

Annex 1

Draft SRA CILEX Code of Conduct

Introduction

The SRA Principles and Code of Conduct for CILEX members describes the standards that we, the SRA, and the public expect of CILEX members.

These rules apply to a person who is a non-authorized CILEX member as if they were an authorized CILEX member, to the extent the context allows in accordance with the membership requirements of CILEX.

They apply to conduct and behaviour relating to your practice and comprise a framework for ethical and competent practice which applies irrespective of your role or the environment or organisation in which you work (subject to the Overseas Rules which apply to your practice overseas). Although paragraphs 8.1 to 8.11 apply only when you are providing your services to the public or a section of the public.

Conduct does not need to take place in a workplace in order to relate to your practice – these requirements capture conduct which touches realistically upon your practice of the profession, in a way that is demonstrably relevant.

You must exercise your judgement in applying these standards to the situations you are in and deciding on a course of action, bearing in mind your role and responsibilities, areas of practice, and the nature of your clients (which in an in house context will generally include your employer and may include other persons or groups within or outside your employer organisation).

You are personally accountable for compliance with the Principles and Code – and our other regulatory requirements that apply to you – and must always be prepared to justify your decisions and actions.

A serious failure to meet our standards or a serious breach of our regulatory requirements may result in our taking regulatory action against you. A failure or breach may be serious either in isolation or because it comprises a persistent or concerning pattern of behaviour. In addition to the regulatory requirements set by us in the Principles and Code, and our rules and regulations, we directly monitor and enforce the requirements relating to referral fees set out in section 56 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, and provisions relating to anti money laundering and counter terrorist financing, as set out in regulations made by the Treasury as in force from time to time. In relation to SRA-CILEX-ACCA entities, supervision of matters relating to anti-money laundering and counter terrorist financing is the responsibility of ACCA.

All these requirements are underpinned by our Enforcement Strategy. That strategy explains in more detail our views about the issues we consider to be serious, and our approach to taking regulatory action in the public interest.

CILEX Principles

The Principles comprise the fundamental tenets of ethical behaviour that we expect CILEX members to uphold.

Should the Principles come into conflict, those which safeguard the wider public interest (such as the rule of law, and public confidence in a trustworthy CILEX profession and a safe and effective market for regulated legal services) take precedence over an individual client's interests. You should, where relevant, inform your client of the circumstances in which your duty to the Court and other professional obligations will outweigh your duty to them.

1. You uphold the rule of law and the impartial administration of justice;
2. You maintain high standards of professional and personal conduct and justify public trust in you, your profession and the provision of legal services;
3. You act with honesty
4. You act with integrity;
4. You comply with your legal and regulatory obligations;
5. You act competently, in the best interests of your client and respect client confidentiality;
6. You treat everyone fairly and without prejudice;
7. You ensure your independence is not compromised;
8. You act effectively and in accordance with proper governance and sound financial and risk management principles;
9. You protect client money and assets.

Maintaining trust and acting fairly

- 1.1 You do not unfairly discriminate by allowing your personal views to affect your professional relationships and the way in which you provide your services.
- 1.2 You do not abuse your position by taking unfair advantage of *clients* or others.
- 1.3 You do not hold out an *undertaking* to be a solicitors' *undertaking* and, where giving an *undertaking* on behalf of a firm or employer organisation, you ensure you are appropriately authorised by the firm or organisation to do so.
- 1.4 You perform all *undertakings* given by you and do so within an agreed timescale or if no timescale has been agreed then within a reasonable amount of time.

- 1.5 You do not mislead or attempt to mislead your *clients*, the *court* or others, either by your own acts or omissions or allowing or being complicit in the acts or omissions of others (including your *client*).
- 1.6 You treat colleagues fairly and with respect. You do not bully or harass them or discriminate unfairly against them. If you are a *manager* you challenge behaviour that does not meet this standard.

Dispute resolution and proceedings before courts, tribunals and inquiries

- 2.1 You do not misuse or tamper with evidence or attempt to do so.
- 2.2 You do not seek to influence the substance of evidence, including generating false evidence or persuading witnesses to change their evidence.
- 2.3 You do not provide or offer to provide any benefit to witnesses dependent upon the nature of their evidence or the outcome of the case.
- 2.4 You only make assertions or put forward statements, representations or submissions to the *court* or others which are properly arguable.
- 2.5 You do not place yourself in contempt of *court*, and you comply with *court* orders which place obligations on you.
- 2.6 You do not waste the *court's* time.
- 2.7 You draw the *court's* attention to relevant cases and statutory provisions, or procedural irregularities of which you are aware, and which are likely to have a material effect on the outcome of the proceedings.

Service and competence

- 3.1 You only act for *clients* on instructions from the *client*, or from someone properly authorised to provide instructions on their behalf. If you have reason to suspect that the instructions do not represent your *client's* wishes, you do not act unless you have satisfied yourself that they do. However, in circumstances where you have legal authority to act notwithstanding that it is not possible to obtain or ascertain the instructions of your *client*, then you are subject to the overriding obligation to protect your *client's* best interests.
- 3.2 You ensure that the service you provide to *clients* is competent and delivered in a timely manner.
- 3.3 You maintain your competence to carry out your role and keep your professional knowledge and skills up to date.
- 3.4 You do not act in matters where you are not authorised to act, or in an area of law where you have insufficient knowledge or experience
- 3.5 You consider and take account of your *client's* attributes, needs and circumstances.

- 3.6 You ensure that, as appropriate in the circumstances, you and your business, its processes and practices adequately:
- (a) assist consumers and clients to access justice and the full range of legal services; and
 - (b) provide each client with equal opportunity to secure a favourable outcome in their matter, taking into account their vulnerability or susceptibility to discrimination.
- 3.7 Where you supervise or manage others providing legal services:
- (a) you remain accountable for the work carried out through them; and
 - (b) you effectively supervise work being done for *clients*.
- 3.8 You ensure that the individuals you manage are competent to carry out their role, and keep their professional knowledge and skills, as well as understanding of their legal, ethical and regulatory obligations, up to date.

Client money and assets

- 4.1 You properly account to *clients* for any *financial benefit* you receive as a result of their instructions, except where they have agreed otherwise.
- 4.2 You safeguard money and *assets* entrusted to you by *clients* and others.
- 4.3 You do not personally hold *client money* unless you work in an *authorised body*, or in an organisation of a kind *prescribed* under this rule on any terms that may be *prescribed* accordingly.

Business requirements

Referrals, introductions and separate businesses

- 5.1 In respect of any referral of a *client* by you to another *person*, or of any third party who introduces business to you or with whom you share your *fees*, you ensure that:
- (a) *clients* are informed of any financial or other interest which you or your business or employer has in referring the *client* to another *person* or which an *introducer* has in referring the *client* to you;
 - (b) *clients* are informed of any fee sharing arrangement that is relevant to their matter;
 - (c) the fee sharing agreement is in writing;
 - (d) you do not receive payments relating to a referral or make payments to an *introducer* in respect of *clients* who are the subject of criminal proceedings; and

- (e) any *client* referred by an *introducer* has not been acquired in a way which would breach the *SRA's regulatory arrangements* if the *person* acquiring the *client* were regulated by the *SRA*.

5.2 Where it appears to the *SRA* that you have made or received a *referral fee*, the payment will be treated as a *referral fee* unless you show that the payment was not made as such.

5.3 You only:

- (a) refer, recommend or introduce a *client* to a *separate business*; or
- (b) divide, or allow to be divided, a *client's* matter between you and a *separate business*;

where the *client* has given informed consent to your doing so.

Other business requirements

5.5 You must complete and deliver to the *SRA* an annual return in the *prescribed* form.

5.6 If you are carrying on *reserved legal activities* in a *non-commercial body*, you must ensure that:

- (a) the body takes out and maintains indemnity insurance; and
- (b) this insurance provides adequate and appropriate cover in respect of the services that you provide or have provided, whether or not they comprise *reserved legal activities*, taking into account any alternative arrangements the body or its *clients* may make.

Conflict, confidentiality and disclosure

Conflict of interests

6.1 You do not act if there is an *own interest conflict* or a significant risk of such a conflict.

6.2 You do not act in relation to a matter or particular aspect of it if you have a *conflict of interest* or a significant risk of such a conflict in relation to that matter or aspect of it, unless:

- (a) the *clients* have a *substantially common interest* in relation to the matter or the aspect of it, as appropriate; or
- (b) the *clients* are *competing for the same objective*,

and the conditions below are met, namely that:

- (i) all the **clients** have given informed consent, given or evidenced in writing, to you acting;
- (ii) where appropriate, you put in place effective safeguards to protect your **clients'** confidential information; and
- (iii) you are satisfied it is reasonable for you to act for all the **clients**.

Confidentiality and disclosure

- 6.3 You keep the affairs of current and former **clients** confidential unless disclosure is required or permitted by law or the **client** consents.
- 6.4 Where you are acting for a **client** on a matter, you make the **client** aware of all information material to the matter of which you have knowledge, except when:
- (a) the disclosure of the information is prohibited by legal restrictions imposed in the interests of national security or the prevention of crime;
 - (b) your **client** gives informed consent, given or evidenced in writing, to the information not being disclosed to them;
 - (c) you have reason to believe that serious physical or mental injury will be caused to your **client** or another if the information is disclosed; or
 - (d) the information is contained in a privileged document that you have knowledge of only because it has been mistakenly disclosed.
- 6.5 You do not act for a **client** in a matter where that **client** has an interest adverse to the interest of another current or former **client** of you or your business or employer, for whom you or your business or employer holds confidential information which is material to that matter, unless:
- (a) effective measures have been taken which result in there being no real risk of disclosure of the confidential information; or
 - (b) the current or former **client** whose information you or your business or employer holds has given informed consent, given or evidenced in writing, to you acting, including to any measures taken to protect their information.

Cooperation and accountability

- 7.1 You keep up to date with and follow the law and regulation governing the way you work.
- 7.2 You are able to justify your decisions and actions in order to demonstrate compliance with your obligations under the **SRA's regulatory arrangements**.

- 7.3 You deal openly, promptly and co-operatively with the **SRA**, other regulators, ombudsmen, and those bodies with a role overseeing and supervising the delivery of, or investigating concerns in relation to, legal services.
- 7.4 You respond promptly to the **SRA** and:
- (a) provide full and accurate explanations, information and documents in response to any request or requirement; and
 - (b) ensure that relevant information which is held by you, or by third parties carrying out functions on your behalf which are critical to the delivery of your legal services, is available for inspection by the **SRA**.
- 7.5 You do not attempt to prevent anyone from providing information to the **SRA** or any other body exercising regulatory, supervisory, investigatory or prosecutory functions in the public interest.
- 7.6 You notify the **SRA** promptly if:
- (a) you are subject to any criminal charge, conviction or caution, subject to the Rehabilitation of Offenders Act 1974;
 - (b) a **relevant insolvency event** occurs in relation to you; or
 - (c) if you become aware:
 - (i) of any material changes to information previously provided to the **SRA**, by you or on your behalf, about you or your practice, including any change to information recorded in the **register**; and
 - (ii) that information provided to the **SRA**, by you or on your behalf, about you or your practice is or may be false, misleading, incomplete or inaccurate.
- 7.7 You report promptly to the **SRA** or another **approved regulator**, as appropriate, any facts or matters that you reasonably believe are capable of amounting to a serious breach of their **regulatory arrangements** by any **person** regulated by them (including you).
- 7.8 Notwithstanding paragraph 7.7, you inform the **SRA** promptly of any facts or matters that you reasonably believe should be brought to its attention in order that it may investigate whether a serious breach of its **regulatory arrangements** has occurred or otherwise exercise its regulatory powers.
- 7.9 You do not subject any **person** to detrimental treatment for making or proposing to make a report or providing or proposing to provide information based on a reasonably held belief under paragraph 7.7 or 7.8 above, or paragraph 3.9, 3.10, 9.1(d) or (e) or 9.2(b) or (c) of the SRA Code of Conduct for Firms, irrespective of whether the **SRA** or another approved regulator subsequently investigates or takes any action in relation to the facts or matters in question.

- 7.10 You act promptly to take any remedial action requested by the **SRA**. If requested to do so by the **SRA** you investigate whether there have been any serious breaches that should be reported to the **SRA**.
- 7.11 You are honest and open with **clients** if things go wrong, and if a **client** suffers loss or harm as a result you put matters right (if possible) and explain fully and promptly what has happened and the likely impact. If requested to do so by the **SRA** you investigate whether anyone may have a claim against you, provide the **SRA** with a report on the outcome of your investigation, and notify relevant persons that they may have such a claim, accordingly.
- 7.12 Any obligation under this section or otherwise to notify, or provide information to, the **SRA** will be satisfied if you provide information to your firm's **COLP** or **COFA**, as and where appropriate, on the understanding that they will do so.

When you are providing services to the public or a section of the public

Client identification

- 8.1 You identify who you are acting for in relation to any matter.

Complaints handling

- 8.2 You ensure that, as appropriate in the circumstances, you either establish and maintain, or participate in, a procedure for handling complaints in relation to the legal services you provide.
- 8.3 You ensure that **clients** are informed in writing at the time of engagement about:
- (a) their right to complain to you about your services and your charges;
 - (b) how a complaint can be made and to whom; and
 - (c) any right they have to make a complaint to the **Legal Ombudsman** and when they can make any such complaint.
- 8.4 You ensure that when **clients** have made a complaint to you, if this has not been resolved to the **client's** satisfaction within 8 weeks following the making of a complaint they are informed, in writing:
- (a) of any right they have to complain to the **Legal Ombudsman**, the time frame for doing so and full details of how to contact the **Legal Ombudsman**; and
 - (b) if a complaint has been brought and your complaints procedure has been exhausted:
 - (i) that you cannot settle the complaint;

- (ii) of the name and website address of an alternative dispute resolution (ADR) approved body which would be competent to deal with the complaint; and
- (iii) whether you agree to use the scheme operated by that body.

8.5 You ensure that complaints are dealt with promptly, fairly, and free of charge.

Client information and publicity

8.6 You give *clients* information in a way they can understand. You ensure they are in a position to make informed decisions about the services they need, how their matter will be handled and the options available to them.

8.7 You ensure that *clients* receive the best possible information about how their matter will be priced and, both at the time of engagement and when appropriate as their matter progresses, about the likely overall cost of the matter and any *costs* incurred.

8.8 You ensure that any *publicity* in relation to your practice is accurate and not misleading, including that relating to your charges and the circumstances in which *interest* is payable by or to *clients*.

8.9 You do not make unsolicited approaches to members of the public, with the exception of current or former *clients*, in order to advertise legal services provided by you, or your business or employer.

8.10 You ensure that *clients* understand whether and how the services you provide are regulated. This includes:

- (a) explaining your professional status, whether you are an **authorised CILEX member**, how you are regulated by the SRA, and the areas of law in which you have rights to practise;
- (b) explaining which activities will be carried out by you, as an *authorised person*;
- (c) explaining which services provided by you, your business or employer, and any *separate business* are regulated by an *approved regulator*; and
- (d) ensuring that you do not represent any business or employer which is not authorised by the **SRA**, including any *separate business*, as being regulated by the **SRA**.

8.11 You ensure that *clients* understand the regulatory protections available to them.

8.12 You do not hold yourself out as having a qualification or professional status that you do not possess.

Supplemental notes

Made by the SRA Board on [].

Made under [insert relevant delegation provisions and LSA provisions.]