



PRACTICE MANAGEMENT

THE SOLICITORS' CODE OF CONDUCT 2007 AND THE LEXCEL STANDARD

THE NEW CODE OF CONDUCT INTRODUCED ON 1 JULY 2007 REPLACES THE GUIDE TO THE PROFESSIONAL CONDUCT OF SOLICITORS FIRST ISSUED WAY BACK IN 1960, WITH THE AIM OF:

- Setting clear mandatory requirements as a single set of rules and core duties.
- Identifying where real risk to clients exists and ensuring an appropriate level of protection whilst avoiding unnecessary regulation.
- Introducing significant changes in areas such as Supervision and Management (rule 5), Equality and Diversity (rule 6) and Litigation and Advocacy (rule 11).

With the code having been condensed from 900+ pages to some 257 it should help practices focus on the new requirements so as to avoid a breach of requirements and the potential for sanctions.

LINKAGES WITH THE LEXCEL STANDARD

A particularly noteworthy feature of the new Code is that some aspects of the Code are addressed within the Lexcel standard. This is particularly noticeable in rule five that relates to business management. If firms conform to the Lexcel standard, many of the requirements in the Code will be evidenced in the office manual, and in the planning processes and development aspects of the standard. In the guidance notes accompanying Rule 5, conformity with practice management standards promoted from time to time by the Law Society ie Lexcel, may be seen as evidence of a systematic and effective approach to management.

briefing notes

EXAMPLES OF THE CLOSE LINKS BETWEEN THE CODE AND THE LEXCEL STANDARD CAN BE SEEN IN:

Rule 1 - With the requirements of this rule referencing standards and public confidence the adoption of the Lexcel requirements will support the requirements for integrity, interests of clients, standards and public confidence.

Rule 2 – The requirements in respect of ‘Client Relations’ are well supported in section 7 of the Lexcel Standard that focuses on Client Care.

Rule 3 – The requirements in respect of ‘Conflict of Interest’ are referenced in Section 8 that identifies the need to document the approach to conflict and confidentiality.

Rule 4 – In respect of ‘Confidentiality and Disclosure’ Section 8.1 to 8.3 of Lexcel requires the identification of procedures re handling client enquiries, accepting new instructions, and acting upon conflicts.

Rule 5 – In respect of ‘Business Management’ there is considerable linkage in this area, as section 6 identifies the requirement to have effective supervision, and 5 references the need to focus on appropriate training. With adoption of the Lexcel standard management will be able to reference the training that will have been undertaken re: policies, planning, finance, marketing, people development and supervision.

Rule 6 – In respect of Equality and Diversity, the standard requires that policies and reviews are in place to address these requirements.

Rule 7 – In respect of Publicity the standard identifies the need for marketing plans, it is likely the proposed 2008 version of the standard will give additional focus in this area.

Rules 8 and 9 - Fee Sharing and Referrals of Business, these aspects of the code are not specifically addressed within the standard apart from the general reference to accepting new instructions identified in section 8.2.

Rule 10 – Although ‘Relations with Third Parties’ is not specifically addressed within the standard, there is general reference in 8.4 to the method of funding.

Rule 11 – The requirements in respect of ‘Business Structure’ are addressed within section 1 of the standard.

Although the rules not mentioned above are not specifically covered within the 2004 version of the Lexcel Standard, the proposed 2008 version might well be giving some additional focus. The benefits of adopting the Lexcel Standard will certainly help firm’s identify how they address many of the code’s rules and core duties.

briefing notes

A SUMMARY OF THE NEW CODE OF CONDUCT

2007-07-16

In summary the new core duties and rules address:

Rule Code Description

No.

1 Core Duties

The basic principles of professional conduct are embodied in six 'core duties' which address:

- Justice and the rule of law.
- Integrity.
- Independence.
- Best interests of clients.
- Standards of service.
- Public confidence

These provide an overarching framework from which the other 24 rules can be understood.

2 Client Relations

Pulls together the solicitors cost information, care codes and other provisions dealing with relationships with clients. This covers the provision of commissions and retainers where they apply. The limitation of liability is built into this rule, but any limitation can only be above the minimum PI insurance requirements.

3 Conflict of Interest

The new rules implemented in 2006 are replicated in the Code, and deal with:

- Definition of a conflict.
- Prevention to act where a conflict exists.
- Exceptions, including where the clients have substantially common interest, or in commercial situations where sophisticated clients are competing for the same asset. Strict conditions apply to the use of such exceptions, and the informed consent of each client being required.

4 Confidentiality and Disclosure

This Rule confirms that the duty of confidentiality overrides the duty of disclosure, but one needs to be aware that pleading the duty of confidentiality does not excuse a breach of the duty of disclosure; and that:-

- The duty of disclosure is limited to information of which you are personally aware, it does not extend to that held within the firm that you are unaware of.
- There is a new duty which prevents you from putting the confidential information of one client at risk by acting for another client where:
 - That information is material.
 - The interests of the client are adverse.
- One can act using information barriers subject to strict conditions where confidentiality would be put at risk, and where otherwise, there would be a breach of this new duty.

briefing notes

5 Business Management

The Rule aims to set out:

- The responsibility for the overall supervision of, and management framework of, the firm
- The minimum requirements to be met, in order to be qualified to supervise.
- The minimum standards applying to supervision of clients' matters.
- The minimum requirement in relation to those business arrangements considered to be essential to good practice and integral to compliance with supervision and other duties to clients.

With the requirement to be Qualified to Supervise and have 12 hours of management training (not necessarily CPD related) firms should look to ensure that training records or personal portfolios provides evidence of such.

6 Equality and Diversity

The changes to this Rule came into effect earlier this year, and now embrace:

- Age discrimination
- Addressing of civil partnerships.
- Paternity rights.
- Clarification in respect of the provisions relating to disability discrimination.
- Duties in relation to implementing an equality and diversity policy.

7 Publicity

This carries over the requirements of the Solicitors Publicity Code 2001, but in a clearer form and accompanied by guidance on issues such as websites, emails and avoidance of misleading or inaccurate publicity. There are requirements in respect of letterheads that require:

- Inclusion of words "regulated by the Solicitors Regulation Authority"
- Sole Practitioners have to refer to the name of the principal
- With a partnership/LLP, or company of 20 or fewer persons, a list of the partners/directors/members must be included.

8 Fee Sharing

The changes introduced in 2004 and 2006 regarding the categories of persons with whom solicitors can share their fees are incorporated in the new code.

9 Referrals of Business

The changes in 2004 that permitted the payment of referral fees subject to specific conditions are covered in this Rule.

10 Relations with third parties

The requirements include:

- Not taking unfair advantage.
- Administering oaths.
- Agreeing costs with another party.
- Undertakings (defined in rule 24) and
- Contract races.

briefing notes

11 Litigation and Advocacy

The Advocacy Code is repealed, and the essential requirements (such as obeying court orders and not deceiving or misleading the court) are included in this Rule, along with other requirements currently found in chapter 21 of the guide.

12 Framework of Practice

The Rule sets out the types of business through which solicitors, registered foreign lawyers and recognised bodies may practice under the regulations of the SRA.

The changes proposed by the government in the legal services bill, which would permit partnerships with members of certain other legal professions (such as barristers) and external ownership are not yet law and may not be fully implemented for several years.

13 In-House Practice

The new Rule maintains the requirement that in-house solicitors are subject to the same general principles of conduct as those in private practice, but it does limit them to acting for their employer. There are however exceptions now included in the rule in relation to employment in local government or by the Crown and non-departmental public bodies

14 Incorporated Practice

This Rule sets out the requirements for a recognised body, its members, directors, shareowners and employees. There are also provisions, which exclude non-lawyers from being members, directors or shareholders.

15 Overseas Practice

This Rule applies specifically to overseas practices (defined in rule 24). It applies, or disapplies, the provision of the rules in the code to overseas practice.

16 European Cross Border Practice

This Rule applies the provisions of the CCBE code of conduct to European cross border practice, but only those requirements not replicated elsewhere in the Solicitors Code of Conduct.

17 Insolvency Practice

Applies when accepting appointments, and acting as an appointments holder.

18 Property Selling

This rule sets out the requirements for providing property-selling services. It also sets out requirements in respect of home information packs (HIPs).

19 Financial Services

The Rule applies when acting in connection with the provision of financial services for clients, both through the firm, and through a separate business. The appropriate preservation of your independence is by continuing to prevent you from becoming an appointed representative (unless this through your separate business, which can be the appointed representative of an independent financial advisor).

briefing notes

It ensures that you cannot have arrangements, which limits the advice or products you can offer except where this is in connection with mortgage and non-investment insurance policies. The Solicitors Financial Services (Scope) Rules and Solicitors Financial Services (Conduct of Business) Rules are not repealed by the code and can be found on the SRA website.

20 Requirements of Practice

This Rule sets out the requirements for holding a practising certificate, and when, and by whom, reserved work can be undertaken.

21 Separate Business

This Rule looks to ensure that the public is not confused or misled into believing that a business carried out by a firm outside of the practice is regulated by the SRA.

It sets out safeguards, which must be put in place to ensure that your separate business is clearly identified as such to customers. Any separate businesses needing to be clarified to clients.

22 Waivers

This Rule gives the SRA the powers to waive certain rules, but not those of the core duties or the duty of confidentiality.

23 Application of these rules

The Rules apply, and are addressed, to 'you' and explains that 'you' includes all individuals and bodies that are regulated by the SRA.

24 Interpretation

This Rule explains the terms commonly used in the code inclusive of 'Undertaking's.

25 Commencement and repeals

Confirmation that the code commences 1 July 2007.

A full copy of the SRA Code of Conduct can be obtained from: www.sra.org.uk

LawGroup UK

1 Shorrolds Road, London, SW6 7TR
DX: 153980 Fulham 3
T: 0845 389 0385 F: 0845 389 0386
info@lawgroup.co.uk
www.lawgroup.co.uk

briefing notes