

SECTION 1

Arrangement of Sections

Code of Conduct of the Bar of England and Wales

The Bar's Code of Conduct sets out the duties which all barristers must obey.

It is divided into the following sections:

Part I - Preliminary

The Preliminary section sets out the details about the commencement of the Code, the rules governing amendments to the Code, the general purpose of the Code, to whom it applies and the Bar Council's powers to waive its provisions.

101 *Commencement.*

102 *Annexes.*

103 *Amendments/additions to the Code.*

104 General purpose of the Code

105 }
106 } **Application of the Code**
107 }

108 Waiver of the Code

Part II - Practising Requirements

The Practising Requirements section sets out the rules governing the circumstances in which individuals may practise as a barrister, exercise rights of audience and supply legal services to the public. Part II also contains the requirement to be insured and the prohibition on barristers practising in partnership.

201 General

202 Requirements to practise

Practising certificate, pupillage, continuing professional development.

203 Rights of audience

203.2 *Three years standing rule*

203.3 *Suitably qualified person*

204 Supply of legal services to the public

205 Partnerships

206.1 } *Rules for barristers wishing to offer legal services to the public*
206.2 } *but who do not meet the criteria do so as practising barristers*

Part III - Fundamental Principles

The Fundamental Principles section includes the duty to not act dishonestly or bring the profession into disrepute, the duties to the court and to act in the best interest of the client. It also contains the duties to the Legal Services Commission, the duty to not discriminate on grounds of race, sex etc. and the duty to maintain independence.

301 Applicable to all barristers

(a) *Dishonest, discreditable conduct, prejudicial to the administration of justice, diminish public confidence, bring the bar into disrepute*

302 Applicable to practising barristers

Duty to the Court, assist in the administration of justice, must not mislead the Court

303 (a) *Act in the best interests of the lay client*
(b) *Primary duty to the lay client*
(c) *Duty to the Legal Services Commission (LSC)*

304 *Duty to comply with LSC Regulations*

305.1 } *Discrimination on grounds of sex and race – general principle,*
305.2 } *offer of pupillage*

306 *Barrister's individual and personal responsibility, exercise of personal judgement*

307 *A barrister must not:*

- (a) } *Compromise his independence and integrity*
- (b) }
- (c) *Compromise professional standards*
- (d) *Must not give commission, a present or money for any professional purpose*
- (e) *Make payment for purposes of procuring instructions*
- (f) *Receive or handle client money, securities or other assets*

Part IV Self-employed Barristers

This section concerns self-employed barristers only. It provides that they can only accept instructions from solicitors or other professional clients and sets out the work that they may not undertake. This section also contains further rules governing insurance, the duties of barristers and heads of chambers to administer their practice efficiently and the rules about fees.

401 Instructions

- (a) *Supply legal services when properly instructed*
- (b) (i) *Management/administration/general conduct of lay client's affairs*
- (ii) *Conduct litigation, inter-partes work*
- (iii) *Investigate/collect evidence for use in Court*
- (iv) *Take proof of evidence in criminal cases*
- (v) *Attend at police stations*
- (vi) *Act as supervisor – s84(2) of the Immigration and Asylum Act 1999*
- (c) *attendance of a self-employed barrister at a legal advice centre*

402 Insurance

403 Administration and conduct of self-employed practice

403.1 Sharing the administration of a barrister's practice

- 403.2 (a) (i) *Efficient and proper administration of practice*
- (ii) *Keeping proper records*
- (iii) *Compliance with Terms of Work / Withdrawal of Credit Scheme 1998*
- (b) *Access to library facilities*
- (c) *Have regard to Bar Council guidance*
- (d) (i) *Handle complaints promptly/courteously*

- (ii) *Have and comply with an appropriate written complaints procedure – provide copies when requested*

404 Heads of Chambers

404.1 *To whom the obligations in this section apply.*

404.2 *The Head of Chambers must ensure that:*

- (a) *Chambers are properly staffed and efficiently and competently administered*
- (b) *Affairs of chambers are conducted fairly and equitably*
- (c) *Proper arrangements are made for dealing with pupils and pupillage, including:*
 - (i) *pupillage vacancies*
 - (ii) *arrangements for funding of pupils*
 - (iii) *pupillage guidelines and the Equality and Diversity Code are considered*
- (d) *Proper arrangements are in place for dealing with equal opportunity issues, in particular:*
 - (i) *there is an Equal Opportunities Officer*
 - (ii) *there is a written Equal Opportunities policy*
 - (iii) *if (i) and (ii) are not complied with Chambers should not take on pupils.*
- (e) *All members have insurance with BMIF*
- (f) *All members comply with 403.2(a)(iii)*
- (g) *All employees and staff are:*
 - (i) *competent to carry out duties*
 - (ii) *carry out duties efficiently*
 - (iii) *are made aware of the provisions of the Code*
 - (iv) *complaints against them are dealt with in accordance with 403(e).*
- (h) *Registered foreign lawyers / foreign lawyers comply with the Code*
- (i) *Fee notes are sent promptly and pursued efficiently*
- (j) *Every member has a Practising Certificate*

404.3 *Regard to Bar Council guidance when carrying out 404.2.*

Fees & Remuneration

405 *Basis on which self-employed barristers can charge for work.*

406.1 *Payment of fees to other barristers.*

406.2 *Duty to pay proper financial remuneration to another barrister and to be paid within a reasonable time.*

Part V – Employed Barristers

This section sets out the rules governing Employed Barristers.

- 501 *To whom an employed barrister can supply legal services when employed:*
- (a) *by a company*
 - (b) *by a public authority*
 - (c) *as a justices clerk*
 - (d) *by a trade association*
- 502 *When employed barristers may offer services to the public:*
- (a) *when employed by a solicitor or authorised litigator*
 - (b) *by the Legal Services Commission*
 - (c) *by a Legal Advice Centre*
 - (d) *when supplying legal services free of charge*
- 503 *Requirements for supplying legal services under a contract for services.*
- 504 *Right to conduct litigation*

Part VI - Acceptance and Return of Instructions

This section deals with the occasion on which barristers are required to accept instructions (the “Cab Rank rule”), when they are required to refuse or withdraw from a case and when they may choose to refuse or withdraw from a case.

- 601 *A barrister cannot withhold advocacy services:*
- (a) *if nature of case is objectionable*
 - (b) *opinion/belief of prospective client unacceptable to the barrister*
 - (c) *on the basis of any financial support given to the prospective client*
602. *The Cab-Rank Rule and when it applies.*
- 603 *When a barrister must not accept instruction:*
- (a) *lacks sufficient experience/competence*
 - (b) *does not have adequate time to properly prepare*
 - (c) *instructions seek to limit barrister’s discretion as to how to conduct the proceedings*
 - (d) *the barrister is likely to be a witness / has difficulty maintaining professional independence / cause the*

- administration of justice to be, or appears to be, prejudiced*
- (e) *conflict of interest*
 - (f) *risk of a breach of confidentiality*
 - (g) *non-compliance with the Terms of Work on which Barristers offer their Services to the Solicitor / Withdrawal of Credit Scheme 1988*
 - (h) *liability exceeds indemnity insurance*
- 604 *When (subject to Paragraph 601) a barrister is not obliged to accept instructions:*
- (a) *work outside of his ordinary working year*
 - (b) *other than at a proper fee*
 - (c) *work under a conditional fee agreement*
 - (d) *save when funded by the Legal Services Commission / Community Legal Service / Criminal Defence Service*
 - (i) *unless and until fee is agreed*
 - (ii) *if required fee to be paid before accepting instruction – fee is not then paid*
 - (e) *in a licensed access matter where lay client is also the professional client*
 - (f) *where the lay client is also the professional client*
 - (g) *to do any work under contractual terms*
- 605 *When a self-employed Queen’s Counsel is not obliged to accept instructions*
- 606.1 *Duty to consider whether it is in the best interests of the client for him to be instructed or remain instructed.*
- 606.2 *Duty to consider whether it is in the best interests of the client to have more than one advocate.*
- 606.3 *Duty to consider whether it is in the best interests of the lay client for a barrister to be instructed directly or by an intermediary who is not a solicitor or an authorised litigator.*
- 606.4 *Duty to consider in cases involving several parties, whether it is in the best interests of the client to be separately or jointly represented.*
- 607 *Obligation to advise client if barrister considers that it is in the best interests of the client to have different representation.*
- 608 *When a barrister must cease to act and return instructions.*
- (a) *witness on a material question of fact*

- (b) *if acting for more than one client and they do not consent to him continuing to act*
 - (i) *conflict or risk of conflict*
 - (ii) *risk of a breach of confidence*
 - (c) *funding wrongly obtained*
 - (d) *refusal of client to permit disclosure of barrister to the court*
 - (e) *where a barrister becomes aware of documents which should have been disclosed on discovery and the client fails to disclose it*
 - (f) *disclosure of documents*
- 609 *(Subject to Paragraph 610) When a barrister may withdraw from a case:*
- (a) *instructions withdrawn*
 - (b) *professional conduct impugned*
 - (c) *advice given in accordance with Paragraph 607 or 703 has not been heeded*
 - (d) *some other substantial reason*
- 610
- (a) *must explain to client why ceasing to act/returning instructions*
 - (b) *return instructions to another barrister without client's consent*
 - (c) *return of brief for social engagement*
 - (d) *except as provided at Paragraph 608, return of instructions/withdrawal which prevents the client from finding other legal assistance in time to prevent prejudice to their case*

Part VII – Conduct of Work by Practising Barristers

This section contains the duties of barristers when conducting work, including the general duties to act courteously and promptly, the duty of confidentiality, duties where there is a conflict between clients, duties when drafting documents and appearing in court, the rules concerning contact with witnesses and media comment and advertising.

- 701 *Duty of a barrister:*
- (a) *to act courteously and promptly*
 - (b) *not to undertake a task which:*
 - (i) *not competent to handle*
 - (ii) *does not have adequate time to prepare for*
 - (iii) *cannot be discharged within time requested*
 - (c) *duty to read instructions promptly*

- (d) *duty to have regard to Written Standards for the Conduct of Professional Work produced by the Bar Council*
- (e) *subject to Paragraph 610, duties to return instructions or to another barrister if:*
 - (i) *unable to complete work within the time requested*
 - (ii) *if there is a risk that they may be unable to undertake the brief or fulfil a professional engagement*
- (f) *a duty to keep adequate records supporting the fees charged or claimed in a case*

702 Confidentiality

703 Conflicts between lay clients and intermediaries

704 *Drafting documents, duty not to include*

- (a) *unsupported statements of facts/contention*
- (b) *contentions not properly arguable*
- (c) *allegations of fraud*
- (d) *statements other than those that the witness/client would give.*

705 *Duties governing contact with witnesses*

706 *Dispensing with the attendance of the professional client*

707 *When a barrister may interview witnesses and take proofs of evidence.*

708 *Duties when conducting proceedings in court.*

- (a) *personal responsibility for conduct of his case*
- (b) *assertion of a personal opinion of the facts or the law*
- (c) *inform the Court of all relevant authorities*
- (d) *inform the Court of any procedural irregularity*
- (e) *must not adduce evidence other than from the client or devise facts*
- (f) *properly arguable submission*
- (g) *scandalous statements / vilifying witnesses*
- (h) *impugning third parties by naming in Court*
- (i) *impugning a witness*
- (j) *suggestion that a victim/witness or other person is guilty of crime, fraud or misconduct or making defamatory aspersions*

708.1 Conduct in mediation

709 Media comment

710 Advertising and publicity

710.1 *What advertising or promotion may include.*

710.2 *Advertising or promotion must not:*

- (a) *be inaccurate/misleading*
- (b) *diminish public confidence in the legal profession or the administration of justice*
- (c) *be comparative*
- (d) *contain success rates*
- (e) *indicate willingness to accept instructions / restrict instructions*
- (f) *be frequent/obtrusive*

Part VIII – Miscellaneous

This section sets out miscellaneous provisions concerning pupillage, working at a Legal Advice Centre, dual qualification and relationships with foreign lawyers.

801 *Responsibilities of a barrister who is a pupil.*

802 *When a barrister who is a pupil can supply legal services, exercise a right of audience and accept a noting brief.*

803.1 *Pupil barristers as members of chambers.*

803.2 *Barrister who is a pupil of an employed barrister.*

804 *Duties of a pupil supervisor.*

805 *Payment by a barrister to a pupil for work done by him.*

806 *Supplying legal services at a Legal Advice Centre*

807 *Barristers employed by a Legal Advice Centre – prohibitions.*

808.1 }
808.2 } **Dual qualification**
808.3 }
808.4 }

809 Foreign lawyers

Part IX - Compliance

This section sets out the duty to inform the Bar Council in the event of criminal convictions, bankruptcy etc and the duties concerning the complaints procedure.

- 901 *Non-compliance with the Code – professional misconduct/written warnings/financial penalties.*
- 902 *False declaration by a barrister on Call to the Bar / discreditable or dishonest conduct before Call.*
- 903 *Annexes of the Code dealing with the complaints and disciplinary system.*
- 904 *Redress to the client for inadequate professional service.*
- 905 *Duties of a practising barrister to:*
 - (a) (i) *respond promptly to the Bar Council*
 - (a) (ii) *permit the Bar Council to inspect premises from which they practise*
 - (b) *duty to report being charged or convicted of a serious criminal offence or convicted of a disciplinary offence*
 - (c) *duties regarding bankruptcy and directors disqualification proceedings*
 - (d) *duty to respond promptly to correspondence from the Bar Council relating to a complaint or to circumstances relating to Paragraph 905(b)-(c)*
 - (e) *duty to respond to letter of notification or request to attend before any tribunal panel body or person*
 - (f) *duty to comply with any decision of a tribunal body or person*

Part X - Definitions

This section contains the definition of terms used in the Code.

Part XI - Transitional Provisions

This section contains the transitional arrangements affecting people who were barristers before this edition of the Code came into force.

The Code also contains various annexes, which set out the rules for particular situations.