

## PROPOSED AMENDMENTS TO THE CODE OF CONDUCT

### Part IV – Self-Employed Barristers

#### Instructions

401 A self-employed barrister whether or not he is acting for a fee:

- (a) may supply legal services only if appointed by the Court or ~~is~~ instructed:
- (i) by a professional client; or
  - (ii) by a licensed access client, in which case he must comply with the Licensed Access Rules (reproduced in Annex F1); or
  - (iii) subject to paragraph 204(c), by or on behalf of any other lay client, in which case he must comply with the Public Access Rules (reproduced in Annex F2); or
- (b) must not in the course of his practice, except as permitted by the Public Access Rules:
- (i) undertake the management administration or general conduct of a lay client's affairs;
  - (ii) conduct litigation ~~or inter-partes work~~ (for example ~~the conduct of correspondence with an opposite party, issuing any claim or process or~~ instructing any expert witness or other person on behalf of his lay client or accepting personal liability for the payment of any such person); and must not conduct correspondence or other work involving other parties save as permitted by rule 401A below.
  - (iii) ~~investigate~~ conduct a case in court if the barrister has previously investigated or ~~collect~~collected evidence for ~~use in any Court~~;
  - ~~(iv)~~
  - ~~(iv) except as permitted by paragraph 707, or by the Public Access Rules, take any proof that case unless the barrister reasonably believes that the investigation and collection of that evidence in any criminal case; (v) is unlikely to be challenged.~~
  - (iv) attend at a police station without the presence of a solicitor to advise a suspect or interviewee as to the handling and conduct of police interviews unless the barrister has complied with such training requirements as may be imposed by the Bar Standards Board in respect of such work.

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~~(v) (vi)~~ act as a supervisor for the purposes of section 84(2) of the Immigration and Asylum Act 1999.

~~(vi) (e)~~ Conduct in court any criminal proceedings in which the barrister has attended at a police station for any defendant in connection with those proceedings or any associated proceedings unless the barrister reasonably believes that nothing said, done, heard or seen by the barrister at the police station might require him/her to give evidence in those proceedings.

~~— must not supply legal services for reward otherwise than in the course of his practice except as permitted by paragraph 806.<sup>4</sup>~~

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#### Conduct of correspondence

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

(a) is satisfied that it is in the lay client's best interests that the barrister does so and that he has adequate systems, experience and resources for managing appropriately such correspondence ; and;

(b) has adequate insurance cover in the event that the lay client suffers any loss arising from the conduct of the correspondence for which the barrister is responsible.

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

#### **Insurance**

402.1 Every self-employed barrister (other than a pupil who is covered under his pupil supervisor's insurance) and a barrister called to the Bar under ~~Regulation 78- Part IV(E)~~ of the ~~Bar Training Regulations<sup>2</sup>~~ Consolidated Regulations must be entered as a member with ~~BMIF<sup>3</sup>~~ BMIF<sup>2</sup>.

402.2 Every barrister entered as a member with BMIF shall:

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

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

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

403.1 ~~Except as permitted in paragraphs 403.2 and 403.3, a~~ self-employed barrister must not ~~practise from the share~~ office ~~offacilities~~ or ~~other premises and must not practise~~ in any ~~unincorporated~~ association ~~(including any arrangement which involves sharing the administration of his practice)~~ with any person other than a self-employed barrister or any of the following:

(a) a registered European lawyer;

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(b) subject to compliance with the Foreign Lawyers (Chambers) Rules (reproduced in Annex H) and with the consent of the Bar Council a foreign lawyer;

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(c) a non-practising barrister

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(d) a person who is:

(i) ~~a~~ lawyer from a jurisdiction other than England and Wales;

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(ii) a retired judge; or

(iii) an employed ~~barrister~~<sup>4</sup>~~barrister~~<sup>3</sup>

to the extent that that person is practising as an arbitrator or mediator.<sup>54</sup>

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~~403.2 A self-employed barrister:~~

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~~(a) must take all reasonable steps to ensure that:~~

~~(i) his practice is efficiently and properly administered having regard to the nature of his practice;~~

~~(ii) proper records are kept;~~

~~(iii) he complies with the Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988 as amended and in force from time to time (reproduced in Annex G1) and with any Withdrawal of Credit Direction issued by the Chairman of the Bar pursuant thereto.~~

~~(b) must have ready access to library may share office facilities which are adequate having regard to the nature of his practice; or other premises with any person or persons (not falling within 403.1 above) and will not be treated as thereby practising in breach of rule 403.1, provided that;~~

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~~(c) must have regard to any relevant guidance issued by the Bar Council including guidance as to:~~

~~(i) the administration of chambers;~~

~~(ii) pupillage and further training; and~~

~~(iii) good equal opportunities practice in chambers in the form of the Equality and Diversity Code<sup>6</sup> for the Bar.~~

~~(d) (i) must deal with all complaints made to him promptly, courteously and in a manner which addresses the issues raised; and~~

~~(ii) must have and comply with an effective<sup>7</sup> written complaints procedure and make copies of the procedure available to a client on request; and~~

~~(iii) meet all the requirements set out in Annex S to the Code.<sup>8</sup>~~

(1) there is complete separation of the services provided by the barrister and the services provided by any person with whom the barrister shares the office facilities or premises;

(2) nothing is done that might reasonably create the impression that there is any sharing of work, income or profits of the businesses;

(3) the barrister has effective arrangements in place to protect the confidentiality of clients' affairs;

(4) there is no general referral arrangement or understanding between the barrister and the person or persons with whom the barrister is sharing; and

(5) prior notification in writing of the sharing, identifying the premises in question and the names and occupations of the persons or body with whom the barrister is sharing, has been given to the Bar Standards Board by the barrister.

403.3 The restrictions in paragraphs (1), (2) and (4) in paragraph 403.2 shall not apply where barristers share premises with any entity which is controlled by them and used as permitted for the purposes of and ancillary to their practice as self-employed barristers.

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

**Please note that there are no other proposed amendments to rules 404.1 onwards. They remain unchanged.**

## **Part VI Acceptance of Instructions**

### **Acceptance of Instructions and the Cab Rank Rule**

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

(a) requiring him to do anything other than during the course of his ordinary working year;

(b) other than at a fee which is proper having regard to:

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

(ii) his ability experience and seniority; and

(iii) the expenses which he will incur;

and any instructions in a matter funded by the Legal Services Commission as part of the Community Legal Service or the Criminal Defence Service for which the amount or rate of the barrister's remuneration is prescribed by regulation or subject to assessment shall for this purpose unless the Bar Council or the Bar in general meeting otherwise determines (either in a particular case or in any class or classes of case or generally) be deemed to be at a proper professional fee.<sup>1 2</sup> .

(c) to do any work under a conditional fee agreement;

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

(i) unless and until his fees are agreed;

(ii) if having required his fees to be paid before he accepts the instructions those fees are not paid;

(e) from anyone other than a professional client who accepts liability for the barrister's fees;

(f) in a matter where the lay client is also the professional client;<sup>3</sup>

(g) to do any work under the Contractual Terms on which Barristers offer their Services to Solicitors 2001 as amended and in force from time to time (reproduced in Appendix G2) or on any other contractual terms,

(h) Where the potential liability for professional negligence in respect of the case could exceed the level of professional indemnity insurance which is reasonably available and likely to be available in the market for him to accept.<sup>4</sup>

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(i) to investigate or collect evidence (save for taking proofs of evidence or preparing witness statements urgently as part of the barrister's conduct of the case at court), to attend at a police station with or without a solicitor, or to conduct correspondence with other parties (save where reasonably necessary as part of the barrister's conduct of the case at court).