

Code of Conduct for Employees of the Legal Services Commission who provide services as part of the Criminal Defence Service

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Introduction

The Legal Services Commission is required, by S.16 Access to Justice Act 1999, to prepare a Code of Conduct to be observed by employees of the Commission, or any other body established by the Commission, who provide services as part of the Criminal Defence Service. The Code is subject to approval by the Lord Chancellor and by both Houses of Parliament.

Code of Conduct for employees of the Legal Services Commission who provide services as part of the Criminal Defence Service

This Code of Conduct is made under S.16 Access to Justice Act 1999 and applies to employees of the Commission or of any body established and maintained by the Commission, who provide services as part of the Criminal Defence Service under S.13(2)(d) and (f) and S.14(2)(d) and (f) of the Act.

For the purpose of this Code:

- "the Act" means the Access to Justice Act 1999.
- "Client" means a person who is seeking or receiving services funded by the Commission as part of the Criminal Defence Service.
- "Commission" means the Legal Services Commission established under S.1 of the Act.
- "Employee" means any person (including a professional employee) who is employed by the Commission, or by a body established by the Commission under S.13(2)(d) and 14(2)(d) of the Act, at an office from which advice, assistance and representation is provided to clients as part of the Criminal Defence Service.
- "Professional body" means the Law Society, the General Council of the Bar, the Institute of Legal Executives or any other body authorised under the Courts and Legal Services Act 1990 as a body that can grant rights of audience or rights to conduct litigation.
- "Professional employee" means any person, whether or not qualified as a solicitor or barrister or otherwise, who is employed by the Commission or a body established by the Commission under S.13(2)(d) and S.14(2)(d) of the Act to provide advice, assistance or representation to clients.
- "Salaried service" means the service provided by employees of the Commission or any body established by the Commission under S.13(2)(d) and S.14(2)(d) of the Act directly to clients.

1. Relationship with other Professional Codes of Conduct

- 1.1 An employee who is a member of a professional body shall comply with the rules of conduct of and have regard to any guidance issued by that body.
- 1.2 The Commission shall appoint a professional head of the salaried service (“the professional head of service”) who shall be responsible for the interpretation of this Code in practice and providing advice and guidance upon it.
- 1.3 This Code applies in addition to any professional or staff code that binds an employee. Where any serious doubt arises as to the interpretation of this Code, the issue will be referred to the professional head of service who will provide advice and guidance on the matter, consulting wherever appropriate with those responsible for other professional codes. So far as it is possible to do so, this Code must be interpreted in a way which is compatible with other professional codes.

2. Duty to Protect the Interests of the Client

- 2.1 The primary duty of a professional employee is to protect the interests of the client so far as consistent with any duties owed to the court and any other rules of professional conduct. Subject to this, a professional employee shall do his or her utmost to promote and work for the best interests of the client and to ensure that the client receives a fair hearing. A professional employee shall provide the client with fearless, vigorous and effective defence and may use all proper and lawful means to secure the best outcome for the client.
- 2.2 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 interests to plead guilty unless satisfied that the prosecution is able to discharge the burden of proof.

3. Duty to Act with Integrity and Independence

- 3.1 An employee shall act with honesty and integrity in carrying out his or her duties on behalf of the salaried service. He or she must never knowingly or recklessly give false or misleading information.
- 3.2 A professional has a duty to maintain his or her professional independence and not to allow this to be compromised by prosecuting authorities, the courts, the Commission, clients or any other source.

4. Duty to act Impartially and to avoid Discrimination

4.1 Employees shall treat clients fairly, reasonably and without discrimination. In carrying out this duty, an employee must not discriminate directly or indirectly against any other person on grounds of race, colour, ethnic or national origin, sex, marital status, sexual orientation, disability, age, political persuasion or religion. In respect of indirect discrimination, there is no breach of this requirement if the employee against whom any complaint is made shows that the act of indirect discrimination was committed without any intention of treating the complainant unfavourably on any ground in this paragraph to which the complaint relates.

4.2 A professional employee may accept instructions from any eligible client, provided that no conflict or significant risk of conflict of interest arises and that he or she can discharge those instructions effectively having regard to other professional obligations, unless there is some other substantial reason why the best interests of the client would not be served or a right of withdrawal would arise immediately under paragraph 11.1.

4.3 A professional employee shall only provide advice, assistance or representation to a client where he or she is competent to do so. Competence requires such legal knowledge, skill, experience and preparation as is reasonably necessary to properly represent the interests of the client.

4.4 A professional employee shall not refuse to advise, assist or represent a client because of the nature of the allegation or the client or because of the employee's personal views.

5. Duty of Confidentiality

5.1 Subject to paragraph 5.2, an employee shall keep all information about a client confidential within the salaried service. This is an ongoing duty that does not cease once employment has terminated, and can be enforced in a court by the Commission or the client.

5.2 The duty of confidence to a client is subject to any statutory provision, any court order and any relevant rules of professional conduct or otherwise setting out circumstances where the duty of confidentiality may be overridden.

6. Duty to the Court

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.

7. Duty to avoid Conflicts of Interest

7.1 A professional employee may not act for any one or more clients if to do so would give rise a conflict of interest.

7.2 The circumstances where a conflict of interest exists include when the duty of the professional employee to act in a client's best interests conflicts with the interests of:

(a) another client of the salaried service;

(b) any employee of the salaried service; or

(c) any third party whose relationship to any employee of the salaried service would reasonably cause the client to believe that the professional employee may not act in that client's best interests.

7.3 Subject to paragraph 7.4 where a professional employee provides advice, assistance or representation to a client and a conflict or a significant risk of conflict arises between the interests of that client and any other client of the salaried service, or between the professional employee and a client, then he or she must cease to act for all clients affected by the conflict.

7.4 If the conflict arises between two or more clients the professional employee may continue to act for one client provided the salaried service is not in possession of relevant confidential information obtained whilst acting for the other client or clients.

7.5 If a professional employee ceases to act for a client due to a conflict of interest, then he or she has a duty to refer the client to another representative, as appropriate.

8. Duty not to Offer or Accept Payments

8.1 Apart from refreshments or cigarettes for the client's immediate consumption in the employee's presence, an employee shall not offer or accept any fee, commission, inducement, gratuity, gift, benefit or other form of compensation, whether direct or indirect, in

the course of his or her employment unless provided for in the Act or its supporting regulations.

9. Relationship with the Legal Profession

9.1 A professional employee shall not practise law other than in the performance of his or her duties as an employee or engage in any other occupation without express written permission from his or her line manager.

9.2 All employees shall endeavour to maintain relationships with the legal profession and other agencies in the criminal justice system based on courteousness, mutual respect and professionalism.

10. Change of Legal Representative

10.1 If a client wishes to change legal representative, then an employee shall advise the client about the relevant rules and procedures including any set out in regulations made under the Act.

11. Withdrawal of Legal Representative

11.1 A professional employee shall cease to act for a client where:

- (a) a conflict or a significant risk of conflict of interest or breach of confidentiality arises;
- (b) a conflict or a significant risk of conflict arises between the client's interests and the duty to the court;
- (c) the client withdraws instructions; or
- (d) continuing to act would cause him or her to be professionally embarrassed within the meaning of the applicable professional code of conduct.

11.2 A professional employee may cease to act for a client where:

- (a) the client's behaviour towards the professional employee or any other employee is violent, threatening or abusive; or
- (b) there is some other substantial reason for withdrawal, approved by the professional head of office or sanctioned by the applicable professional code of conduct.

11.3 If a professional employee ceases to act then he or she shall give reasons to the client for doing so, except in the case of paragraph 11.1(c) above.

12. Public Interest Disclosure

12.1 If an employee believes that he or she is being required to act by the Commission in a way which:

- (a) is illegal, improper or unethical;
- (b) is in breach of professional rules;
- (c) may involve maladministration, fraud or misuse of public funds;
or
- (d) is otherwise inconsistent with this Code or the Commission's Staff Code of Conduct.

He or she shall bring this to the attention of the professional head of office who shall notify the professional head of service, or to the professional head of service, as appropriate. The professional head of service shall carry out an investigation and make a report to the Commission.

12.2 If any of the above circumstances arise, a professional employee must also consider whether it is appropriate to continue to act for a client.

12.3 This provision does not override the rules of professional privilege.

13. Excessive Caseload

13.1 If a professional employee considers that the acceptance of any further instructions is reasonably likely to lead to inadequate representation of existing clients, he or she shall decline to accept further instructions and shall bring this to the attention of the professional head of office who shall notify the professional head of service.

14. Standards of Conduct

14.1 Subject to the provisions of this Code and any other rules of professional conduct, an employee shall not do anything to bring the salaried service into disrepute in the course of his or her employment or otherwise.

14.2 An employee shall not misuse his or her position or information acquired in the course of his or her duties to further his or her own private interests or those of others.

15. Complaints

- 15.1 A complaint against an employee under this Code shall be made to the professional head of office who shall investigate the complaint and notify the professional head of service.
- 15.2 A complaint against a professional employee may be dealt with under the procedure laid down by his or her professional body, as well as under the procedure in paragraph 15.1.
- 15.3 Subject to paragraphs 5.1 and 5.2 an employee shall co-operate with requests from a professional body for comments or information in respect of complaints that the body is investigating.