

PUBLIC DEFENDER SERVICE

GUIDANCE 1/2002

Introduction

1. By paragraph 1.2. of the code of conduct for employees of the Legal Services Commission who provide services as part of the Criminal Defence Service (the Code) I am responsible for providing advice and guidance upon the code.
2. I have been asked by the Legal Services Commission to give advice and guidance in relation to paragraph 2.2. of the Code. I take the opportunity also to do so in relation to applications for adjournments.
3. I have consulted with the Law Society and the Bar Council before issuing this guidance.

Paragraph 2.2.

4. This paragraph provides that

“a professional employee shall not put a client under pressure to plead guilty, and in particular, shall not advise a client that it is in his or her interest to plead guilty unless satisfied that the prosecution is able to discharge the burden of proof”

5. The relevant provisions of the Law Society’s Guide to the Professional Conduct of solicitors 1999 states (paragraph 21.20) that

“a solicitor who appears in court for the defence in a criminal case is under a duty to say on behalf of the client what the client should properly say for himself or herself if the client possessed the requisite skill and knowledge. The solicitor has a concurrent duty to ensure that the prosecution discharges the onus placed upon it to prove the guilt of the accused.”

6. The relevant provisions of the Bar’s Code of Conduct provide:

12.1. “when defending a client on a criminal charge, a barrister must endeavour to protect his client from conviction except by a competent tribunal and upon legally admissible evidence sufficient to support a conviction for the offence charged”

12.3. “A barrister acting for a defendant should advise his lay client generally about his plea. In doing so he may, if necessary, express his advice in strong terms. He must however, make it clear that the client has complete freedom of choice and that the responsibility for the plea is the client’s”.

7. The professional employee should seek to obtain a sufficient disclosure of the prosecution evidence so that he or she may be satisfied that the Crown is able to establish its case. The client should not be required to indicate a plea otherwise than on the basis of an informed decision (see R v. Calderdale Magistrates Court ex p Donahue & Cutler 2001 Crim LR 141).
8. If the client wishes to proceed without such disclosure specific instructions to that effect should be obtained and recorded
9. Whilst the court will often reduce the sentence it would have imposed upon a client as a discount for a timely indication of a guilty plea, it will not always do so.
10. A professional employee should be alert to any vulnerability on the part of a client and to their level of understanding. He or she should give advice in terms appropriate to the circumstances of that client.
11. Even if the client wishes to admit guilt, a professional employee should, where appropriate, consider other possibilities such as a reduction in the level of charge or other disposals such as a public interest discontinuance or a caution reprimand or warning.
12. Subject to these considerations a professional employee must be free to give appropriate advice to his or her client. Giving such advice will not be treated as putting a client under pressure to plead guilty for the purpose of paragraph 2.2 of the code, provided it does not seek to remove the final decision on plea from the client. Appropriate records must be kept.

Applications for Adjournments

13. Paragraph 2.1 of the code states

“the primary duty of a professional employee is to protect the interests of the client so far as is consistent with any duties owed to the court and any other rules of professional conduct.....”
14. Paragraph 6 of the code identifies the duty to the court. It states:
 - “6.1 an employee shall never deceive or recklessly or knowingly mislead the court.
 - 6.2. subject to the provisions of this Code and any other rules of professional conduct employees shall ensure that in the public interest they discharge their duties in a way which is consistent with the proper and efficient administration of justice.”
- 15 The relevant rules of professional conduct are summarised in Cordery on

- 1.1. "A solicitor who has accepted instructions on behalf of the client is bound to carry out those instructions with diligence and must exercise reasonable care and skill...."
 - 2.3. "the solicitor's authority stemmed from the retainer given to him by his client, and his authority to act is limited by any special conditions imposed and supplemented by any special authority conferred by the retainer....."
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16. A professional employee should not seek an adjournment for his or her own convenience but only in accordance with instructions received from a client.
 17. If a client seeks an adjournment, a professional employee should advise as to the advantages and disadvantages of that course of action. Having given that advice the professional employee should follow the client's instructions. In doing so he or she must comply with the provisions of paragraph 6.1 of the Code. (that provision not being made subject to the rules of professional conduct set out above).

Anthony Edwards
Professional Head of Service
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