

Annex 2

Amendments to the Code of Conduct

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Paragraph 401 of the Bar Code

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, instructing any expert witness or other person on behalf of his lay client or accepting personal liability for the payment of any such person);

(iii) investigate or collect evidence for use in any Court;

(iv) except as permitted by paragraph 707, ~~or by the Public Access Rules,~~ take any proof of evidence in any criminal case;

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(v) 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.

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

(c) must not supply legal services for reward otherwise than in the course of his practice except as permitted by paragraph 806.¹ⁱ

The Public Access Rules: Annex F2 of the Bar Code

1. These rules apply to barristers instructed by or on behalf of lay clients (other than licensed access clients) pursuant to paragraph 401(a)(iii) of the Code of Conduct.

2. Before accepting any public access instructions from or on behalf of a lay client who has not also instructed a solicitor or other professional client, a barrister must –

i) Be properly qualified by having more than 3 years' practising experience, by having undertaken and satisfactorily completed the appropriate training, and by registering with the Bar Council as a Public Access practitioner; and

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ii) Take such steps as are reasonably necessary to ascertain whether it would be in the best interests of the client or in the interests of justice for the lay client to instruct a solicitor or other professional client.

3. **A barrister may not accept direct instructions from or on behalf of a lay client:**

(1) In or in connection with any matter or proceedings in which it is likely that the lay client would be eligible for public funding;

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(2) In or connection with any matter of proceedings in which, in all the circumstances, it would be in the best interests of the client or in the interests of justice for the client to instruct a solicitor or other professional client. A

barrister may not accept direct instructions from or on behalf of a lay client:

(1) in, or in connection with, any matter or proceedings concerning immigration or asylum;

(2) in, or in connection with:

(a) any family business or family proceedings (as those terms are defined in section 65 of the Magistrates' Courts Act 1980 or in section 32 of the Matrimonial and Family Proceedings Act 1984 or in section 8 of the Children Act 1989); or

(b) any criminal cause or matter;

unless:

(i) the barrister is instructed by the lay client and not by or through an intermediary on behalf of the lay client; and

(ii) the barrister is instructed solely:

(A) to provide advice or draft documents (but not to attend interviews conducted by prosecuting or investigating authorities), other than in connection with proceedings which have been commenced (and, for the avoidance of doubt, proceedings are commenced, inter alia, when the Defendant is charged or a summons is issued); or

(B) in, or in connection with, proceedings:

(1) before the European Court of Human Rights or the Courts of the European Communities;

- (2) on appeal to the House of Lords or the Privy Council;
- (3) on appeal to the Court of Appeal, provided that there is no reason to believe that any party to the proceedings will seek to adduce new evidence;
- (4) on appeal to the High Court by way of case stated by a Magistrates' Court or the Crown Court;
- (5) on appeal to the Crown Court from a sentence imposed by a Magistrates' Court, provided that there is no reason to believe that the appeal will involve a Newton hearing; or
- (6) on appeal to the Child Support Appeal Tribunal or the Child Support Commissioners

4. In any case where a barrister is not prohibited ~~by rule 3~~ from accepting instructions, **the barrister must at all times consider the developing** ~~it is a matter for consideration in the~~ circumstances of the case, **and** whether **at any stage** it is in the best interests of the client or in the interests of justice for the lay client to instruct a solicitor or other professional client. **If, after accepting direct instructions a barrister forms the view that circumstances are such that it would be in the best interests of the client, or in the interests of justice for the lay client to instruct a solicitor or other professional client the barrister must :**

(a) inform the client of his view; and

(b) withdraw from the case in accordance with the provisions of paragraph 608 (a) of the Code unless the client instructs a solicitor or other professional client to act in the case.

5. A barrister must have regard to guidance published from time to time by the Bar Council in considering whether to accept and in carrying out any public access instructions.

6. A barrister who accepts public access instructions must forthwith notify his lay client in writing, and in clear and readily understandable terms, of:

- (a) the work which the barrister has agreed to perform;
- (b) the fact that in performing his work the barrister will be subject to the requirements of the Code of Conduct and, in particular, paragraphs 401(b) and 608;
- (c) the fact that the barrister cannot be expected to perform the functions of a solicitor or other authorised litigator and in particular to fulfil limitation obligations, disclosure obligations and other obligations arising out of or related to the conduct of litigation;
- (d) the fact that the barrister is a sole practitioner, is not a member of a firm and does not take on any arranging role;
- (e) in any case where the barrister has been instructed by an intermediary:
 - (i) the fact that the barrister is independent of and has no liability for the intermediary; and
 - (ii) the fact that the intermediary is the agent of the lay client and not the agent of the barrister;
- (f) the fact that the barrister may be prevented from completing the work by reason of his professional duties or conflicting professional obligations, and what the client can expect of the barrister in such a situation;
- (g) the fees which the barrister proposes to charge for that work, or the basis on which his

fee will be calculated;

(h) the barrister's contact arrangements; and

(i) the barristers' complaints procedure and that of the General Council of the Bar.

7. Save in exceptional circumstances, a barrister will have complied with rule 6 above if he has written promptly to the lay client in the terms of the draft letter annexed hereto.

8. In any case where a barrister has been instructed by an intermediary, he must give the notice required by rule 6 above both:

(a) directly to the lay client; and

(b) to the intermediary.

9. A barrister who accepts public access instructions must keep a case record which sets out:

(a) the date of receipt of the instructions, the name of the lay client, the name of the case, and any requirements of the client as to time limits;

(b) the date on which the instructions were accepted;

(c) the dates of subsequent instructions, of the despatch of advices and other written work, of conferences and of telephone conversations;

(d) when agreed, the fee.

10. A barrister who accepts public access instructions must either himself retain or take reasonable steps to ensure that the lay client will retain for at least seven years after the date of the last item of work done:

(a) copies of all instructions (including supplemental instructions);

(b) copies of all advices given and documents drafted or approved;

(c) the originals, copies or a list of all documents enclosed with any instructions;

(d) notes of all conferences and of all advice given on the telephone.

11.—A barrister who has accepted public access instructions may undertake correspondence where it is ancillary to permitted work, and in accordance with the guidance published by the Bar Council.

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1412. Save where otherwise agreed:

(a) A barrister shall be entitled to copy all documents received from his lay client, and to retain such copies permanently.

(b) A barrister shall return all documents received from his lay client on demand, whether or not the barrister has been paid for any work done for the lay client.

(c) A barrister shall not be required to deliver to his lay client any documents drafted by the barrister in advance of receiving payment from the lay client for all work done for that client.

| A barrister who has accepted public access instructions in any [civil](#) matter may take a proof of evidence from his client in that matter.

^{i 1} Amended 11th September 2006