of the current Barristers' Register. Barristers are required to be allowed to practise in order to appear on the Register and therefore those that who are not permitted to practise but nevertheless wish to provide unreserved legal services are 'unregistered' barristers.
80. Turning now to the issue of whether additional safeguards are required for members of the public to ensure clarity over the status of unregistered barristers. There was general agreement that a prohibition would be disproportionate but much less on how the current regime could be improved.

81. A number of respondents commented on the subjective element of the proposal that barristers who are not entitled to practise should provide a disclaimer to clients if the client knew that they were a barrister. It was argued that it might be difficult for an individual to know whether or not the client knew that they were a barrister. This proposal introduced a subjective test, whereas the criterion should be objective.
82. It was however, accepted by a number of respondents that it was important to ensure that clients and potential clients should be clear about the status and rights of the person whom they have gone to for advice.
83. A full summary of the responses can be found in the consultation section of the BSB's website.

Policy decisions

84. The Board is grateful for the responses received and recognises the controversial nature of this issue and its wide impact on a number of barristers operating in a variety of contexts and circumstances. However, the Board does not believe that the current arrangement serves the public interest.
85. It proposes therefore that:
 - a. The objective of regulating unregistered barristers is to ensure that their clients understand that the person they are dealing with is not a practising barrister, does not have practising rights, might be less well trained or have no insurance and is not subject to the BSB's practising rules and that they do not have a right to complain to the Legal Ombudsman. Some clients are much more knowledgeable than others and the regulatory regime should reflect the different levels of risk.
 - b. As there are also other situations in which clients might be misled about the status of a barrister, a new general rule should be introduced. This will require all barristers (whether entitled to practise or not) whose professional practice or business includes the supply of legal services, not to mislead, or cause or permit to be misled, those to whom they supply, or offer to supply, those services about the nature of the legal services they are entitled to supply, the basis on which they are can supply them, the extent to which they are regulated when providing those services or the extent to which they are covered by insurance. This rule places the obligation on all barristers to

ensure that their status and their rights to provide reserved or unreserved legal services are clear.

- c. There will be an additional rule for unregistered barristers who are self-employed or who work for unregulated employers¹⁰ whose business includes giving legal advice to clients. If those clients are individuals or small businesses or charities, and so likely to have little experience of legal matters, the barrister must explain in language that the client can understand that they are not acting as a barrister, are not subject to rules about how they practise and may not be covered by insurance. They must also explain that the client cannot complain to the Legal Ombudsman and can only complain to the BSB in limited circumstances. The client should be asked to confirm in writing that this explanation has been given. The BSB will provide a model form of words.
- d. Specific guidance will be provided for unregistered barristers when dealing with other clients. These clients are generally less at risk of being misled about the standing of an unregistered barrister and the BSB has concluded that it would therefore be proportionate to rely on the general rule about not misleading plus guidance on its application rather than imposing a rule which would inevitably be less flexible. Draft guidance is at **Annex 2**.

86. The Board considers that its proposals represent a proportionate response to the different risks involved in providing legal services to different kinds of client. It would, however, welcome views on whether it is desirable, as proposed in rule 87, to require a detailed explanation to be given and written confirmation obtained in the case of small businesses, charities and other organisations as well as to individuals. It is arguable that it is only individual lay clients who need this added protection, and that the general guidance would adequately protect the interests of other clients while avoiding imposing a more rigid rule which cannot take account of the varying degrees of knowledge which business clients are likely to have.

87. The ban on unregistered barristers holding themselves out as barristers when providing legal services will be retained. The Board recognises that its proposed

¹⁰ It is proposed that for this purpose barristers who work for employers who are subject to regulation by any regulator (for example, one of the accountancy regulators) should be treated in the same way as those who work for employers regulated by an Approved Regulator. In all such cases, the barrister will be subject to the regulator's rules about dealing with clients.

approach means that unregistered barristers will nevertheless need to tell their clients before providing legal services that they are a barrister but only in the context of explaining the limitations on what they can do. On balance the Board considers that this presents a lesser risk to inexperienced clients than leaving them at risk of believing they are dealing with a fully qualified barrister entitled to practise as such.

Barristers registered under paragraph 206

88. There are about 100 barristers currently registered under rule 206 of the Code ie barristers called before 31 July 2000 who are not entitled to practise as barristers but are nevertheless permitted to hold themselves out as barristers subject to providing a disclaimer that they are not fully regulated by the Bar Standards Board. These barristers will be permitted to continue to hold themselves out as barristers and will be subject to the same rules and guidance as unregistered barristers as outlined in paragraph 82(d) above.

89. The rule 206 category will be closed to new entrants.

90. The arrangements outlined above are a departure from the stance in the original consultation paper.

Q15: Do you agree with the new proposals in respect of unregistered barristers?

Q16: Do you think that the proposals provide adequate safeguards for clients and potential clients?

Q17: Do you think that rule 87 should apply to clients which are small businesses and other organisations as well as to clients who are individuals?

Q18: Do you have any comments on how these new proposals are reflected in the Practising Rules?

Dual authorisation

91. The current Code prohibits a person who is a member of another authorised body and entitled to practise from also being a practising

barrister¹¹ ie a person cannot be both a practising barrister and a practising solicitor. This position is maintained in the new Practising Rules at paragraphs 9 and 45. The Board would however welcome views on whether that prohibition remains appropriate and necessary given the changing shape of the provision of legal services. The revolutionising of the legal market as a result of the Legal Services Act 2007 and the subsequent new business opportunities will see barristers and solicitors working more closely and more flexibly. Furthermore, the shape of legal regulation is altering to reflect the shift in the provision of legal services.

92. The original reason for the prohibition was to avoid duplication of regulation and confusion for clients over in what capacity a person was providing legal services. It is arguable that, in the current climate, such a prohibition is restrictive and unnecessary. The dual qualified barrister would need to comply with the Code and with the rules applying to him as a result of his other qualification and would potentially be subject to both sets of disciplinary procedures, but with the onus on Approved Regulators to avoid regulatory conflicts, that should not present undue problems.
93. Many barristers who are dually qualified might nevertheless prefer to be subject to only one set of rules. The Code will therefore continue to allow such a barrister to decide not to hold a practising certificate but nevertheless to be able to describe himself as a barrister while providing legal services provided that he makes it clear that he is not practising as a barrister. This is a simpler requirement than currently applies. The barrister will also continue to be subject to the rules of the other Approved Regulator

Q19: Do you think that the prohibition on dual qualification should continue?

Q20: If not, should there be any restrictions or safeguards introduced, and if so, what should they be?

Q21: Do you agree that the information which a dual qualified barrister is required to give if he wishes to call himself as a barrister even though he is not practising as a barrister should be limited to explaining that he is not practising as a barrister

Application of the International Practice Rules

¹¹ See paragraph 808

94. The International Practice Rules have been the subject of review and consideration by the Bar Council's International Relations Committee. Revisions to these Rules will be consulted on separately and will be incorporated in the new Code before publication.

Undeeming of legal aid fees

95. Paragraph 604(b) of the current Code states that a self-employed barrister is not obliged to accept instructions under the cab rank rule, amongst other things, other than at a fee which is proper. The Bar Council decided in 2001 in relation to family graduated fees and 2003 in respect of criminal graduated fees that they were no longer deemed to be at a proper professional fee and accordingly barristers are not obliged to accept instructions where fees are offered on that basis.
96. Now that the Board is established as the independent regulatory arm of the Bar Council, it does not believe that it can merely adopt the representative position on what is a regulatory issue. It does not itself have the authority to delegate to the representative body the power to determine what is a proper fee, nor does it think that this is the kind of economic decision which it, as a regulator, should take. Accordingly, new rule 77 says nothing about whether legal aid fees are to be considered to be proper professional fees. It will continue to be open to the Bar Council to offer guidance but, as for privately funded work, barristers will have to make their own decision as to whether a proposed fee is a proper professional fee and be prepared to defend that decision if challenged.

Q 22 Do you agree with how it is proposed to deal with legal aid fees for the purpose of the cab rank rule

Shared responsibility for Chambers management

97. The current Code at paragraph 404 places specific and direct obligations on Heads of Chambers in respect of the administration of Chambers. These obligations cover such issues as ensuring that Chambers is administered competently and effectively, that the affairs of Chambers are conducted fairly and equitably for all members and that proper arrangements are made for dealing with pupils and equality and diversity.
98. The role of Head of Chambers and the management and administration of Chambers have changed markedly in recent years and, with the potential

for new business arrangements for the provision of legal services, are likely to develop further. For example, many Chambers now operate a committee structure with different committees taking responsibility for different aspects of Chambers administration such as pupillage and complaint handling. The Head of Chambers may not play an active part in all, or any, of these Committees yet would, under the current construction of the rule be accountable for ensuring that they are acting in accordance with the regulatory requirements. The Board is therefore of the view that the new Rules need to reflect the reality of practice administration within Chambers.

99. The Board believes that it is appropriate to place some responsibility on all members for the proper administration of Chambers. As a result, the proposed solution removes sole responsibility from the Head of Chambers and in turn places a collective responsibility on all members of Chambers to take reasonable steps to ensure that Chambers administration meets the regulatory requirements. The level of responsibility will depend on the role the member plays in the administration of Chambers. This means that a very junior member of Chambers has a lesser responsibility (but a responsibility nonetheless) than, for example, a member of Chambers who sits on one or more of the Chambers' committees.

100. This proposal is reflected in paragraphs 66-70 of the new Practising Rules.

Q23: Do you agree that all members of Chambers should be collectively responsible for the administration of Chambers?

Q24: If so, do you agree with the approach proposed?

Three year rule

101. The Practising Rules continue the 'three year rule' which requires that a barrister of less than three years' standing may only supply legal services to the public or exercise any right of audience if the barrister's principal place of practise has a qualified person who is readily available to provide guidance.

102. The rule has been amended from the provision in the current Code to take account of the changes permitting barristers to practise in a dual capacity. If a barrister has more than one principal place of practice, there must be a qualified person in both locations.

103. The current rule requires the young barrister and the qualified person to be based in the same Chambers or office. Waivers are sometimes granted to allow other forms of support from a qualified person who works elsewhere but who is committed to being available to provide advice and help and who is in regular touch with the young barrister. It has been suggested that the Code should be amended to permit this type of arrangement without the need for a waiver. The Board's view is that there are significant advantages in the young barrister and the qualified person working from the same place. This makes it much easier to raise issues as they arise and for informal help and advice to be given. When such an arrangement is not possible, a waiver can be sought and approval can then be given subject to conditions appropriate to the individual circumstances.

Q 25 Do you agree that the existing requirement for barristers subject to the three year rule to have the same principal place of business as a qualified person should remain?

New contractual terms

104. In 2010, the Bar Council consulted about proposals to introduce standard contractual terms. This would involve a change to the Practising Rules to provide that the cab rank rule would apply to work offered on the standard terms. The Bar Standards Board is still considering the responses to the consultation. Any agreed changes to the rules will be incorporated into the final version of the new Code.

Practising Certificate Regulations

105. These Rules replace the current Practising Certificate Rules at Annex D to the Code. They reflect changes in the practising certificate arrangements as a result of the proposals for an authorisation to practise regime and also pick up certain administrative changes made to the process of renewal and revocation of practising certificates as well as the change to an annual renewal date of 1 April for all practising barristers. These changes are discussed in paragraphs 59 to 66 above.

Q26: Do you have any comments on the Practising Certificate Rules?

Compliance Rules

106. The Compliance Rules draw together the rules in the existing Code that place a specific compliance requirement on barristers, for example, a requirement to respond to correspondence from the Bar Council or Bar Standards Board or a requirement for barristers to report if they have been convicted or declared bankrupt.
107. This section of the Code also includes the definition of professional misconduct and identifies the circumstances in which breaches of the Code may be subject to administrative sanctions such as warnings and fines, rather than being treated as misconduct. These arrangements and the definition of misconduct are to be reviewed in 2011 and the new Code will be updated to reflect the outcome of those discussions.
108. The Board also intends to review the standard of proof required for misconduct cases and the Code may require further amendment following that review.
109. Of particular note are the following new rules, which are discussed at paragraphs 42 to 43:
- i. An obligation to co-operate with the regulator and the Legal Ombudsman;
 - ii. An obligation to comply with monitoring requirements imposed by the regulator;
 - iii. A positive duty to report misconduct

Q27: Do you have any comments on the content and drafting of the Compliance Rules?

Transitional arrangements

110. Transitional arrangements will be considered once the new Code has been finalised but any alleged breaches of the Code will continue to be considered in relation to the rules that applied at the time the relevant conduct took place.

PART 3: RELATED CODE ISSUES

111. As mentioned above, there are a number of related projects and issues that the Board is undertaking that impact on the shape and content of the Code of Conduct. This part of the consultation paper discusses some of those projects and issues and, where necessary, invites comments.

112. This part in particular focuses on:

- i. The policy for the period for disciplinary and related findings should be published
- ii. Entity regulation
- iii. Quality assurance of advocates
- iv. Referral fees

113. Dealing with each in turn:

Publication of disciplinary and related findings

114. This section of the consultation paper arises from discussions held by a working group established by the Board's Complaints Committee.

115. The Board has been considering the period for which disciplinary and related findings should be published, or available on request to regulators or particular bodies having a particular interest in relevant issues.

116. The current rules or practice of the Board are as follows:

<u>FINDING</u>	<u>PUBLICATION</u>	<u>DISCLOSURE</u>
Professional misconduct findings (by Disciplinary Tribunals or using Determination by Consent procedure)	Recorded on Board website unless body making finding directs otherwise. Record remains for 2 years, save that sentences which include suspension or disbarment remain	Disclosed on request, throughout the barrister's career to enquirers and, in particular, to the Judicial Appointments Commission, the QC Appointments Panel (QCA) and to other Bars.

	indefinitely.	
Interim Suspension Orders (i.e. following a criminal conviction)	Not published.	Disclosed to all enquirers while current.
Restrictions and conditions imposed by Fitness to Practise Panels (i.e. on health grounds).	Not published.	Not disclosed
Findings of Inadequate Professional Service	Not published	Disclosed only to QCA and Inns on request.
“Fixed Penalty” Offences (para 901.1)	Not published	Not disclosed
‘No further action’	Not published	Fact of NFA disclosed on request, throughout the barrister’s career to enquirers and, in particular, to the Judicial Appointments Commission, the QC Appointments Panel (QCA) and to other Bars.

(There is additional publication of findings of professional misconduct, at the time of the finding being made, to named office holders such as the Lord Chancellor and Lord Chief Justice. This additional publication is not the subject of this consultation. Additionally, disclosure of complaints which have not, or not yet, resulted in any finding raises different issues, which are not the subject of this consultation.)

117. The Board considers that the publication of disciplinary and related findings might serve a number of purposes consistent with the regulatory objectives set out in section 1 of the Legal Services Act 2007. In particular:

- (1) protecting and promoting the public interest;
- (2) protecting and promoting the interest of consumers; and

(3) promoting and maintaining adherence to the professional principles.

118. The Board further takes the view that the publication of disciplinary findings assists in securing transparent regulation, enabling the public to have confidence in the work of the BSB as a regulator.
119. However, the Board is aware of countervailing data protection concerns, so that information relating to individual barristers is not published or disclosed for longer than is necessary to secure the regulatory objectives. The Board is also concerned to ensure that all information which is available to the public should be published on the Board website. It should not be the case that more information is available to those who are sophisticated enough to contact the Board and ask for information than is available to other members of the public.

Q28: Do you agree with the purposes of publication and disclosure? Do you consider that any other purposes are served by publication?

Q29: Do you agree with the concerns identified? Can you identify any further concerns?

The nature of findings involved

120. The Board considers that the extent of publication and disclosure should be influenced by the nature and seriousness of the relevant findings.
121. Professional misconduct findings are potentially the most serious findings. They are made as a result of complaints being made, whether by third parties or by the Complaints Committee itself. Findings follow hearings before Disciplinary Tribunals or a Determination by Consent procedure (where the barrister concerned accepts a proposed determination, including proposed sanction, by the Complaints Committee). Sanctions for professional misconduct range up to disbarment.
122. Interim suspension orders are very rare. They are imposed only where the barrister concerned has been convicted of an indictable offence, or convicted by an Approved Regulator for misconduct resulting in a suspension or termination of his right to practise in a Recognised Body. Such orders come to an end once the underlying complaint has been finally disposed of, and any sanction imposed.
123. Restrictions on practice, or the imposition of conditions on practice, under the fitness to practise rules are also rare. These are imposed only where there is a medical reason to restrict practice, determined by a specialist Medical Panel.
124. 'Fixed penalty' offences are those breaches of the Code of Conduct covered by paragraph 901.1 of the Code. They are generally administrative and/or low level

breaches, which are sanctioned by a written warning and/or a fine of £300. Historically, these findings have never been published, and never been disclosed to third parties.

125. Inadequate Professional Service (IPS) findings are only available where a lay client has complained about the service provided by the barrister. From October 2010, the BSB will no longer have jurisdiction over service complaints of this nature, and it will be for the Legal Ombudsman to determine publication and disclosure policy. The Board has historically not published findings of IPS, and disclosed them only to the QC Appointments body and the Inns of Court on request.
126. No further action is a determination by the Complaints Committee that there is a sustainable case of professional misconduct against a barrister, but that it is not in the public interest to pursue the matter at a Disciplinary Tribunal. When a determination of NFA is made by the Complaints Committee, then (as a matter of recent policy) it will be open to the barrister concerned to request that such determination be re-opened and that the barrister be prosecuted before a Disciplinary Tribunal. Accordingly, NFA determinations are now made only with the agreement (albeit tacitly expressed) of the barrister concerned. Historically, these findings have been disclosed to various named parties and to enquirers on request, but are not otherwise published.

The Board's proposals

Publication of findings of professional misconduct

127. In order to meet the purposes of publication in a proportionate manner, the Board proposes the following publication policy:
- (1) For professional misconduct findings for which a sentence of up to three months' suspension is imposed, publication will be for 5 years from the date of first publication.
 - (2) For professional misconduct findings for which a sentence of between three months' and 12 months' suspension is imposed, publication will be for 10 years from the date of first publication.
 - (3) For professional misconduct findings for which a sentence of disbarment or of in excess of 12 months' suspension is imposed, publication will continue indefinitely.
128. Where a sentencing body imposes a number of sentences on a single occasion, whether for a single offence or for multiple offences, publication of all sentences will continue for as long as that applicable to the greatest sentence or (in the case of consecutive suspensions) the total sentence.

129. In every case, the sentencing body will have the power to order that publication of the sentence will be for a period different to that which would otherwise apply (whether longer or shorter).
130. Where a barrister is found to have committed further professional misconduct at a time when previous findings were still being published, those earlier findings shall continue to be published (and, if appropriate, re-published) until the publication period for the later findings expires.

Q30: Do you agree with the Board’s proposal as to the publication of findings of professional misconduct? If not, why not?

Disclosure of findings of professional misconduct

131. The BSB proposes that it will disclose information relating to a barrister’s disciplinary history indefinitely, even where this information is no longer being published, to the following bodies (or their successors) (“**the Named Bodies**”) on request to:
- (1) the Judicial Appointments Commission;
 - (2) the QC Appointments body;
 - (3) the Inns of Court (in respect of a barrister’s application to be a pupil supervisor, on an application by a former barrister for re-admission to the Bar).
132. The Board proposes that it will not, once the publication period for a disciplinary finding has expired, disclose that finding to any other person or body without the consent of the barrister concerned.
133. Accordingly:
- (1) If a third party (not being one of the Named Bodies) seeks a disciplinary history for a barrister, they will be told only what is available for general publication, and be told that this is the limitation on what the Board will disclose.
 - (2) If, however, a barrister asks the Board for a statement as to that barrister’s own disciplinary history, for example at the request of a potential employer, then the Board will provide such statement.

Q31: Do you agree with the Board’s proposal as to the disclosure of findings of professional misconduct? If not, why not?

Publication and disclosure of interim suspension orders

134. The Board proposes that it will publish, and disclose on request, all current interim suspensions.

135. Once an interim suspension has come to an end, it will no longer be published or disclosed.

Q32: Do you agree with the Board's proposal as to the publication and disclosure of findings of IPS? If not, why not?

Publication and disclosure of conditions imposed by Fitness to Practise panels

136. The Board proposes that it will publish, and disclose on request, all current conditions or restrictions imposed by Fitness to Practise panel.

137. Once such conditions or restrictions have come to an end, their existence will no longer be published or disclosed.

Q33: Do you agree with the Board's proposals as to the publication and disclosure of conditions imposed by Fitness to Practise panels? If not, why not?

Publication and disclosure of findings of Inadequate Professional Service

138. The BSB does not propose to publish current or historic findings of Inadequate Professional Service.

139. The Board does propose to continue disclosing historic findings of Inadequate Professional Service to the Named Bodies on request.

Q34: Do you agree with the Board's proposal as to the publication and disclosure of findings of IPS? If not, why not?

Publication and disclosure of findings of 'fixed penalty' (para 901.1) findings

140. The Board proposes that it will continue neither to publish nor disclose findings under para 901.1.

Q35: Do you agree with the Board's proposal neither to publish nor disclose findings under para 901.1. If not, why not?

Publication and disclosure of 'No Further Action' determinations

141. The Board proposes that it will continue neither to publish nor publicly to disclose determinations of NFA.

142. However, the Board proposes that it will disclose determinations of NFA to the Named Bodies indefinitely.

Q36: Do you agree with the Board’s proposal as to the publication and disclosure of NFA determinations? If not, why not?

Other powers to publish and disclose findings

143. The Board has considered the possibility that, in addition to the rules proposed above, there should be an express power retained by the Complaints Committee, or some other body, to publish or disclose additional information where there is good reason. However, the Board cannot currently see any circumstances in which such power would be needed.

144. Accordingly, the Board is not presently minded to provide for any person or body to have the power to authorise further publication or disclosure of disciplinary or related findings.

145. The Board would particularly welcome views on this issue.

Q37: Do you consider that there should be a residual power in the Complaints Committee, or in some other body, to publish or disclose findings where there is good reason to do so? If so, why?

Summary

146. In summary, the Board proposes implementation of the following policy (in addition to disclosure with the consent of the barrister concerned, which will in every case be possible indefinitely):

<u>FINDING</u>	<u>PUBLICATION</u>	<u>DISCLOSURE</u>
Professional misconduct findings, with sentences up to 3 months’ suspension	5 years (unless sentencing body orders otherwise)	Indefinitely to the Judicial Appointments Commission, QC Appointments and the Inns of Court (the ‘Named Bodies’). Otherwise, only during period of publication.
Professional misconduct findings, with sentences of suspension in excess of 3 months and up to 12 months	10 years (unless sentencing body orders otherwise)	Indefinitely to the Named Bodies. Otherwise, only during period of publication.

Professional misconduct findings, with sentences of suspension in excess of 12 months and disbarment	Indefinitely (unless sentencing body orders otherwise)	Indefinitely.
Interim Suspension Orders (i.e. following a criminal conviction)	For duration of order.	For duration of order.
Restrictions and conditions imposed by Fitness to Practise Panels (i.e. on health grounds).	For duration of restriction / conditions imposed.	For duration of restriction / conditions imposed.
Findings of Inadequate Professional Service	Not published.	Indefinitely to the Named Bodies. Otherwise, not disclosed.
“Fixed Penalty” Offences (para 901.1)	Not published.	Not disclosed.
‘No further action’	Not published.	Indefinitely to the Named Bodies. Otherwise, not disclosed.

Q38: Do you have any further comments to make on the Board’s proposed publication and disclosure policy?

Quality assurance of advocates

147. The Board, through the Joint Advocacy Group consulted in July 2010 on proposals for a quality assurance scheme for all criminal advocates. The consultation period closed on 12 November and the responses are currently being analysed and the scheme revised accordingly. It is likely that the eventual scheme will require specific code provisions to ensure that advocates comply with the requirements of the scheme and comply with any independent body established to it.

Entity regulation

148. On 27 September 2010 the Board issued a consultation paper on whether it should become a regulator of entities and if so what type of entity should be permitted and what reserved legal activities people within the entity should be permitted to carry out. The paper discusses a number of related policy issues that would need to be resolved

should the Board become an entity regulator. It also raises the possibility that some of the proposals, notably those relating to litigation, should be extended to self-employed barristers.

149. Should the Board regulate entities, it will be necessary to develop a regulatory framework and discrete rules for entities and those employed within them. The Board has had regard to this when drafting the new Code of Conduct to ensure that there is sufficient flexibility both in the content and the structure for revision or addition to be made in the future.
150. It is likely that, should the Board become an entity regulator, rules will be required to address a number of new regulatory policy issues, in particular:
- i. Authorisation of entities
 - ii. Nature of entities the BSB will consider authorising
 - iii. Litigation;
 - iv. Prohibition orders preventing entities from employing named individuals;
 - v. Duty of employees not to cause the entity to breach the Code of Conduct and duty on employers to ensure that employees abide by the Code of Conduct;
 - vi. The applicability of the cab-rank rule to entities;
 - vii. Intervention powers;
 - viii. Disciplinary arrangements for managers and employees of entities;
 - ix. Insurance requirements.
151. At this stage it is not possible to say firstly whether the Board will become an entity regulator and secondly, if so, what changes to the Code will be necessary. It is however important to note the possible changes and the Board has had regard to these to ensure that the new Code can be adapted as required.

Pupillage review

152. In 2009 the Board carried out an extensive review of pupillage. The recommendations arising from that review were approved by the Board and are currently in the process of being implemented and this will include the need for revisions to be made to the Pupillage Funding and Advertising Requirements (Annex S of the current Code).
153. One recommendation arising from the review is that the minimum amount of the pupillage award should be raised from £10,000 to £12,000 a year, payable as before in

equal monthly instalments. The amount prescribed in the new Code will reflect this change.

154. A second recommendation accepted by the Board is that all chambers, whether or not they participate in the OLPAS/Pupillage Portal scheme, should process pupillage applications according to the timetable laid down by the OLPAS/Pupillage Portal scheme. This will be reflected in the Funding and Advertising Requirements and the Board will consider further how to introduce equivalent provisions for authorising other training providers.
155. A third recommendation is that so called “third six’ pupillages should not be treated as pupillages for the purpose of the Code of Conduct or the Training Regulations, on the grounds that these are voluntary arrangements between the barrister and the organisation concerned, and that the training delivered by the organisation (if any) does not fall within the jurisdiction of the BSB. A new definition of pupils has been added to meet this point. Once barristers have fully satisfied the pupillage requirements, they become entitled to a full practising certificate and are subject to the Code provisions as they apply to fully qualified junior barristers, not to the special rules which apply to pupils.

Referral fees

156. The Legal Services Board has recently consulted upon regulatory arrangements in respect of referral fees (payment in return for instructions). The current Code prohibits the payment of referral fees and the new draft Code replicates the existing rules. Depending on the outcome of the LSB’s consultation paper this position may need to be reviewed. It is likely that policy decisions will be taken before the new Code is published and will therefore be able to be reflected in it.

PART 4: OTHER ISSUES

Publication of the new Code

157. The Code of Conduct is currently available in both loose-leaf hard copy and electronically on the BSB's website. Copies are automatically sent to all Chambers and individual copies can be bought for £25. The Code can be downloaded free of charge from the BSB's website. Any amendments to the Code are, once approved, immediately included in the on-line version. Hard copies of the amendments are distributed on average twice a year to avoid over burdening Chambers and other recipients.

158. The advantages of the present system are:

- They give self-employed barristers access to a hard copy of the Code at Chambers;
- The size makes it relatively easy to transport the Code to court
- The loose-leaf format enables it to be easily updated;
- The website ensures that barristers have ready access to the Code should they need it.

159. The disadvantages are:

- In practice, the hard copy of the Code does not get to every barrister;
- Employed barristers only have free access to the Code via the web;
- It is not always easy for busy practitioners to keep their Codes up to date;
- Some concerns have been expressed that the version on the web is not easy to search.

160. Possible alternative approaches for publishing the Code include:

- (1) A bound copy (either in paperback or hardback), which could be supplement regularly by updates;
- (2) On CD-rom;
- (3) On the website only.

161. A bound copy of the Code is likely to be easier to handle than the present version, but it will be more difficult to update and the supplements might get lost. It will be no cheaper than the existing version. A CD-rom would be considerably cheaper and

would enable copies to be provided to all barristers. On the other hand, it would get out of date and would need to be supplemented by new CDs. It relies on all barristers (and other users) having ready access to a computer wherever they might want to access it. While this is likely to be the case for the vast majority of barristers and other professional users, it is still not universally true.

162. Our preliminary view is that we should move to a web based version of the Code with hard copies made available upon request and upon payment. We believe that this best serves the needs of the users of the Code. A web based version will be readily accessible for barristers and members of the public alike and will aid navigation as it can contain links to related guidance or other provisions of the Code. It also makes it easy to update the Code as changes are made so as to ensure that the Code remains as accurate and up to date as possible.
163. Barristers and others will be able to view the Code on-line or, if necessary, print out the relevant sections for use. In any event, it will still be possible to obtain a hard copy of the Code.

Q39: Do you agree that the Code should be principally web based?

Equality and diversity

164. The Code of Conduct will be the subject of a comprehensive Equality Impact Assessment. The Board is committed to promoting diversity and equality throughout the Bar and within our own organisation. We endeavour to ensure that our processes and procedures are fair, objective, transparent and free from discrimination. In addition to the questions we have asked in this paper, please could you let us know if any issues arise which you consider might have implications for equality and diversity. We would particularly welcome comments on whether there are likely to be any negative consequences for any group arising from the new Code of Conduct and how these could be mitigated, or if there are opportunities to promote greater equality.

Q40: Do you think that the new Code of Conduct gives rise to any negative consequences for any group and, if so, how could they be mitigated?

Q41: Does the Code provide opportunities to promote greater equality, and if so, how?

Q42: Do you have any other comments on equality and diversity issues that may arise from the new Code of Conduct?

Timetable for publication of the new Code of Conduct

165. The proposed timetable for the publication of the new Code of Conduct is set below.

Action	Date
Consultation period	January – April 2011
Review consultation responses and amend Code of Conduct	April - August 2011
Include additions to the Code in the light of other policy decisions (quality assurance of advocates, entity regulation etc)	April – August 2011
Conduct Equality Impact Assessment	August 2011
Code considered and approved by the Bar Standards Board	September 2011
Code submitted to the Legal Services Board for approval	October 2011
Code approved by the Legal Services Board (dependent on approval process but likely to be a minimum of 90 days from application date)	December 2011
Code brought into force and published on Bar Standards Board website	January 2012

Q43: Do you have any comments on the proposed timetable for publication?

Annex 1

THE CODE OF CONDUCT OF THE BAR OF ENGLAND AND WALES

FOREWORD

Foreword

Justice and the rule of law are fundamental to our society. So is public confidence in the administration of justice.

Barristers play a central part in our legal system. The effective and efficient running of the system relies on barristers using their independent judgment when advising their clients, presenting their clients' cases effectively, and carrying out their duty to the court and their other professional duties. The trust and confidence which the public places in barristers, and the reputation of the Bar, depend on the behaviour and reputation of all barristers – even when they are not acting in a professional capacity.

Barristers therefore must act with integrity, honesty and independence. In their practice they must provide a competent and professional service, keep their knowledge fully up to date, give sound advice and deal frankly and courteously with clients, colleagues and others.

When acting as an advocate, the role of a barrister is to present their client's case as effectively as possible. Justice requires that people appearing before a court should have a fair hearing. This in turn means that they should be able to have their case presented by skilled advocates who will do so fearlessly, in accordance with their duty to the court, regardless of any personal views, and in the best interests of their client.

(To be signed by the Chair of the BSB)

THE CODE OF CONDUCT OF THE BAR OF ENGLAND AND WALES

INTRODUCTION

INTRODUCTION

The Code

1. The Code of Conduct of the Bar of England and Wales (“this Code” or “the Code”) consists of:
 - 1.1 This Introduction.
Conduct Rules
 - 1.2 The Conduct Rules.
Practice Rules
 - 1.3 The Practising Rules.
*Annexes to the Practising Rules (Applicable to Self-Employed Barristers)*¹²
 - (a) The Licensed Access Rules.
 - (b) The Licensed Access Recognition Regulations.
 - (c) The Public Access Rules.
 - (d) The Terms of Work on which Barristers Offer their Services to Solicitors.
 - (e) The Withdrawal of Credit Scheme 1988.
 - (f) The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001.
 - (g) The Chambers Complaints Rules.
 - (h) The Pupillage Funding and Advertising Rules.*Licensing Rules*
 - 1.4 The Practising Certificate Rules.
 - 1.5 The Registration of Employed Lawyers Rules.
*Qualification Regulations*¹³
 - 1.6 The Bar Training Regulations.
 - 1.7 The Continuing Professional Development Regulations.

¹² These annexes are not included in this draft of the Code. Annexes (d) to (f) and (h) are being reviewed separately

¹³ Not included in this draft of the Code. The CPD regulations are being considered by the CPD working group

Discipline Rules

1.8 The Compliance Rules.

*Annexes to the Compliance Rules (Disciplinary Procedures)*¹⁴

- (a) The Complaints Rules.
- (b) The Disciplinary Tribunals Regulations.
- (c) The Hearings before the Visitors Rules.
- (d) The Interim Suspension Rules.
- (e) The Fitness to Practice Rules.

1.9 Definitions.

Commencement

- 2. This Ninth Edition of the Code came into force on [date] and replaced the Eighth Edition of the Code.
- 3. In respect of anything done or omitted to be done or otherwise arising before [date]:
 - 3.1 this Ninth Edition of the Code shall not apply;
 - 3.2 the Edition of the Code in force at the relevant time shall apply; and
 - 3.3 any reference to this Code shall include reference to the Edition of the Code in force at the relevant time.

Amendment

- 4. Save in the case of the Hearings before the Visitors Rules, amendments and additions to this Code may be made by resolution of the Bar Standards Board which shall be operative upon such date as the resolution shall appoint or if no such date is appointed on the later of:
 - 4.1 the date of the Resolution; and
 - 4.2 the date when approval of the amendment or addition, if required, is given by the Legal Services Board under Schedule 4 of the Legal Services Act 2007.
- 5. Amendments and additions will be published from time to time in such manner as the Bar Standards Board may determine.

Application

¹⁴ Not included in this draft of the Code

6. If:
 - 6.1 you are employed by or a manager of a recognised body;
 - 6.2 you are subject to a requirement of the regulatory arrangements or the approved regulator of that recognised body; and
 - 6.3 that requirement conflicts with a requirement of this Code which, but for the operation of this rule, would apply to you,

then the requirement of this Code shall not apply to you.

7. If you are a registered European lawyer, then, save where otherwise provided, the provisions of this Code which apply to barristers shall apply to you in connection with all professional work undertaken by you in England and Wales:
 - 7.1 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
 - 7.2 as if references in these Rules to barristers included reference to registered European lawyers.

Guidance

8. The Bar Standards Board has published and will publish from time to time guidance as to the interpretation and application of this Code, consisting of:
 - 8.1 The guidance contained in the Conduct Rules.
 - 8.2 The Pupillage Handbook.
 - 8.3 The Equality and Diversity Code Good Practice Guidelines.
 - 8.4 Such other guidance as may be published from time to time on the Bar Standards Board's website.
9. In carrying out your obligations under this Code, you must have regard to any relevant guidance issued by the Bar Standards Board, which will be taken into account if there is an alleged breach of any of your obligations under this Code.

Waiver

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

Interpretation

11. In this Code, any reference to the masculine shall be deemed to include the feminine and any reference to the singular shall include the plural.
12. In this Code, the words and phrases defined in the Definitions section shall have the meaning there set out.

THE CODE OF CONDUCT OF THE BAR OF ENGLAND AND WALES

CONDUCT RULES

Introduction to the Conduct Rules

These Conduct Rules define the professional duties that barristers owe to the public, the court, their clients, their colleagues and to others involved in the administration of justice. They set out the principles on which good professional practice is founded. They also set out the standards that all barristers are expected to meet and against which their conduct is judged.

These Conduct Rules are made up of:

- Core Duties (labelled ‘CD1’ and so on). The Core Duties are the basic duties owed by barristers. Failing to comply with a Core Duty may make a barrister liable to disciplinary action
- Rules (labelled ‘1.1R’ and so on). The Rules give effect to, and are to be read in the light of, the Core Duties. Failing to comply with a Rule may make a barrister liable to disciplinary action
- Guidance (labelled ‘1.3G’ and so on). As provided by paragraph 8 of the Introduction of the Code, guidance helps to interpret the Core Duties and the Rules, and will be taken into account if there is an alleged breach of a Core Duty or a Rule.

How the Conduct Rules apply

These Conduct Rules apply to barristers, as follows:

- Conduct rule 2.13R and the accompanying guidance apply to all barristers at all times.
- Core Duty 4 and the accompanying guidance apply to all barristers at all times.

- All of the Core Duties and all of the Conduct Rules apply to all practising barristers in relation to anything that they do in their professional practice. 'Practising as a barrister' is defined in the Practising Rules.

The only exception to this is that in relation to a barrister who is an employee or a manager of a recognised body, the requirements of these Conduct Rules do not apply in the circumstances provided for in paragraph 6 of the Introduction to the Code.

These Conduct Rules also apply to registered European lawyers, in the manner provided for by paragraph 7 of the Introduction to this Code.

Core Duties

- CD1 You must observe your duty to the court in the administration of justice.**
- CD2 You must act with integrity and honesty.**
- CD3 You must maintain your independence.**
- CD4 You must not behave in a way which is likely to diminish the trust and confidence which the public places in you or the profession.**
- CD5 You must keep the affairs of each client confidential.**
- CD6 You must act in the best interests of each client.**
- CD7 You must provide a competent standard of work and service to each client.**
- CD8 You must not discriminate improperly in relation to any person.**

The Core Duties are not presented in any order of importance.

Section 1: The duty to the court in the administration of justice

CD1 You must observe your duty to the court in the administration of justice

1.1R Your duty to the court includes the following:

- (1) You must not knowingly mislead the court or permit the court to be misled.
- (2) You must not abuse your role as an advocate.
- (3) You must avoid wasting the court's time.
- (4) You must take reasonable steps to ensure that the court has before it all relevant decisions and legislative provisions.

1.2G Your duty to the court is subject to your duty to keep the affairs of each client confidential.

1.3G If there is to be public confidence in the justice system, advocates must assist the court in the administration of justice. This means that your duty to act in the best interests of each client is subject to your duty to the court.

Not misleading the court

1.4G Your duty not to mislead the court or permit the court to be misled means that you must not:

- (1) make submissions, representations or any other statement;
- (2) call witnesses to give evidence; or
- (3) ask questions which suggest facts to witnesses

which you know to be untrue or misleading.

1.5G Your duty to act in the best interests of your client is subject to your duty to the court. Thus, for example, you must not make any submission on behalf of your client which you know to be untrue as a result of what your client has told you or as a result of documents which you have seen. However, your duty to the court does not prevent you from putting

forward your client's case simply because you do not believe that the facts are as your client (or you, on your client's behalf) states them to be. Your role as an advocate is to present your client's case, and it is not for you to decide whether your client's case is to be believed.

Relationship between duty of confidence and duty not to mislead the court

1.6G Your duty to the court does not mean you must disclose confidential information which you have obtained in the course of your instructions and which your client has not authorised you to disclose to the court. However, you must not knowingly mislead the court or permit the court to be misled. For example, if your client were to tell you that he had committed the crime with which he was charged:

- (1) You would not be entitled to disclose that information to the court without your client's consent.
- (2) You would not be misleading the court if, after your client had entered a plea of 'not guilty', you were to test in cross-examination the reliability of the evidence of the prosecution witnesses and then address the jury to the effect that the prosecution had not succeeded in making them sure of your client's guilt.
- (3) However, you would be misleading the court if you were to:
 - (a) suggest to prosecution witnesses;
 - (b) call your client or your witnesses to show; or
 - (c) submit to the jury

that your client did not commit the crime.

1.7G If there is a risk that the court will be misled unless you disclose confidential information which you have learned in the course of your instructions, you should ask the client for permission to disclose it to the court. If your client refuses to allow you to make the disclosure you must cease to act, and return your instructions: see rule

4.24R(2) below. In these circumstances you must not reveal the information to the court.

1.8G Similarly, if you become aware that your client has a document which should be disclosed but has not been disclosed, you cannot continue to act unless your client agrees to the disclosure of the document: see rule 4.24R(3) below. In these circumstances you must not reveal the existence or contents of the document to the court.

Not abusing the advocate's role

1.9G Your duty not to abuse your role as an advocate includes the following:

- (1) You must not make statements or ask questions merely to insult, humiliate or annoy a witness or any other person.
- (2) You must avoid unnecessarily naming in open court any third party whose reputation would be harmed by being named.
- (3) You must not make an allegation against a witness whom you have had an opportunity to cross-examine unless you have given that witness a chance to answer the allegation in cross-examination.
- (4) You must not make a serious allegation against any person or suggest that a person is guilty of a crime with which your client is charged unless:
 - a you have a reasonable foundation in fact for the allegation; and
 - b the allegation is relevant to your client's case or the credibility of a witness.
- (5) You should not put forward a personal opinion of the facts or the law unless you are invited or required to do so by the court or by law.

Taking reasonable steps to avoid wasting the court's time

1.10G Your duty to take reasonable steps to avoid wasting the court's time includes the following:

- (1) You must not make any submission which you do not consider to be properly arguable.
- (2) You should attend court on time.

Assisting the court as to the law

1.11G It is your duty to ensure that the court has before it all relevant decisions and legislative provisions relevant to the decision that the court has to make. This includes drawing to the attention of the court any decision or provision which may be adverse to the interests of your client. You should take particular care to make sure you are complying with this duty in cases where you are appearing against a litigant who is not legally represented.

1.12G You should bring any procedural irregularity to the attention of the court during the hearing, rather than wait and raise the matter on appeal.

Section 2: Integrity, honesty and independence

CD2 You must act with integrity and honesty.

CD3 You must maintain your independence.

CD4 You must not behave in a way which is likely to diminish the trust and confidence which the public places in you or the profession.

2.1R You must not compromise your independence, integrity or freedom from outside pressures.

2.2R You must not do anything which would reasonably lead others to think that your independence has been compromised.

2.3G The integrity, honesty and independence of barristers are fundamental. The duty not to compromise your independence, integrity or freedom from external pressures will cover conduct designed to please the client, a colleague, the court, your employer or any recognised body of which you are an owner, manager or a third party. Therefore your duty to act in the best interests of each client is subject to your duty to act with integrity, honesty and independence.

Payments and gifts

2.4R If you are a self-employed barrister you must not:

(1) give a commission or present (apart from small promotional items) or lend money for any professional purpose;

(2) accept any money (whether as a loan or otherwise) from any client, professional client or other intermediary, unless it is a payment for your professional services; or

(3) make or receive any payment to any person to procure or reward the provision or referral of professional instructions.

2.5R Nothing in 2.4R shall prohibit:

- (a) payments for clerking and administrative services
- (b) payments required to ADR bodies that appoint or recommend a person to provide mediation, arbitration or adjudication services
- (c) payments for advertising and publicity

2.6G The exemption in 2.5R includes internally and externally provided third party, as well as employed, clerking and administrative services

2.7G If you are a self-employed barrister making payments or receiving gifts in connection with professional services could compromise your independence. If you are offered a gift by a current, prospective or former client, professional client or other intermediary, you should consider carefully whether the circumstances and size of the gift would reasonably lead others to think that your independence had been compromised. Giving or receiving entertainment at a disproportionate level may give rise to a similar issue.

Integrity

2.8R In your professional practice, your duty to act with integrity includes the following:

- (1) You must not knowingly mislead any person.
- (2) You must not draft any statement of case, witness statement, affidavit or other document containing:
 - (a) any statement of fact or contention which is not supported by your client or your instructions;
 - (b) any contentions which you do not consider to be properly arguable;
 - (c) any allegation of fraud, unless you have before you material which establishes a reasonably credible case of fraud, and clear instructions to allege fraud; or

- (d) (in the case of a witness statement or affidavit) any statement of fact other than the evidence which you reasonably believe the witness would give if the witness were giving evidence orally.
- (3) You must not encourage a witness to give untruthful or less-than-truthful evidence.
- (4) You must not rehearse, practise with or coach a witness in respect of their evidence.
- (5) Unless you have the permission of the representative for the opposing side or of the court, you must not communicate with any witness (including your client) about a case while the witness is giving evidence.
- (6) You must not publish any advertising material which is inaccurate, likely to mislead, or which makes direct quality comparisons with any other person.

2.9G You may draft a document containing specific factual statements or contentions included by you, as long as your client or the witness confirms their accuracy.

Conduct likely to diminish public confidence

2.10G Under Core Duty CD4 you must not behave in a way which is likely to diminish the trust and confidence which the public places in you or the profession.

2.11G This type of conduct may take many forms. It is not possible to define all forms of conduct which are likely to lessen the trust the public places in you or the profession. However, it will usually include:

- (1) criminal conduct, other than minor criminal offences
- (2) offensive or discreditable conduct towards third parties
- (3) dishonesty
- (4) unlawful victimisation or harassment
- (5) abuse of your position as a barrister

(6) bankruptcy

2.12G Conduct which is likely to diminish the trust and confidence that the public places in you or the profession will *not* normally include:

(1) your conduct in your private or personal life, unless this involves:

a abuse of your position as a barrister; or

b committing a criminal offence.

(2) minor criminal offences. For the purpose of this section 2, minor criminal offences include:

a an offence committed in the United Kingdom which is a fixed-penalty offence under the Road Traffic Offenders Act 1988

b an offence committed in the United Kingdom or abroad which is dealt with by a procedure substantially similar to that for such a fixed-penalty offence

c an offence whose main ingredient is the unlawful parking of a motor vehicle.

Co-operation with regulators

2.13R You must deal with the Bar Council (in its role as an Approved Regulator), the Bar Standards Board and the Legal Ombudsman in an open, timely and co-operative manner.

2.14G. The Compliance Rules contain detailed provisions as to your duty of co-operation with the Bar Council, the Bar Standards Board and the Legal Ombudsman. which includes reporting serious misconduct by another barrister and other specified matters and providing information which is reasonably requested of you

Section 3: Confidentiality

CD5 You must keep the affairs of each client confidential.

- 3.1G The barrister's duty of confidentiality is central to the administration of justice. Clients who put their confidence in their legal advisers must do so in the knowledge that the information they give, or which is given on their behalf, will stay confidential. In normal circumstances, this information will be privileged and not disclosed to a court.
- 3.2G Your duty of confidentiality is subject to an exception if disclosure is permitted or required by law. For example, you may be obliged to disclose certain matters by the Proceeds of Crime Act 2002. Disclosure in those circumstances would not amount to a breach of CD5.
- 3.3G There may be circumstances when your duty of confidentiality conflicts with your duty to the court. These are considered in the guidance to Section 1 above.

Section 4: Client relations

CD6 You must act in the best interests of each client.

CD7 You must provide a competent standard of work and service to each client.

Personal responsibility

4.1R You are personally responsible for your own conduct and for your professional work. You must use your own judgment in all your professional activities and be able to justify your decisions and actions.

4.2G It is fundamental that a barrister is personally responsible for their own conduct and their own professional work. You must use your own professional judgment in relation to those matters on which you are instructed. You must do this regardless of the views of your client, professional client, employer or any other person : see Sections 1 and 2 above.

Professional competence

4.3R You must recognise and work within the limits of your own competence.

4.4R You must not accept instructions to undertake any task which:

- (1) you are not competent to handle
- (2) you do not have enough experience to handle
- (3) you do not have enough time to prepare for
- (4) you cannot discharge within the time requested, or in any event within a reasonable time.

See also Rules 4.23R to 4.30R for specific provisions relating to the acceptance of instructions.

4.5G Under Rules 4.3R and 4.4R you must consider, before accepting instructions, whether you have the competence to handle your instructions. This involves considering whether you have the necessary experience and the necessary

expertise. You must also satisfy yourself that you have enough time to handle the instructions and to prepare for any hearing you are instructed to attend (see also Rule 4.23R). There may be exceptional circumstances when instructions are delivered so late that no suitable, competent advocate would have adequate time to prepare. In those cases Rule 4.4R(3) and (4) do not require you to refuse instructions.

4.6R You must keep your professional knowledge and skills up to date.

4.7G Throughout your working life, you should regularly take part in professional development and educational activities that maintain and further develop your competence and performance. Merely complying with the minimum Continuing Professional Development requirements may not be sufficient to comply with 4.6R.

Best interests of each client

4.8R Your duty to act in the best interests of each client is subject to your duties under Core Duties 1 to 4.

4.9R Your duty to act in the best interests of each client means that:

- (1) you must promote fearlessly and by all proper lawful means the client's best interests
- (2) you must do so without regard to your own interests or to any consequences to you
- (3) you must do so without regard to the consequences to any other person (whether to your professional client, employer or any other person).

4.10R Your duty to act in the best interests of each client includes a duty to consider whether the client's best interests are served by different legal representation, and if so, to advise the client to that effect.

- 4.11R Your primary duty is to your client, not your professional client or other intermediary. You must not permit your professional client, employer or any other person to limit your discretion as to how the interests of the client can best be served.
- 4.12R When supplying legal services funded by the Legal Services Commission as part of the Community Legal Service or the Criminal Defence Service your primary duty is to the client. But you must also comply with any duty imposed on you by or under the Access to Justice Act 1999 or any regulations or code in effect under that Act, including Annex E.
- 4.13G The Rules are expressed in terms of the interests of each client. This is because you may only accept instructions to act for more than one client if you are able to act in the best interests of each client as if that client were your only client.
- 4.14G Your duty may require you to advise your client that in their best interests they should be represented by:
- (1) a different barrister, whether more senior or more junior than you, or with different experience to you;
 - (2) more than one barrister;
 - (3) fewer barristers than have been instructed; or
 - (4) different solicitors.
- 4.15G If you consider that your professional client, another solicitor or intermediary, another barrister, or any other person acting on behalf of your client has been negligent, it is your duty to ensure that your client is advised of this.

Work and service

- 4.16R You must:
- (1) read promptly all instructions delivered to you;
 - (2) act and carry out your instructions promptly, conscientiously, diligently and with reasonable competence;

(3) treat each client with courtesy and consideration; and

(4) take all reasonable steps to avoid incurring unnecessary expense.

4.17G You should read your instructions promptly. This may be important if there is a time limit or limitation period. If you fail to read your instructions promptly, it is possible that you will not be aware of the time limit until it is too late.

4.18G It is important that you provide not merely a competent standard of work but also a competent standard of service to your client.

4.19G It is important to remember that your client may not be familiar with legal proceedings and may find them to be a difficult and stressful experience. You should do what you reasonably can to ensure that the client understands the process and what to expect from it and from you. You should also try to avoid any unnecessary distress for your client.

4.20G You are responsible for the service provided by all those who represent you in your dealings with your client, including your clerks or any other employees or agents.

The 'Cab-rank' rule

4.21R In relation to advocacy services you must not withhold your services:

(1) on the ground that the nature of the case is objectionable to you or to any section of the public;

(2) on the ground that the conduct, opinions or beliefs of the prospective client are unacceptable to you or to any section of the public;

(3) on any ground relating to the source of any financial support which may properly be given to the prospective client for the proceedings in question (for example, on the ground that this support will be available as part of the Community Legal Service or Criminal Defence Service).

4.22R If you are a self-employed barrister you must comply with the “Cab-rank” rule. This means that, provided you are offered a proper fee for your services, and subject to Rules 4.24R to 4.31R and to Rules 74 and 75 of the Practising Rules, you must:

- (1) accept any brief to appear before a court;
- (2) accept any other instructions; and
- (3) act for any client

in any field and before any court in which you practise in relation to work appropriate to your experience and seniority. You must do so irrespective of:

- a the client;
- b the nature of the case;
- c whether the client is paying privately or is publicly funded; and
- d any belief or opinion which you may have formed as to the character, reputation, cause, conduct, guilt or innocence of the client.

4.23R If you are a self-employed barrister you must not withhold any service:

- (1) on the ground that the nature of the case is objectionable to you or to any section of the public;
- (2) on the ground that the conduct, opinions or beliefs of the prospective client are unacceptable to you or to any section of the public;
- (3) on any ground relating to the source of any financial support which may properly be given to the prospective client for the proceedings in question (for example, on the ground that this support will be available as part of the Community Legal Service or Criminal Defence Service).

Acceptance and return of instructions

4.24R You must not accept instructions, and (subject to rule 4.31R) you must cease to act and must return any instructions which you have accepted, if:

- (1) due to any existing or previous instructions you are not able to fulfil your obligation to act in the best interests of each client
- (2) you reasonably believe that there is a conflict of interest, or that there is a real risk that a conflict of interest may arise, between:
 - a you and some other person; or
 - b two or more clients

unless all your clients have given informed consent to your acting in such circumstances

- (3) there is a real risk that information confidential to another client or former client, or other person to whom you owe duties of confidence, may be disclosed or used without the consent of that client, former client or other person
- (4) your instructions seek to limit your ordinary authority or discretion in the conduct of proceedings in court
- (5) your instructions require you to act other than in accordance with law or with the provisions of this Code
- (6) your instructions require you to act as an advocate in court in a matter in relation to which you are likely to be a witness
- (7) you reasonably believe that you will be unable to maintain your professional independence whether because of your connection with the client, with the court or a member of it, or otherwise
- (8) you reasonably believe that the administration of justice may be prejudiced

- (9) you are instructed by a client without a solicitor or other professional client, and you are satisfied that either the client's interests or the interests of justice can only be served if the client instructs a solicitor or other intermediary.

4.25G Rules 4.24R (1), (2) and (3) are intended to reflect the law on conflict of interests and confidentiality.

4.26G If you come into possession of confidential or privileged information or documents of another person, there will be circumstances in which Rules 4.24R (3), (7) or (8) will require you to cease to act.

4.27G Rule 4.24R (6) prevents you acting as advocate if you are likely to be a witness. Even if you are instructed with another lawyer who will act as advocate, you should not accept instructions if you are likely to be called as a witness because you have taken a witness statement or attended on a client at a police station. There may however be other instances where it might be appropriate to act in a case where you are likely to be a witness. For example, the matter on which you are likely to be a witness may be peripheral or minor in the context of the litigation as a whole, and you may consider that it is in the interests of the client that you continue to act. However, in those cases you should consider carefully, before accepting the brief, whether your involvement is likely to be challenged.

4.28R Subject to rule 4.31R below, you must cease to act and must return your instructions if:

- (1) in a case funded by the Legal Services Commission as part of the Community Legal Service or Criminal Defence Service it has become apparent to you that this funding has been wrongly obtained by false or inaccurate information and action to remedy the situation is not immediately taken by your client
- (2) the client refuses to authorise you to make some disclosure to the court which your duty to the court requires you to make
- (3) you become aware during the course of a case of the existence of a document which should have been but has not been disclosed, and the client fails to disclose it, contrary to your advice
- (4) you are satisfied that the relevant instructions have been withdrawn.

4.29R Unless in the case of (1), (2) and (3) the circumstances are such that the client may be adversely affected because there is not enough time to engage other adequate legal assistance, you may cease to act and return any instructions if:

- (1) your professional conduct is being called into question
- (2) the client consents
- (3) despite all reasonable efforts to prevent it, a hearing becomes fixed for a date on which you have already entered in your professional diary that you will not be available
- (4) illness, injury, pregnancy, childbirth, a bereavement or a similar matter makes you unfit or unable reasonably to perform the services required in the instructions
- (5) you are unavoidably required to attend on jury service
- (6) there is some other substantial reason for doing so.

4.30R You must inform your professional client, or your client if instructed by a client, if:

- (1) it becomes apparent to you that you will not be able to do the work within the time requested, or within a reasonable time after receipt of instructions
- (2) there is an appreciable risk that you may not be able to undertake a brief or fulfil another professional engagement which you have accepted.

4.31R You must not:

- (1) cease to act, or return instructions:
 - a under Rule 4.24R(1), unless you have acted with proper regard to any guidance on the return of instructions in these circumstances, issued by the Bar Standards Board;

- b under Rules 4.24(3), (7) or (8), in the circumstances described in paragraph 4.26G, unless you can do so without jeopardising your client's interests;
 - c under Rules 4.24R(6), unless you can do so without jeopardising your client's interests;
 - d under Rules 4.24R(1), (2), (3) or (6), if the circumstances are such that the client may be prejudiced because there is insufficient time to engage other adequate legal assistance; or
 - e in any case, unless either:
 - (i) your client consents; or
 - (ii) you have clearly explained to your client or your professional client the reasons for doing so;
- (2) return instructions to another barrister without the consent of your client or your professional client; or
- (3) break an engagement to supply legal services in the course of practice so that you can attend or fulfil a non-professional engagement of any kind.

Section 5: Discrimination

CD7 You must not discriminate improperly in relation to any person.

5.1R You must not, in your professional practice, discriminate improperly against, victimise or harass any other person on the grounds of race, colour, ethnic or national origin, nationality, citizenship, , sex ,gender re-assignment, sexual orientation, marital or civil partnership status, disability, age religion or belief.

5.2R You must take all reasonable steps to ensure that in relation to your business:

- (1) there is in force a written statement of policy on equality and diversity
- (2) there is in force a written plan for implementing the policy referred to in 5.2R(1)

5.3R In this section “business” includes your place of work, any business structure through which you may offer your services (including any procurement vehicle which does not itself supply legal services but arranges for barristers to do so) and any recognised body of which you are an employee or manager.

5.4G Rule 5.2R places a personal obligation on all barristers to take reasonable steps to ensure that appropriate policies are in place. What steps are reasonable will depend, among other things, on your position in the organisation you work in.

For example, if you are a Head of Chambers it is likely to be reasonable for you to ensure that the policies required by 5.2R are in place. Self-employed barristers must also comply with the specific requirements in the Practising Rules.

5.5G The equality and diversity good practice guidelines describe the legal and regulatory requirements relating to equality and diversity and provide guidance on how they should be applied in Chambers. They are also relevant to all pupil supervisors and Authorised Training Organisations which will be expected to show how they comply with the guidelines as a condition of authorisation. Although the equality and diversity guidelines are not directly applicable to other practising barristers, they provide helpful guidance which you are encouraged to take into account in your professional practice.

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

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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 24.3 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) if you are appointed or instructed by the Court or instructed:
- 24.1 by a professional client; or
 - 24.2 by a licensed access client, in which case you must comply with the Licensed Access Rules; or
 - 24.3 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. "International work" means¹⁵ practice as a barrister:
- 25.1 where the work:
 - (a) relates to matters or proceedings essentially arising taking place or contemplated outside England and Wales; and
 - (b) 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:
 - (a) the instructions emanate from outside England and Wales; and
 - (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 international work substantially performed outside England and Wales:
- 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;

¹⁵ This definition is under review as part of a review of the International Practising Rules

- 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 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 work¹⁶

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

52. If you are a pupil-supervisor, you must:
- 52.1 comply with Part V and Schedule C of the Bar Training Regulations; and

¹⁶ Under review

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 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 thereto¹⁷.
67. You must:
- 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,

¹⁷ Under review

- (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 dutiesand 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 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 international work.
- 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 Rules¹⁸ 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;

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

A complainant must be an individual; or ¹² ¹³

(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

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

- (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 6, 45 and 63.

PRACTISING CERTIFICATE RULES

The Practising Certificate Year

1. In these rules, “practising certificate year” refers to the period from 1 April in any calendar year to 31 March in the next calendar year.

Eligibility for Practising Certificates

2. You are eligible for a practising certificate if:
 - 2.1 you are a barrister or a registered European lawyer and you are not currently suspended from practice and have not been disbarred;
 - 2.2 you meet the requirements of sub-paragraph 3.1, 3.2, 3.3 or 3.4 below; and
 - 2.3 either:
 - (a) within the last 5 years either: (i) you have held a practising certificate; or (ii) you have satisfactorily completed (or have been exempted from the requirement to complete) either the non-practising period of 6 months of pupillage or 12 months of pupillage; or
 - (b) if not, you have complied with such training requirements as may be imposed by the Bar Standards Board.
3. You are eligible for:
 - 3.1 a full practising certificate if you have satisfactorily completed (or have been exempted from the requirement to complete) 12 months of pupillage.
 - 3.2 a provisional practising certificate if you have satisfactorily completed (or have been exempted from the requirement to complete) the non-practising period of 6 months of pupillage and at the time when you apply for a practising certificate you are registered as a pupil;
 - 3.3 a limited practising certificate if you were called to the Bar before 1 January 2002; or
 - 3.4 a registered European lawyer’s practising certificate if you are a registered European lawyer.

Applications for Practising Certificates

4. You may apply for a practising certificate by:
 - 4.1 completing the application form supplied by the Bar Standards Board and submitting it to the Bar Standards Board; and
 - 4.2 paying (or undertaking to pay in a manner determined by the Bar Council) the appropriate practising certificate fee in the amount determined in accordance with rule [7] below (subject to any reduction pursuant to rule [6] below).

before the practising certificate is issued.

5. You are personally responsible for the contents of any application form submitted to the Bar Standards Board by you or on your behalf and you must not submit (or cause or permit to be submitted on your behalf) an application form to the Bar Standards Board which you do not believe contains full and accurate information.
6. When applying for the renewal of a practising certificate, you may, by completing the form supplied for that purpose by the Bar Standards Board, apply to the Bar Council for a reduction in the practising certificate fee payable by you if your gross fee income or salary is less than such amount as the Bar Council may decide from time to time.

Practising Certificate Fees

7. The practising certificate fee shall be the amount or amounts prescribed in the Schedule of Practising Certificate Fees issued by the Bar Council from time to time, and any reference in these Rules to the “appropriate practising certificate fee” or the “practising certificate fee payable by you” shall refer to the amount payable by you pursuant to that Schedule, having regard, inter alia, to:
 - 7.1 the different annual practising certificate fees which may be prescribed by the Bar Council for different categories of barristers, e.g. for Queen’s Counsel and junior counsel, for barristers of different levels of seniority, and/or for barristers practising in different capacities (i.e. self-employed barristers, employed barristers, managers or employees of recognised bodies or barristers practising with dual capacity);

- 7.2 any reductions in the annual practising certificate fees which may be permitted by the Bar Council in the case of practising certificates which are valid for only part of a practising certificate year;
 - 7.3 any discounts from the practising certificate fee which may be permitted by the Bar Council in the event of payment by specified methods;
 - 7.4 any reduction in or rebate from the practising certificate fee which may be permitted by the Bar Council on the grounds of low income, change of category or otherwise; and
 - 7.5 any surcharge or surcharges to the practising certificate fee which may be prescribed by the Bar Council in the event of application for renewal of a practising certificate being made after the end of the practising certificate year.
8. If you have given an undertaking to pay the practising certificate fee, you must comply with that undertaking in accordance with its terms.

Issue of Practising Certificates

9. The Bar Council (acting by the Bar Standards Board) shall not issue a practising certificate to a barrister or a registered European lawyer:
- 9.1 who is not eligible for a practising certificate, or for a practising certificate of the relevant type;
 - 9.2 who has not applied for a practising certificate; or
 - 9.3 who has not paid (or undertaken to pay in a manner determined by the Bar Council) the appropriate practising certificate fee.
10. The Bar Council (acting by the Bar Standards Board) may refuse to issue a practising certificate, or may revoke a practising certificate, if it is satisfied that the barrister or registered European lawyer:
- 10.1 has not provided complete or accurate information in his application form;
 - 10.2 is not insured against claims for professional negligence as required by rule 14 of the Practising Rules;
 - 10.3 in the case of a barrister who is insured by the Bar Mutual Indemnity Fund, has failed to pay any insurance premium when due;

- 10.4 has failed and continues to fail to pay a practising certificate fee when due;
 - 10.5 has not complied with any of the requirements of the Continuing Professional Development Regulations applicable to him; or
 - 10.6 would be, or is, practising in breach of the provisions of paragraphs 12-22, 24, 26, 30-34 or 37-39 of the Practising Rules.
11. When the Bar Council (acting by the Bar Standards Board) issues a practising certificate, it:
 - 11.1 shall publish that fact, the name and practising address of the member and the other details specified in rule 12 below in the register on the Bar Standards Board's website; and
 - 11.2 shall send a copy of the practising certificate to the barrister or registered European lawyer.
12. A practising certificate shall state:
 - 12.1 the name of the barrister or registered European lawyer;
 - 12.2 the period for which the practising certificate is valid;
 - 12.3 the reserved legal activities which the barrister or registered European lawyer to whom it is issued is thereby authorised to carry on;
 - 12.4 the capacity (or capacities) in which the barrister or registered European lawyer practises; and
 - 12.5 whether the barrister or registered European lawyer is registered with the Bar Council as a Public Access practitioner.
13. A practising certificate may be valid for a practising certificate year or part thereof and for one month after the end of the practising certificate year.
 14. A full practising certificate shall authorise a barrister to exercise a right of audience before every court in relation to all proceedings.
 15. A provisional practising certificate shall authorise a barrister to exercise a right of audience before every court in relation to all proceedings.
 16. A limited practising certificate shall not authorise a barrister to exercise a right of audience, save that:

- 16.1 it shall authorise a barrister to exercise any right of audience which he had by reason of being a barrister and was entitled to exercise on 31 July 2000; and
- 16.2 it shall authorise a barrister called to the Bar before 1 January 2002 to exercise such right of audience (if any) as he was entitled to exercise on [*day before implementation date*] pursuant to paragraph 1102 of the 8th Edition of the Code of Conduct of the Bar of England and Wales.
17. A practising certificate issued to an employed barrister or to a barrister who is a manager or an employee of a recognised body (or to a registered European lawyer who is employed or who is a manager or an employee of a recognised body) shall authorise the barrister (or the registered European lawyer) to conduct litigation in relation to every court and all proceedings if the barrister:
- 17.1 has spent a period of at least twelve weeks working under the supervision of a qualified person (as defined in rule 34 of the Practising Rules); or
- 17.2 has been exempted from this requirement by the Bar Standards Board on the grounds of his relevant experience.
18. Every practising certificate issued to a barrister shall authorise the barrister to carry on:
- 18.1 reserved instrument activities;
- 18.2 probate activities; and
- 18.3 the administration of oaths.
19. A registered European lawyer's practising certificate shall authorise a registered European lawyer to carry on the same reserved activities as a full practising certificate issued to a barrister, save that:
- 19.1 A registered European lawyer is only authorised to exercise a right of audience or a right to conduct litigation if he acts in conjunction with a solicitor or barrister who is entitled to practise before the court, tribunal or public authority concerned and who could lawfully exercise that right.
- 19.2 Unless he has a home professional title obtained in Denmark, the Republic of Ireland, Finland, Sweden, Iceland, Liechtenstein, Norway, the Czech Republic, Cyprus, Hungary or Slovakia, a registered European lawyer is not

authorised to prepare for remuneration any instrument creating or transferring an interest in land.

Amendment and Revocation of Practising Certificates

20. You must inform the Bar Standards Board as soon as reasonably practicable if any of the information contained in your practising certificate application form:
 - 20.1 was incomplete or incorrect when the application form was submitted; or
 - 20.2 changes before the expiry of your practising certificate.
21. If you change the capacity in which you practise before the expiry of your practising certificate (e.g.. if you change from being an employed barrister or a manager or employee of a recognised body to a self-employed barrister, or vice versa, or if you commence or cease practice in a dual capacity), you must within 14 days of demand by the Bar Council pay to the Bar Council the amount (if any) by which the practising certificate fee which would apply to you in your current status exceeds the practising certificate which you have already paid (or undertaken to pay) to the Bar Council.
22. The Bar Council (acting by the Bar Standards Board) may amend a practising certificate if it is satisfied that any of the information contained in the relevant application form was incorrect or incomplete or has changed, but may not amend a practising certificate without first:
 - 22.1 giving written notice to the barrister or registered European lawyer of the grounds on which the practising certificate may be amended; and
 - 22.2 giving the barrister or registered European lawyer a reasonable opportunity to make representations.
23. The Bar Council (acting by the Bar Standards Board) shall endorse a practising certificate to reflect any qualification restriction or condition imposed on the barrister by the Bar Council or by a Disciplinary Tribunal, Informal Panel, Interim Suspension Panel or Fitness to Practise Panel.
24. The Bar Council (acting by the Bar Standards Board):
 - 24.1 shall revoke a practising certificate if the barrister or registered European lawyer is disbarred or suspended from practice as a barrister or registered European lawyer; and
 - 24.2 may revoke a practising certificate:

- (a) in the circumstances set out in rule [10] above; or
- (b) if the barrister or registered European lawyer has given an undertaking to pay the practising certificate fee and fails to comply with that undertaking in accordance with its terms;

but in either case only after:

- (i) giving written notice to the barrister or registered European lawyer of the grounds on which the practising certificate may be revoked; and
- (ii) giving the barrister or registered European lawyer a reasonable opportunity to make representations.

Applications for Review

25. If you contend that the Bar Council (acting by the Bar Standards Board) has:

25.1 wrongly failed or refused to issue or amend a practising certificate; or

25.2 wrongly amended or revoked a practising certificate,

then you may lodge an application for review with the Qualifications Committee of the Bar Standards Board using the form supplied for that purpose by the Bar Standards Board.

26. The Bar Council (acting by the Bar Standards Board) may issue a temporary practising certificate to a barrister who has lodged an application for review.

27. If the Qualifications Committee finds that the Bar Council (acting by the Bar Standards Board) has wrongly failed or refused to issue a practising certificate, then the Bar Council (acting by the Bar Standards Board) shall issue such practising certificate as ought to have been issued.

28. If the Qualifications Committee finds that the Bar Council (acting by the Bar Standards Board) has wrongly failed or refused to amend a practising certificate, then the Bar Council (acting by the Bar Standards Board) shall make such amendment to practising certificate as ought to have been made.

29. If the Qualifications Committee finds that the Bar Council (acting by the Bar Standards Board) has wrongly amended a practising certificate, then the Bar Council (acting by the Bar Standards Board) shall cancel the amendment.

30. If the Qualifications Committee finds that the Bar Council (acting by the Bar Standards Board) has wrongly revoked a practising certificate, then the Bar Council (acting by the Bar Standards Board) shall re-issue the practising certificate.

Interpretation

31. Paragraph 7 of the Introduction to this Code shall not apply to these Practising Certificate Rules.

THE REGISTRATION OF EUROPEAN LAWYERS RULES

1. If you are a European lawyer and wish to practise on a permanent basis in England and Wales under a home professional title, you may apply to the Bar Standards Board to be registered as a registered European lawyer.
2. An application for registration must be made in such form as may be prescribed by the Bar Standards Board and be accompanied by:
 - 2.1 a certificate, not more than three months old at the date of receipt of the application by the Bar Standards Board, that you are registered with the competent authority in a home state as a lawyer qualified to practise in that home state under a home professional title;
 - 2.2 a declaration that:
 - (a) you have not on the ground of professional misconduct or the commission of a criminal offence been prohibited from practising in your home state and are not currently suspended from so practising;
 - (b) no bankruptcy order or directors disqualification order has been made against you and you have not entered into an individual voluntary arrangement with your creditors;
 - (c) you are not aware of any other circumstances relevant to your fitness to practice under your home professional title in England and Wales; and
 - (d) you are not registered with the Law Society of England and Wales, of Scotland or of Northern Ireland; and
 - 2.3 the prescribed fee.
3. Provided it is satisfied that the application complies with the requirements of rule 2, the Bar Standards Board will:
 - 3.1 register you as a registered European lawyer; and
 - 3.2 so inform you and the competent authority in your home state which has issued the certificate referred to in rule 2.1.
4. The Bar Standards Board will:

- 4.1 remove a European lawyer from the register:
 - (a) pursuant to a sentence of a Disciplinary Tribunal; or
 - (b) if the registered European lawyer ceases to be a European lawyer;
- 4.2 suspend a European lawyer from the register:
 - (a) pursuant to a sentence of either a Disciplinary Tribunal or a Summary Procedure Panel; or
 - (b) if the European lawyer's authorisation in his home state to pursue professional activities under his home professional title is suspended; and
- 4.3 notify the European lawyer's home professional body:
 - (a) of his removal or suspension from the register; and
 - (b) of any criminal conviction or bankruptcy order of which it becomes aware against a registered European lawyer.

COMPLIANCE RULES

Application of these Rules

1. These rules apply to you if you are a barrister, a pupil or a registered European lawyer.

Co-operation with the Bar Council and the Bar Standards Board

2. You must deal with the Bar Council and the Bar Standards Board in an open, timely and co-operative manner.
3. In particular, you must respond promptly, fully and accurately to any correspondence or enquiries from the Bar Council or the Bar Standards Board.
4. If you are practising, or the Bar Council or Bar Standards Board has reason to believe that you may be practising, as a barrister or a registered European lawyer, you must:
 - 4.1 respond promptly, fully and accurately to any request by the Bar Council or the Bar Standards Board for information concerning your practice or the circumstances giving reason to believe that you are practising; and
 - 4.2 permit the Bar Council or Bar Standards Board or any person appointed by them to inspect forthwith and on request and at any time which is reasonable having regard to the circumstances and the urgency of the matter:
 - (a) any premises from which you practise or are believed to practise;
 - (b) the arrangements made for administering your practice and chambers or office; and
 - (c) any records relating to such practice and to the administration of your chambers or office.
 - 4.3 give the Legal Ombudsman all such reasonable assistance requested of you, in connection with the investigation, consideration and determination of complaints under the Ombudsman scheme.

Duty to Report Certain Matters to the Bar Standards Board

5. You must report promptly to the Bar Standards Board if:
 - 5.1 you are charged with an indictable offence;
 - 5.2 you are convicted of or accept a caution in any jurisdiction for any criminal offence other than a minor criminal offence;
 - 5.3 you are charged with a disciplinary offence by another approved regulator or professional body;
 - 5.4 you are convicted of a disciplinary offence by another approved regulator or other professional body;
 - 5.5 you are a manager of a recognised body which is the subject of an intervention by the approved regulator of that body;
 - 5.6 you are a registered European lawyer and:
 - (a) any investigation into your conduct is commenced by your home professional body;
 - (b) any finding of professional misconduct is made by your professional body; or
 - (c) your authorisation in your home state to pursue professional activities under your home professional title is withdrawn or suspended;
 - 5.7 bankruptcy proceedings are initiated in respect of or against you;
 - 5.8 directors disqualification proceedings are initiated against you;
 - 5.9 a bankruptcy order or directors disqualification order is made against you; or
 - 5.10 you enter into an individual voluntary arrangement with your creditors.

Reporting Serious Misconduct

6. Subject to your duty to keep the affairs of each client confidential, you must report to the Bar Standards Board if you become aware of serious misconduct by a barrister, a pupil or a registered European lawyer.
7. Serious misconduct includes, without being limited to:
 - 7.1 dishonesty;

- 7.2 disreputable conduct within chambers or a place of work, such as:
- (a) assault or harassment;
 - (b) seeking to gain access without consent to papers relating to a case in which a member of chambers or other lawyer is instructed on the other side; or
 - (c) seeking to gain access without consent to confidential information relating to another member of chambers, member of staff or pupil;

- 7.3 disreputable conduct in relation to court proceedings, such as:
- (a) seeking to gain access without consent to instructions or other confidential information relating to the opposing party's case;
 - (b) encouraging a witness to give evidence which is untruthful or misleading;
 - (c) allowing the court or an opponent to be misled; or
 - (d) being drunk or under the influence of drugs in court; or

7.4 failure by a barrister to report promptly to the Bar Standards Board pursuant to rule 5 above.

8. Your duty to report serious misconduct arises if you have before you material which establishes a strong case of serious misconduct. In considering whether you are obliged to report another person, you should consider all the circumstances, including:

- 8.1 whether that person's instructions or other confidential matters might have a bearing on the assessment of their conduct;
- 8.2 whether that person has been offered an opportunity to explain their conduct, and if not, why not;
- 8.3 any explanation which has been or could be offered for that person's conduct;
- 8.4 whether the matter has been raised, or will be raised, in the litigation in which it occurred, and if not, why not

9. You must never report, or threaten to report, another person as a litigation tactic, but only in the public interest.

Disciplinary Proceedings

10. You are subject to, and must comply in due time with the requirements of, and with any sentence or suspension imposed or direction made or undertaking accepted by a tribunal body or person pursuant to the Annexes to these rules, namely:

10.1 The Complaints Rules.

10.2 The Disciplinary Tribunals Regulations.

10.3 The Hearings before the Visitors Rules.

10.4 The Interim Suspension Rules.

10.5 The Fitness to Practise Rules.

11. Where a complaint about a barrister, pupil or registered European lawyer has been made to or by the Bar Standards Board, or where the Bar Standards Board has reasonable grounds for believing that a breach of this Code may have occurred or is about to occur, or where a circumstance referred to in rule 5 above has been reported to the Bar Standards Board, you must:

11.1 respond promptly to any request from the Bar Standards Board for comments or information on the matter whether it relates to you or to another person; and

11.2 respond promptly to any letter of notification sent to you or attend before any tribunal panel body or person when so required pursuant to the Annexes to these rules;

provided for the avoidance of doubt that nothing in this rule shall require you to disclose or produce any document or information protected by law or in circumstances to which Core Duty 5 of the Conduct Rules, or the equivalent rule of another approved regulator to which you are subject, applies.

Misconduct

12. The following shall constitute misconduct:

12.1 any failure by you to comply with any requirement imposed on you by the provisions of this Code, other than those referred to in rule 12.2 below;

- 12.2 any serious failure by you to comply with any requirement imposed on you by the following provisions of this Code: [paragraphs 202 (a) to (d), 203(1)(a), 204(b), 402, 403.2(b)(c) and (d), 404, 405, 406, 701, 709, 801(a), 804 or 905(a)(i), (d) or (e) of this Code or the training requirements imposed by the Bar Training Regulations in force at the date of his Call to the Bar or with the Continuing Professional Development Regulations or the Practising Certificate Regulations];¹⁹
- 12.3 any failure by you to comply with any requirement of the provisions of this Code referred to in rule 12.2 above if you have received two or more separate written warnings from the Bar Standards Board, or been subject to a financial penalty on two or more separate occasions, in a period of three years for failure to comply with any requirement of any of those provisions;
- 12.4 any failure by you to comply with any requirement of [paragraph 202 of the Code] if you have failed to take the necessary action to cure any relevant non-compliance with the preconditions to practise set out therein, or have failed to pay any financial penalty imposed on you, within any time limit prescribed by the relevant Regulations or specified by the Bar Standards Board (or any extension thereof);
- 12.5 any failure by you to cooperate with the Legal Ombudsman;
- 12.6 any failure by you to comply with:
- (a) any requirement imposed on you by the Legal Ombudsman to produce information or a document;
 - (b) any requirement imposed on you by any determination of the Legal Ombudsman
- 12.7 if you are convicted of misconduct under the rules of another Approved Regulator;
- 12.8 if the information provided by you in support of an application for a practising certificate is found to be inaccurate or incomplete in any material respect;
- 12.9 if the declaration made by you on Call to the Bar is found to have been false in any material respect;

¹⁹ These provisions are under review. References are to the current Code and have not been amended pending review.

- 12.10 if you are found to have engaged before Call in conduct which is dishonest or otherwise discreditable to a barrister and which was not, before Call, fairly disclosed in writing to the Benchers of the Inn calling you; or
- 12.11 any breach of any undertaking given by you on Call to the Bar in any material respect.
13. For the purposes of rule 12.2 above, a failure to comply with a requirement of a relevant provision of this Code may be a serious failure:
- 13.1 due to the nature of the failure;
- 13.2 due to the extent of the failure;
- 13.3 because the failure in question is combined with a failure to comply with a requirement of any other provision of this Code;
- 13.4 if you have previously failed to comply with the same or any other requirement of any provision of this Code (whether or not that provision is mentioned in rule 12.2 above).

Written Warnings and Financial Penalties

14. Any failure by you to comply with any requirement of the provisions of this Code referred to in rule 12.2 above shall render you liable to a written warning from the Bar Standards Board and/or the imposition of a fixed financial penalty of £300 (or such other sum as may be prescribed by the Bar Standards Board from time to time).
15. You must pay any financial penalty imposed on you pursuant to rule 14 above [within 14 days of receipt of notification of the imposition of the penalty].
16. In the event that you are given a written warning by the Bar Standards Board, or a financial penalty is imposed upon you, pursuant to rule 14 above:
- 16.1 You shall have a right of appeal to an appeal panel under the provisions of paragraphs 66 to 70 of the Complaints Rules.
- 16.2 The time for bringing such an appeal shall be 28 days from the date upon which the written warning or notice seeking payment of the penalty is deemed to have been received by you.
- 16.3 However, unless the Bar Standards Board agrees or the appeal panel otherwise rules, an appeal shall not operate as a suspension of the

requirement to pay the financial penalty or an extension of the time for so doing.

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:

(1)	administration of oaths	has the same meaning as in paragraph 8 of Schedule 2 to the Legal Services Act 2007.
(2)	Appointments Panel	means the panel established by the Constitution of the Bar Standards Board to make appointments to the Bar Standards Board.
(3)	Approved Regulator	has the same meaning as in section 20(2) of the Legal Services Act 2007.
(4)	authorised person	has the same meaning as in section 20(1) of the Legal Services Act 2007
(5)	bankruptcy order	includes a bankruptcy order made pursuant to the Insolvency Act 1986 and any similar order made in any jurisdiction in the world.
(6)	Bar	means the Bar of England and Wales.
(7)	Bar Council	means The General Council of the Bar as constituted from time to time or a Committee thereof.
(8)	barrister	means an individual who has been called to the Bar by one of the Inns of Court and who has not ceased to be a member of the Bar.
(9)	Bar Standards Board	means the Board established to exercise and oversee the regulatory functions of the Bar Council.
(10)	Bar Training Regulations	means the Consolidated Regulations in respect of anything arising before 1st September 2009 and the Bar Training Regulations in respect of anything arising on or after 1st September 2009.
(11)	BMIF	means Bar Mutual Indemnity Fund Limited.
(12)	brief	means instructions to a barrister to appear as an advocate before a Court.
(13)	Call	means Call to the Bar in accordance with the Bar Training Regulations.
(14)	chambers	means a place at or from which one or more self-employed barristers carry on their practices and also refers where the context so requires to all the barristers (excluding pupils) who for the time being carry on their practices at or from that place.
(15)	client	means, in relation to any legal services provided or to be provided by you, the person to whom or on whose behalf you provide or are to provide those services.

(16)	Company	means a company regulated by an Approved Regulator
(17)	complaint	means an allegation by any person or by the Bar Standards Board of its own motion of professional misconduct and includes a legal aid complaint.
(18)	the Complaints Committee	means the Complaints Committee of the Bar Standards Board or its successor.
(19)	conditional fee agreement	means a conditional fee agreement as defined in Section 58 of the Courts and Legal Services Act 1990.
(20)	Court	means any court or tribunal or any other person or body whether sitting in public or in private before whom a barrister appears or may appear as an advocate.
(21)	Director	Means a director of a company, and includes the director of a Recognised Body which is a company, and in relation to a <i>societas Europaea</i> includes: (a) in a two-tier system, a member of the management organ and a member of the supervisory organ; (b) in a one-tier system, a member of the administrative organ.
(22)	discrimination	has the same meaning as in chapter 2 of the Equality Act 2010
(23)	Disciplinary Tribunal	means a disciplinary tribunal constituted under the Disciplinary Tribunals Regulations.
(24)	employed barrister	means a practising barrister: (a) who is employed other than by a Recognised Body; (b) who is employed either: (i) under a contract of employment; or (ii) under a written contract for services which is for a determinate period (subject to any provision for earlier termination on notice); or (iii) by virtue of an office under the Crown or in the institutions of the European Communities; and (c) who supplies legal services as a barrister in the course of his employment.
(25)	employer	means a person by whom an employed barrister is employed as such and any holding subsidiary or associated company corporate body or firm of that person.
(26)	English law	includes international law and the law of the European Communities.
(27)	Establishment Directive	means Directive 98/5/EC of the European Parliament and of the Council of February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained.
(28)	European lawyer	means a person who is a national of a Member State and who is authorised in any Member State to pursue professional activities under any of the professional titles appearing in article 2(2) of the European Communities (Lawyer's Practice) Order 1999, but who is not any of the following:

		(a) a solicitor or barrister of England and Wales or Northern Ireland; or (b) a solicitor or advocate under the law of Scotland.
(29)	foreign lawyer	means a person (other than a registered European lawyer or a practising barrister of the bar of England and Wales) who is authorised by a competent professional body to practise in a system of law other than English law.
(30)	harassment	has the same meaning as in section 26 of the Equality Act 2010.
(31)	Hearings before the Visitors	means an appeal hearing constituted under the Hearings before the Visitors Rules 2005.
(32)	home professional body	means the body in a Member State which authorises a European lawyer to pursue professional activities under any of the professional titles appearing in article 2(2) of the European Communities (Lawyer's Practice) Order 1999 and, if he is authorised in more than one Member State, it shall mean any such body.
(33)	home professional title	means, in relation to a European lawyer, the professional title or any of the professional titles specified in relation to his home State in article 2(2) of the European Communities (Lawyer's Practice) Order 1999 under which he is authorised in his home State to pursue professional activities.
(34)	home State	means the Member State in which a European lawyer acquired the authorisation to pursue professional activities under his home professional title and, if he is authorised in more than one Member State, it shall mean any such Member State;
(35)	indictable offence	has the same meaning as in Schedule 1 of the Interpretation Act 1978, i.e. "an offence which, if committed by an adult is triable on indictment whether it is exclusively so triable or triable either way".
(36)	instructions	means instructions or directions in whatever form (including a brief) given to a practising barrister to supply legal services whether in a contentious or in a non-contentious matter and "instructed" shall have a corresponding meaning.
(37)	Interim Suspension Panel	means a panel constituted under the Interim Suspension Rules.
(38)	intermediary	means any person by whom a self-employed barrister is instructed on behalf of a client and includes a professional client who is not also the client.
(39)	Justices' clerk	means a serving Justices' clerk or assistant Justices' clerk, appointed under the Courts Act 2003.
(40)	international work	has the meaning set out in paragraph 25 of the Practising Rules.
(41)	lay member	means a lay person appointed to be a member of the Bar

		Standards Board or one of its regulatory committees.
(42)	lay representative	means either (a) a lay person appointed by the President of the Council of the Inns of Court to serve on Disciplinary Tribunals, Interim Suspension Panels and Appeal Panels therefrom, and Medical Panels and Review Panels therefrom; or (b) a lay person appointed by the Lord Chief Justice to serve on Hearings before the Visitors
(43)	legal aid complaint	has the same meaning as in section 40 of the Administration of Justice Act 1985.
(44)	Legal Advice Centre	means a centre operated by a charitable or similar non-commercial organisation at which legal services are habitually provided to members of the public without charge (or for a nominal charge) to the client and: (a) which employs or has the services of one or more solicitors conducting work pursuant to rule 13.04 of the Solicitors' Code of Conduct 2007, or (b) which has been and remains designated by the Bar Standards Board as suitable for the employment or attendance of barristers subject to such conditions as may be imposed by the Bar Standards Board in relation to insurance or any other matter whatsoever.
(45)	Legal Ombudsman	the Legal Ombudsman of England and Wales, set up by the Office for Legal Complaints, under the Legal Services Act 2007, to consider and resolve complaints made about lawyers by consumers of legal services
(46)	legal services	includes legal advice representation and drafting or settling any statement of case witness statement affidavit or other legal document but does not include: (a) sitting as a judge or arbitrator or acting as a mediator; (b) lecturing in or teaching law or writing or editing law books articles or reports; (c) examining newspapers, periodicals, books, scripts and other publications for libel, breach of copyright, contempt of court and the like; (d) communicating to or in the press or other media; (e) giving advice on legal matters free to a friend or relative or acting as unpaid or honorary legal adviser to any charitable benevolent or philanthropic institution; (f) in relation to a barrister who is a non-executive director of a company or a trustee or governor of a charitable benevolent or philanthropic institution or a trustee of any private trust, giving to the other directors trustees or governors the benefit of his learning and experience on matters of general legal principle applicable to the affairs of the company institution or trust.
(47)	Licensed Access client	means a person or organisation approved as such by the Bar Standards Board in accordance with the Licensed Access Recognition Regulations.
(48)	LLP	means a limited liability partnership formed by being incorporated under the Limited Liability Partnerships Act 2000.

(49)	manager	means a barrister who is: (a) a partner in a partnership; (b) a member of an LLP; or (c) a director of a company, which is a Recognised Body.
(50)	mediation	means the process whereby the parties to a dispute appoint a neutral person (mediator) to assist them in the resolution of their dispute.
(51)	Medical Panel	means a panel constituted under the Fitness to Practise Rules.
(52)	Member State	means a state which is a member of the European Communities.
(53)	minor criminal offence	includes: a) an offence committed in the United Kingdom which is a fixed-penalty offence under the Road Traffic Offenders Act 1988; b) an offence committed in the United Kingdom or abroad which is dealt with by a procedure substantially similar to that for such a fixed-penalty offence; c) an offence whose main ingredient is the unlawful parking of a motor vehicle.
(54)	non-practising barrister	means a barrister who is not a practising barrister.
(55)	owner	means, in relation to a body, a person with any ownership interest in that body.
(56)	partner	means a person who is or is held out as a partner in an unincorporated firm.
(57)	partnership	means an unincorporated partnership, and includes any unincorporated firm in which persons are or are held out as partners, but does not include an LLP.
(58)	practising barrister	means a barrister who is practising as such within the meaning of rule 45 of the Practising Rules. certificate
(59)	practising certificate	means a practising certificate issued pursuant to the Practising Certificate Rules.
(60)	probate activities	has the same meaning as in paragraph 6 of Schedule 2 to the Legal Services Act 2007.
(61)	reserved instrument activities	has the same meaning as in paragraph 5 of Schedule 2 to the Legal Services Act 2007.
(62)	the President	means the President of the Council of the Inns of Court.
(63)	probate activities	has the same meaning as in paragraph 6 of Schedule 2 to the Legal Services Act 2007.
(64)	professional client	means a solicitor or other professional person by whom a self-employed barrister is instructed that is to say: (a) a solicitor, a solicitors' firm, LLP or company, a

		<p>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 services without a fee.</p>
(65)	professional misconduct	has the meaning set out in rule 12 of the Compliance Rules.
(66)	the public	<p>includes any client of:</p> <p>(a) a practising barrister; or;</p> <p>(b) in the case of an employed barrister, of the barrister's employer; or</p> <p>(c) in the case of a manager or employee of a Recognised Body, of that Body.</p>
(67)	public access instructions	means instructions given to a barrister by or on behalf of a client, in accordance with the Public Access Rules.
(68)	pupil	means an individual who is undertaking either the first non-practising six months of pupillage, or the second, practising six months of pupillage, or a part thereof and who is registered with the Bar Standards Board as a pupil.
(69)	pupil supervisor	an individual, qualified barrister who has been approved as a pupil supervisor by his or her Inn of Court, and in accordance with the Bar Training Regulations
(70)	the Quality Assurance Committee	means the Quality Assurance Committee of the Bar Standards Board or its successor.
(71)	Recognised Body	<p>means a partnership, LLP, company or sole principal authorised to provide reserved legal activities by an Approved Regulator other than the Bar Standards Board other than:</p> <p>(a) a licensable body as defined in section 72 of the Legal Services Act 2007; or</p> <p>(b) a body which is deemed to be authorised by reason of section 18(3) of the 2007 Act.</p>

(72)	registered European lawyer	means a European lawyer registered as such by the Bar Council and by an Inn in accordance with The Registered European Lawyers Rules.
(73)	reserved instrument activities	has the same meaning as in paragraph 5 of Schedule 2 to the Legal Services Act 2007.
(74)	reserved legal activity	has the same meaning as in section 12 of the Legal Services Act 2007.
(75)	right of audience	has the same meaning as in paragraph 3 of Schedule 2 to the Legal Services Act 2007.
(76)	right to conduct litigation	has the same meaning as in paragraph 4 of Schedule 2 to the Legal Services Act 2007.
(77)	self-employed barrister	means a practising barrister who is self-employed.
(78)	solicitor	means a solicitor of the Supreme Court of England and Wales.
(79)	trade association	means a body of persons (whether incorporated or not) which is formed for the purpose of furthering the trade interests of its members or of persons represented by its members, and does not include any association formed primarily for the purpose of securing legal assistance for its members.
(80)	victimisation	has the same meaning as in section 27 of the Equality Act 2010.

Annex 2

GUIDANCE ON RULES 3.1, 86 and 87 OF THE PRACTISING RULES

1. Rule 3 of the Practising Rules provides that if you do not hold a practising certificate you may not practise as a barrister.
2. Rule 4.1 of the Practising Rules provides that (subject to rules 6 and 7 of the Practising Rules) you practise as a barrister if you supply²⁰ legal services and in connection with the supply of such services:
 - 2.1 you hold yourself out or allow yourself to be held out as a barrister; or
 - 2.2 you carry on any reserved legal activity pursuant to authorisation from the Bar Council.
3. If you do not have a practising certificate, you may only supply legal services if:
 - 3.1 you do not hold yourself out or allow yourself to be held out as a barrister (subject to certain exceptions) and
 - 3.2 you do not carry on any reserved legal activity (unless you do so pursuant to authorisation from another approved regulator²¹).

Holding Yourself Out as a Barrister

4. The Code does not prohibit you from describing yourself as a barrister, except in connection with the supply of (or offering to supply) legal services.²²
5. Legal services are defined in the Definitions as follows:

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

 - (a) sitting as a judge or arbitrator or acting as a mediator;
 - (b) lecturing in or teaching law or writing or editing law books articles or reports;

²⁰ Supplying legal services includes offering to supply legal services: see rule 5 of the Practising Rules.

²¹ Rule [2] of the Practising Rules prohibits you from carrying on a reserved legal activity without authorisation from an approved regulator.

²² This is subject to the requirement of Core Duty 4 of the Conduct Rules that you must not behave in a way which is likely to diminish the trust and confidence which the public places in you or the profession. There are circumstances in which describing yourself as a barrister in matters unconnected to the supply (or offer to supply) of legal services may amount to a breach of Core Duty 4.

(c) examining newspapers, periodicals, books, scripts and other publications for libel, breach of copyright, contempt of court and the like;

(d) communicating to or in the press or other media;

(e) exercising the powers of a commissioner for oaths;

(f) giving advice on legal matters free to a friend or relative or acting as unpaid or honorary legal adviser to any charitable benevolent or philanthropic institution;

(g) in relation to a barrister who is a non-executive director of a company or a trustee or governor of a charitable benevolent or philanthropic institution or a trustee of any private trust, giving to the other directors trustees or governors the benefit of his learning and experience on matters of general legal principle applicable to the affairs of the company institution or trust;

6. Thus, the Code does not prohibit you from describing yourself as a barrister in connection with:

6.1 lecturing or teaching law;

6.2 writing or editing law books, articles or reports;

6.3 reading for libel;

6.4 acting as an arbitrator or mediator; or

6.5 acting as an honorary legal adviser to a charity.

7. Providing legal advice, representing clients before tribunals which do not require a right of audience, and acting as legal assessor to a tribunal all constitute the supply of legal services. If you do not have a practising certificate, the Code therefore prevents you from holding yourself out as a barrister if you supply such services.

8 In connection with the supply of (or offering to supply) legal services, you must not hold yourself out as a barrister unless:

8.1 you have a practising certificate; or

8.2 your supply (or offer to supply) falls within one of the exceptions contained in:

(a) rule 6 (pupils in the non-practising six months pupillage);

(b) rule 8 (foreign lawyers);

(c) rule 9 (barristers practising as members of another authorised body);
and

(d) rule 10 (certain barristers called before 31 January 2000),
of the Practising Rules).

9 The Code does not contain a comprehensive definition of “holding yourself out as a barrister”. However, the following activities would normally constitute holding yourself out as a barrister:

9.1 describing yourself as a barrister in any written material used in connection with the supply of (or offer to supply) legal services, such as websites, advertising materials, publicity materials, cards, letterheads or boards or other signs on premises;

9.2 describing yourself as a barrister to clients or prospective clients or to opposing parties or their representatives;

9.3 describing yourself to clients or prospective clients as a non-practising barrister or barrister-at-law (titles which have been allowed in the past but not in recent years)

9.4 describing yourself as an unregistered barrister in any written material offering to supply legal services unless you explain in the same material and on the same page that you are not practising as a barrister and are not subject to the rules applying to practising barristers

9.4 describing yourself in such contexts as “counsel” or by any other expression (e.g. “member of [an Inn of Court]”) which suggests that you are a barrister; or

9.5 wearing barrister’s robes or sitting in court in a place reserved for barristers.

10. The following activities may sometimes constitute holding yourself out as a barrister depending on the circumstances and involve a risk of misleading a client or potential client about the capacity in which you may provide legal services (see also para below):

1. practising from an address which includes the word “Chambers”

2. describing yourself as a barrister in material in which you elsewhere offer to supply legal services, thus potentially leading readers to believe that you are a practising barrister

11 The following activities would not normally constitute holding yourself out as a barrister:

11.1 describing yourself as having qualified as a barrister in your curriculum vitae when applying for a job;

11.2 responding to an enquiry from a client or prospective client as to whether or not you are a barrister, provided that you explain:

(a) (unless you are supplying legal services pursuant to rule 10 of the Practising Rules) that you are not acting as a barrister;

(b) that you are not subject to the Conduct Rules and other provisions of the Code applicable to practising barristers; and

(c) (unless you are covered by professional indemnity insurance) that you are not covered by professional indemnity insurance

(d) that your client does not have the right to complain to the Legal Ombudsman.

11.3 describing yourself as a lawyer

11.4 describing yourself as a BVC/BPTC graduate

11.5 providing the explanation required by rule 87 (see below)

11.6 describing yourself to an individual client (or potential client, before supplying any services to them) as a barrister without a practising certificate, or as an unregistered barrister, provided that you either comply with rule 87 (if it applies) or (if it doesn't) you follow the guidance below.

12 The Code does not prohibit you, if you are a Queen's Counsel, from describing yourself as such.²³

Reserved Legal Activities

13 Reserved legal activities are defined in section 12 of the Legal Services Act 2007. They are:

(1) the exercise of a right of audience;

(2) the conduct of litigation;

(3) reserved instrument activities;

²³ But see footnote 3, mutatis mutandis.

- (4) probate activities;
- (5) notarial activities,²⁴ and
- (6) the administration of oaths.

14 Advocacy is not a reserved legal activity unless it involves the exercise of a right of audience. Thus, advocacy before an arbitrator or other tribunal where rights of audience are not required is not a reserved legal activity.

15 The Practising Rules do not require you to have a practising certificate if and insofar as you provide advocacy services in a context which does not involve the exercise by you of a right of audience. But if you do provide such advocacy services without a practising certificate, you must not hold yourself out as a barrister, and you must be careful not to mislead your client about your status.

The Duties under Rules [86 and 87] of the Practising Rules

16. Rule 86 applies to anybody who is a barrister. So it covers barristers who do not hold a practising certificate. It provides that

“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; or

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.

86.4 the extent to which you are insured against claims for professional negligence”

17 For the purposes of rule 86.2 of the Practising Rules, the basis on which you are entitled to supply legal services means your status under the Code by virtue of which you may provide legal services, for example barrister with a full practising certificate, pupil, barrister with limited practising rights or barrister without a practising certificate

18 The following paragraphs contain examples of conduct which would normally constitute a breach of rule 86 of the Practising Rules if:

- 1. you do not have a practising certificate; but
- 2. you supply (or offer to supply) legal services, other than pursuant to:
 - (e) rule [6] (pupils in the non-practising six months pupillage);

²⁴ The Bar Council does not authorise barristers to provide notarial services.

- (f) rule [8] (foreign lawyers);
- (g) rule [9] (barristers practising as members of another authorised body);
or
- (h) rule [10] (certain barristers called before 31 January 2000),

of the Practising Rules.

19 Example 1: If you are a barrister but you do not have a practising certificate, you are entitled to provide advocacy services in a tribunal where no right of audience is required. But if you told your client that you were able to provide that service because you were a barrister, that would be misleading. The fact that you are a barrister has nothing to do with your entitlement to provide such advocacy services. Because of the potential for clients to be misled when legal services are provided to them by barristers who do not hold a practising certificate, there is a further rule which applies to such barristers when supplying services to certain clients who are particularly liable not to understand the situation. This is rule 87 which is further explained below.

20 Example 2: If you know, or have reason to believe, that your client thinks that you are a barrister (even though you have never told them that) then you would be allowing them to be misled if you did not explain to them the capacity in which you were acting for them.

21. Example 3: You imply that the services which you supply are regulated by the Bar Standards Board or another regulator, or that complaints about the services you supply can be made to the Legal Ombudsman

22 Example 4: You call yourself an unregistered barrister in promotional material sent to an individual client and do not explain what that means to the client before supplying legal services to them

23. The following paragraph contains an example of conduct which would normally constitute a breach of rule 86 of the Practising Rules if you supply (or offer to supply) legal services pursuant to rule 10 (certain barristers called before 31 January 2000) of the Practising Rules).

24. Example: If you describe yourself as barrister when supplying legal services and you imply that you could provide reserved legal activities, or fail to explain that you are not subject to the rules applying to practising barristers.

25. The following paragraphs contain examples of conduct which would normally constitute a breach of rule 86 if you have a practising certificate:

26. Example 1: You are a pupil and you imply that you hold a full practising certificate

27. Example 2: You imply that you are authorised to exercise a reserved legal service for which you are not authorised

28 For the reason explained above, there is a further rule, rule 87 of the practising rules, which applies to you only if you are a barrister who does not hold a practising certificate but who nevertheless does provide legal services to certain kinds of clients. The kind of clients who trigger this obligation are clients who in general are unlikely to be well informed about the capacity in which you are allowed to practice and the extent to which you are regulated by the BSB. Rule 87 imposes a positive obligation on such barristers to give an explanation to such clients. This is necessary because, even if you have not held yourself out as a barrister to them, they may know or believe that you are a barrister and may assume that you are entitled to practice as such and are subject to regulation by the BSB in relation to the services you are offering. An explanation will enable them to make a better informed choice about whether they wish to be your client. .

29. Rule 87 of the Practising Rules provides as follows:

“87 If you do not hold a practising certificate and you supply legal services (other than as provided for in rule 87.3) 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 Rules, then before supplying such services:

87.1 you must explain to the client:

- (a) (unless you are supplying legal services pursuant to rule [first six pupil taking noting brief]) that you are not acting as a barrister and do not hold a practising certificate;
- (b) that you are not subject to the Conduct Rules and other provision 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;
- (d) (unless you are covered by professional indemnity insurance) that you are not covered by professional indemnity insurance;
- (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]”

30. Any explanation given to a client pursuant to this rule should be given in language which the client can reasonably be expected to understand.

31. The Annex to this Guidance [*to be drafted*] contains a suggested form of written confirmation which may be given pursuant to rule 87.2 of the Practising Rules. The written confirmation will be evidence that an explanation was given in the event of a subsequent complaint from the client. It will therefore protect the barrister as well as helping to ensure that the client is given the necessary information. But it is important that you first give an oral explanation and ensure that the client has understood it rather than just giving them a piece of paper to sign.

32. The clients to whom the explanation required by this rule must be given are:

32.1 individuals; or

32.2 any other person entitled to bring a complaint pursuant to the Legal Ombudsman Scheme Rules.

33. The Legal Ombudsman Scheme Rules are to be found at <http://www.legalombudsman.org.uk/>. They provide that complaints may be made by micro enterprises (headcount below 10 and turnover or balance sheet total of 2 million euros or less), charities with an income of £1million or less and clubs and other organisations with a turnover of £1 million or less). Clients may only complain to the Legal Ombudsman about services provided by authorised persons so clients of barristers providing legal services without a practising certificate cannot use this service.

34. Rule 87 does not apply to you if:

34.1 you are a manager or employee of an entity regulated by another Approved Regulator (because your dealings with clients are subject to the rules of that Regulator).

34.2 you are a manager or employee of a body subject to regulation by another professional body or regulator, such as a firm of chartered accountants, a chartered surveyor or a financial services firm (because your dealings with clients are subject to the rules of that professional body or regulator)

34.3 you provide legal services only to your employer (because the risk of your employer not understanding your position is much less).

34.4 you provide legal services only to larger companies or other bodies (because they can be expected to understand, or inform themselves as to, the limitations on the services you can provide and the consequences of the fact that you do not have a practising certificate).

35. The following section provides guidance on how you may describe yourself in the circumstances described in paragraph 34. If there is any doubt about whether your client or employer has understood the position, you should consider giving an explanation, if necessary in writing, on the lines set out in Rule 87.

35.1 Barristers working for an employer whose main business is not the provision of legal services who:

(i) provides legal services only to the employer or fellow employees

If you are in this category you may describe yourself to your employer and colleagues as an unregistered barrister or a barrister without a practising certificate, but you should explain what this means if there is a risk of someone being misled.

(ii) occasionally gives incidental legal advice to customers of the employer

If you are in this category you may not hold yourself out as a barrister to customers but if asked or it becomes known that you are a barrister, you may say that you are an unregistered barrister and explain what this means (ie you are not entitled to practice as a barrister and not subject to detailed regulation by the BSB).

35.2 Barristers working for a recognised body regulated by another Approved Regulator or for a body subject to regulation by another professional body or regulator

If you are in this category you may describe yourself as an unregistered barrister to your employer and fellow employees, making clear what this means if necessary. When dealing with clients, you should not hold yourself out as a barrister but if asked or it becomes known that you are a barrister, you should explain that you are unregistered and what this means

35.3 Self-employed barristers and those working for unregulated employers whose business includes providing unreserved legal services to business customers who are regular users of legal services

If you are in this category you may not advertise or hold yourself out as a barrister but in putting forward proposals to do particular jobs, you may say that you are an unregistered barrister subject to ensuring that your potential customer knows what that means. If in doubt, a written statement should be provided on the lines suggested above for dealing with inexperienced customers. If you are not insured against claims for professional negligence, this should also be stated.

35.4. Self-employed barristers and other barristers working for unregulated employers who provide legal services to other clients are covered by rule 87.

35.5 If you provide legal services to clients through a legal entity such as a company or partnership, this guidance applies to you as if you were self-employed.

Annex 3

Destination Table

Showing the destination of provisions in the Code of Conduct of the Bar of England and Wales (8th Ed) in the new draft Conduct Rules and those provisions that are to be considered during the review of the Practising Rules

Existing Code			Draft Conduct Rules	Practising Rules (PR), Compliance Rules (CR) and Practising Certificate Rules (PCR)
Paragraph	Sub-paragraph	Sub-subparagraph		
101-103				
104			Introduction	
105-107			-	1 PR
108			-	-
201	(a)	(i)	-	4.1(a) PR
		(ii)	-	4.1(b) PR
	(b)		-	4.2 PR
	(c)		-	5 PR
202	(a)		-	2.3(a) PCR
	(b)		4.7G	-
	(c)		-	3PR
	(d)		-	4.1 PCR
203.1	(a)		-	14 PCR
	(b)	(i)	-	18.1 PR
		(ii)	-	18.2 PR
203.2	(a)		-	19.1 PR
	(b)		-	19.2 PR
	(c)		-	19.3 PR
203.3	(a)		-	21.1 PR

Existing Code			Draft Conduct Rules	Practising Rules (PR), Compliance Rules (CR) and Practising Certificate Rules (PCR)
Paragraph	Sub-paragraph	Sub-subparagraph		
	(b)		-	21.2 PR
	(c)		-	21.3 PR
	(d)		-	21.4 PR
203.4			-	20 PR
204	(a)		-	18 PR
	(b)		-	14 PR
	(c)	(i)	-	24.3(a) PR
		(ii)	-	24.3(b) PR
		(iii)	-	24.3(c) PR
205	(a)		-	12.1 PR
	(b)		-	12.3 PR
	(c)		-	12.2 PR
206.1			-	10 PR
206.2			-	8 PR?
207	(a)		-	13.1 PR
	(b)	(i)	-	13.2(a) and (b) PR
		(ii)	-	13.2(b) PR
208	(a)		-	84.1 PR
	(b)		-	84.2 PR
	(c)		-	84.3PR
	(d)		-	84.4 PR
	(e)		-	84.5 PR
209	(a)		-	55.1 PR
	(b)	(i)	-	55.2 PR
		(ii)	-	55.2 PR
	(c)		-	55.3 PR
301	(a)	(i)	CD2 and 2.11G(3)	-

Existing Code			Draft Conduct Rules	Practising Rules (PR), Compliance Rules (CR) and Practising Certificate Rules (PCR)
Paragraph	Sub-paragraph	Sub-subparagraph		
		(ii)	CD1 and CD4	-
		(iii)	CD4 and 2.10,2.11G and 2.12G	-
	(b)		-	-
302			CD1 1.1R(1) 1.2G-1.6G 2.8R(1)	-
303	(a)		CD6 4.8R 4.9R	-
	(b)		4.11R	-
	(c)		4.12R	-
304			4.12R	-
305.1			CD8 5.1R	-
305.2			2.11G(4)	-
306			4.1R 4.2G	-
307	(a)		CD2 CD3 2.1R	-
	(b)		2.2R	-
	(c)		2.3G	-
	(d)		2.4R(1) 2.4R(2) 2.5R 2.6G	-

Existing Code			Draft Conduct Rules	Practising Rules (PR), Compliance Rules (CR) and Practising Certificate Rules (PCR)
Paragraph	Sub-paragraph	Sub-subparagraph		
	(e)		2.4R(3) 2.7G	-
	(f)		Provision no longer exists	
401	(a)	(i)	-	24.1 PR
		(ii)	-	24.2 PR
		(iii)	-	24.3 PR
	(b)	(i)	-	26.1 PR
		(ii)	-	26.2 PR
		(iii)	-	26.4 PR
		(iv)	-	26.5 PR
		(v)	-	26.6 PR
		(vi)	-	26.7 PR
401A.1	(a)		-	27.1 PR
	(b)		-	27.2 PR
401A.2			-	27.3 PR
402.1			-	57 PR
402.2	(a)		-	58.1 PR
	(b)		-	58.2 PR
403.1			-	59 PR
403.2			-	60 PR
403.3			-	62.1 PR
403.4			-	62 PR
403.5	(a)	(i)	-	66.1 PR
		(ii)	-	66.2 PR
		(iii)	-	66.3 PR
	(b)		-	-
	(c)		-	Introduction

Existing Code			Draft Conduct Rules	Practising Rules (PR), Compliance Rules (CR) and Practising Certificate Rules (PCR)
Paragraph	Sub-paragraph	Sub-subparagraph		
				(paragraph 9)
	(d)	(i)	-	67.3 PR
		(ii)	-	67.4 PR
		(iii)	-	67.5 PR
404.1	(a)		-	-
	(b)		-	-
	(c)		-	-
404.2	(a)		-	68.1 PR
	(b)		-	69.1 PR
	(c)	(i)	-	68.2(a) PR
		(ii)	-	68.2(b) PR
		(iii)	-	Introduction (paragraph 9.2)
	(d)	(i)	-	69.2 PR
		(ii)	5.2R and 5.6R	69 PR
		(iii)	-	-
	(e)		-	68.4 PR
	(f)		-	68.5 PR
	(g)		-	68.6 PR
	(h)		-	68.7 PR
	(i)		-	68.8 PR
	(j)		-	68.9 PR
404.3				Introduction (paragraph 9)
405	(a)		-	71.1 PR
	(b)		-	71.2 PR
406.1			-	72 PR
406.2	(a)		-	73.1 PR

Existing Code			Draft Conduct Rules	Practising Rules (PR), Compliance Rules (CR) and Practising Certificate Rules (PCR)
Paragraph	Sub-paragraph	Sub-subparagraph		
	(b)		-	73.2 PR
407			-	28 PR
501	(a)		-	31.2 PR
	(b)	(i)	-	31.3 PR
		(ii)	-	31.4 PR
	(c)		-	-
	(d)		-	31.5 PR
502	(a)		-	31.6 PR
	(b)		-	31.7 PR
	(c)		-	31.8 PR
503			-	-
504			-	32 PR
505			-	35 PR
506			-	39 PR
507			-	41 PR
601			4.22R	
602			4.21R	74 PR
603	(a)		4.4R(1) 4.4R(2) 4.5G	
	(b)		4.4R(3) 4.4R(4) 4.5G	
	(c)		4.23R(4)	
	(d)		4.23R(6) 4.23R(7) 4.23R(8) 4.26G	

Existing Code			Draft Conduct Rules	Practising Rules (PR), Compliance Rules (CR) and Practising Certificate Rules (PCR)
Paragraph	Sub-paragraph	Sub-subparagraph		
	(e)		4.23R(2)	
	(f)		4.23R(3)	
	(g)		-	See new contract proposals
	(h)		4.23R(9)	
604	(a)		-	77.1 PR
	(b)	(i)	-	77.2(a) PR
		(ii)	-	77.2(b) PR
		(iii)	-	77.2(c) PR
	(c)		-	77.3 PR
	(d)	(i)	-	77.4(a)
		(ii)	-	77.4(b)
	(e)		-	
	(f)		-	77.5 PR
	(g)		-	77.6 PR
	(h)		-	77.7 PR
	(i)		-	77.8 PR
605	(a)		-	77.11(a) PR
	(b)		-	77.11(b) PR
606.1			4.14G	
606.2			4.14G	
606.3				
606.4			4.13G 4.14G	
Repealed?			-	
			-	
607			4.10R 4.14G	

Existing Code			Draft Conduct Rules	Practising Rules (PR), Compliance Rules (CR) and Practising Certificate Rules (PCR)
Paragraph	Sub-paragraph	Sub-subparagraph		
608	(a)		4.23R	
	(b)		4.23R(2)	
	(c)		4.27R(1)	
	(d)		1.7G 4.27R(2)	
	(e)		1.8G 4.27R(3)	
	(f)		4.25R	
609	(a)		4.27R(4)	
	(b)		4.28R(1)	
	(c)		-	-
	(d)		4.28R(6)	
610	(a)		4.30R(1)e(ii)	
	(b)		4.30R(1)e(i) 4.30R(2)	
	(c)		4.30R(3)	
	(d)		4.30R(1)a,b,c	
701	(a)		1.1R(3) 1.10G CD7 4.16R to 4.20G	
	(b)	(i)	4.4R(1)	
		(ii)	4.4R(3)	
		(iii)	4.4R(4)	
	(c)		4.16R(1)	
	(d)		-	Introduction (paragraph 9)

Existing Code			Draft Conduct Rules	Practising Rules (PR), Compliance Rules (CR) and Practising Certificate Rules (PCR)
Paragraph	Sub-paragraph	Sub-subparagraph		
	(e)	(i)	4.29R(1)	
		(ii)	4.29(R)(2)	
	(f)		-	67.1 PR
702			CD5 3.1G 3.2G 3.3G	
703			4.11G 4.14G 4.15G	
704			2.9G	
	(a)		2.8R(2)(a)	
	(b)		2.8R(2)(b)	
	(c)		2.8R(2)(c)	
	(d)		2.8R(2)(d)	
705	(a)		2.8R(4)	
	(b)		2.8R(3)	
	(c)		2.8R(5)	
706			-	81PR
707			-	-
708	(a)		4.1R 4.2G	
	(b)		1.9G	
	(c)		1.1R(4) 1.11G	
	(d)		1.12G	
	(e)		2.8R(2)(a)	
	(f)		1.10G(1)	

Existing Code			Draft Conduct Rules	Practising Rules (PR), Compliance Rules (CR) and Practising Certificate Rules (PCR)
Paragraph	Sub-paragraph	Sub-subparagraph		
			2.8R(2)(b)	
	(g)		1.9G(1)	
	(h)		1.9G(2)	
	(i)		1.9G(3)	
	(j)		1.9G(4)	
708.1			-	
709.1			2.15R	79 PR
709.2			2.16G	80 PR
710.1			2.8R(6)	
710.2			2.8R(6)	
801	(a)		-	49.1 PR
	(b)		-	49.2 PR
	(c)		-	49.3 PR
802	(a)		-	3.2 PCR and 15 PCR
	(b)		-	6 PR and 17 PR
803.1			-	50 PR
803.2			-	51 PR
804	(a)		-	52.1 PR
	(b)		-	52.2 PR
	(c)		-	Introduction (paragraph 9)
805			-	53 PR
806			-	43 PR
807	(a)		-	44.1 PR
	(b)		-	44.2 PR
	(c)		-	44.3 PR
808.1			-	45 PR

Existing Code			Draft Conduct Rules	Practising Rules (PR), Compliance Rules (CR) and Practising Certificate Rules (PCR)
Paragraph	Sub-paragraph	Sub-subparagraph		
808.2			-	54 PR
808.3	(a)		-	-
	(b)		-	-
	(c)		-	-
808.4			-	
809			-	42 PR
901-905			2.13R 2.14G	
1001				To be considered
1101			-	-
1102			-	16.2 PCR
1103			-	16.1 PCR
1104			-	20 PR
1105			-	
1106			-	-
Annex A				
1			-	25 PR
2			-	
3			-	37 PR and 77.12 PR
4	(a)		-	62.2 PR
	(b)		-	26 PR
	(c)		-	71.1 PR
	(d)		-	
	(e)		-	8 PR
5			-	22 PR
6			-	27.2 PR
7			-	

Existing Code			Draft Conduct Rules	Practising Rules (PR), Compliance Rules (CR) and Practising Certificate Rules (PCR)
Paragraph	Sub-paragraph	Sub-subparagraph		
Annex D				
1			-	-
2			-	-
3			-	-
4			-	-
5			-	-
6			-	-
7			-	-
8			-	-
9			-	-
10				4 PCR
11	(a)			21 PCR
	(b)			24.1 PCR
12				22 PCR
13			-	
14			-	2.1 PCR
15	(a)		-	-
	(b)		-	-
	(c)		-	10.1 PCR
	(d)		-	9.3 PCR
	(e)		-	10.3 PCR
	(f)		-	10.5 PCR
16				1 PCR
17			-	
18			-	7.1 PCR
19			-	-
20			-	-

Existing Code			Draft Conduct Rules	Practising Rules (PR), Compliance Rules (CR) and Practising Certificate Rules (PCR)
Paragraph	Sub-paragraph	Sub-subparagraph		
21			-	6 PCR, 7.4 PCR
22			-	-
23			-	-
24			-	-
25			-	-

Annex 4

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

Circuits
All Specialist Bar Associations
Heads of Chambers
Inns of Court

OTHER BODIES

Legal Ombudsman
Law Society
Solicitors Regulation Authority
Institute of Barristers Clerks
Legal Practice Management Association
Institute of Legal Executives
Council for Licensed Conveyancers
Chartered Institute of Patent Agents
Institute of Trade Mark 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