

THE BSB HANDBOOK
PART II – THE CODE OF CONDUCT

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A. APPLICATION

II.A1. Who?

II.A1.1 Section II.B (Core Duties): applies to all *BSB regulated persons* except where stated otherwise, and references to "you" and "your" in Section II.B shall be construed accordingly.

II.A1.2 Section II.C (Conduct Rules):

- (a) Applies to all *BSB regulated persons* apart from *unregistered barristers* except where stated otherwise.
- (b) Rules II.C1.R2, II.C1.R3, II.C2.R1, II.C3.R2, II.C3.R5 and II.C4.R1 to II.C4.R7 (and associated guidance to those rules) and the guidance on Core Duties also apply to *unregistered barristers*.

References to "you" and "your" in Section II.C shall be construed accordingly

II.A1.3 Section II.D (Specific Rules): applies to specific groups as defined in each sub-section and references to "you" and "your" shall be construed accordingly.

II.A2. When?

II.A2.1 Section II.B applies when practising or otherwise providing *legal services*. In addition, CD5 and CD9 apply at all times.

II.A2.2 Section II.C applies when practising or otherwise providing *legal services*. In addition, rules II.C2.R1, II.C3.R2 and II.C4.R1 to II.C4.R7 and the associated guidance apply at all times.

II.A2.3 Section II.D applies when practising or otherwise providing *legal services*.

II.A2.4 Sections II.B, II.C and II.D only apply to *registered European lawyers* in connection with professional work undertaken by them in that capacity in England and Wales.

B. THE CORE DUTIES

- II.B.CD1 **You must observe your duty to the *court* in the administration of justice [CD1].**
- II.B.CD2 **You must act in the best interests of each *client* [CD2].**
- II.B.CD3 **You must act with honesty and integrity [CD3].**
- II.B.CD4 **You must maintain your independence [CD4].**
- II.B.CD5 **You must not behave in a way which is likely to diminish the trust and confidence which the public places in you or in the profession [CD5].**
- II.B.CD6 **You must keep the affairs of each *client* confidential [CD6].**
- II.B.CD7 **You must provide a competent standard of work and service to each *client* [CD7]**
- II.B.CD8 **You must not discriminate unlawfully against any person [CD8].**
- II.B.CD9 **You must be open and co-operative with your regulators [CD9].**
- II.B.CD10 **You must take reasonable steps to manage your *practice*, or carry out your role within your *practice*, competently and in such a way as to achieve compliance with your legal and regulatory obligations [CD10].**

Guidance to the Core Duties

II.B.G1. The Core Duties are not presented in order of precedence, subject to the following:

II.B.G1.1 CD1 overrides any other core duty, if and to the extent the two are inconsistent. Rules II.C1.R2 and II.C1.R3 deal specifically with the relationship between CD1, CD2 and CD6 and you should refer to those rules and to the related Guidance;

II.B.G1.2 in certain other circumstances set out in this Code of Conduct one Core Duty overrides another. Specifically, Rule II.C3.R2 provides that CD2 (as well as being subject to CD1) is subject to your obligations under CD3,

CD4, and CD8.

II.B.G2. Your obligation to take reasonable steps to manage your *practice*, or carry out your role within your *practice*, competently and in such a way as to achieve compliance with your legal and regulatory obligations (CD10) includes an obligation to take all reasonable steps to mitigate the effects of any breach of those legal and regulatory obligations once you become aware of the same.

C. THE CONDUCT RULES

C1. YOU AND THE COURT

Outcomes

- II.C1.O1. The *court* is able to rely on information provided to it by those *conducting litigation* and by advocates who appear before it.
- II.C1.O2. The proper administration of justice is served.
- II.C1.O3. The interests of *clients* are protected to the extent compatible with outcomes II.C1.O1 and II.C1.O2 and the Core Duties.
- II.C1.O4. Both those who appear before the *court* and *clients* understand clearly the extent of the duties owed to the *court* by advocates and those conducting litigation and the circumstances in which duties owed to *clients* will be overridden by the duty owed to the *court*.
- II.C1.O5. *The public* has confidence in the administration of justice and in those who serve it.

Rules

- II.C1.R1. You owe a duty to the *court* to act with independence in the interests of justice. This duty overrides any inconsistent obligations which you may have (other than obligations under the criminal law). It includes the following specific obligations which apply whether you are acting as an advocate or are otherwise involved in the *conduct of litigation* in whatever role (with the exception of Rule II.C1.R1.2 below, which applies when acting as an advocate):
 - II.C1.R1.1 you must not knowingly or recklessly mislead or attempt to mislead the *court*;
 - II.C1.R1.2 you must not abuse your role as an advocate;
 - II.C1.R1.3 you must take reasonable steps to avoid wasting the *court's* time;

II.C1.R1.4 you must take reasonable steps to ensure that the *court* has before it all relevant decisions and legislative provisions;

II.C1.R1.5 you must ensure that your ability to act independently is not compromised.

II.C1.R2. Your duty to act in the best interests of each *client* is subject to your duty to the *court*.

II.C1.R3. Your duty to the *court* does not require you to act in breach of your duty to keep the affairs of each *client* confidential.

Not misleading the court

II.C1.R4. Your duty not to mislead the *court* or to permit the *court* to be misled will include the following obligations:

II.C1.R4.1 you must not:

- (a) make submissions, representations or any other statement; or
- (b) ask questions which suggest facts to witnesses,

which you know, or are instructed, are untrue or misleading.

II.C1.R4.2 you must not call witnesses to give evidence or put affidavits or witness statements to the *court* which you know, or are *instructed*, are untrue or misleading, unless you make clear to the *court* the true position as known by or instructed to you.

Guidance on Rules II.C1.R1 – II.C1.R4 and relationship to CD1 and CD2

II.C1.G1. Rules II.C1.R1 to II.C1.R4 set out some specific aspects of your duty to the *court* (CD1). See II.B.CD1 and associated Guidance at II.B.G1.1.

II.C1.G2. Knowingly misleading the *court* includes inadvertently misleading the *court* if you later realise that you have misled the *court*, and you fail to correct the position. Recklessness means being indifferent to the truth, or not caring whether something is

true or false.

II.C1.G3. Your duty under Rule II.C1.R1.4 includes drawing to the attention of the *court* any decision or provision which may be adverse to the interests of your *client*. It is particularly important where you are appearing against a litigant who is not legally represented.

II.C1.G4. You are obliged by CD2 to promote and to protect your *client's* interests so far as that is consistent with the law and with your overriding duty to the *court* under CD1. Your duty to the *court* does not prevent you from putting forward your *client's* case simply because you do not believe that the facts are as your *client* states them to be (or as you, on your *client's* behalf, state them to be), as long as any positive case you put forward accords with your *instructions* and you do not mislead the *court*. Your role when acting as an advocate or *conducting litigation* is to present your *client's* case, and it is not for you to decide whether your *client's* case is to be believed.

II.C1.G5. For example, you are entitled and it may often be appropriate to draw to the witness's attention other evidence which appears to conflict with what the witness is saying and you are entitled to indicate that a *court* may find a particular piece of evidence difficult to accept. But if the witness maintains that the evidence is true, it should be recorded in the witness statement and you will not be misleading the *court* if you call the witness to confirm their witness statement. Equally, there may be circumstances where you call a hostile witness whose evidence you are instructed is untrue. You will not be in breach of Rule II.C1.R4 if you make the position clear to the *court*. See, further, the guidance at II.C2.G1

II.C1.G6. As set out in Rule II.C1.R3, your duty to the *court* does not permit or require you to disclose confidential information which you have obtained in the course of your *instructions* and which your *client* has not authorised you to disclose to the *court*. However, Rule II.C1.R4 requires you not knowingly to mislead the *court* or to permit the *court* to be misled. There may be situations where you have obligations under both these rules.

II.C1.G7. Rule II.C1.R2 makes it clear that your duty to act in the best interests of your *client* is subject to your duty to the *court*. For example, if your *client* were to tell you that he had committed the crime with which he was charged, in order to be able to

ensure compliance with Rule II.C1.R3 on the one hand and Rules II.C1.R1 and II.C1.R4 on the other:

II.C1.G7.1 you would not be entitled to disclose that information to the *court* without your *client's* consent; and

II.C1.G7.2 you would not be misleading the *court* if, after your *client* had entered a plea of 'not guilty', you were to test in cross-examination the reliability of the evidence of the prosecution witnesses and then address the jury to the effect that the prosecution had not succeeded in making them sure of your *client's* guilt.

II.C1.G8. However, you would be misleading the *court* and would therefore be in breach of Rules II.C1.R1 and II.C1.R4 if you were to set up a positive case inconsistent with the confession, as for example by:

II.C1.G8.1 suggesting to prosecution witnesses, calling your *client* or your witnesses to show; or submitting to the *jury*, that your *client did* not commit the crime; or

II.C1.G8.2 suggesting that someone else had done so; or

II.C1.G8.3 putting forward an alibi.

II.C1.G9. If there is a risk that the *court* will be misled unless you disclose confidential information which you have learned in the course of your *instructions*, you should ask the *client* for permission to disclose it to the *court*. If your *client* refuses to allow you to make the disclosure you must cease to act, and return your *instructions*: see Rules II.C3.R11 to II.C3.R13 below. In these circumstances you must not reveal the information to the *court*.

II.C1.G10. For example, if your *client* tells you that he has previous *convictions* of which the prosecution is not aware, you may not disclose this without his consent. However, in a case where mandatory sentences apply, the non-disclosure of the previous *convictions* will result in the *court* failing to pass the sentence that is required by law. In that situation, you must advise your *client* that if consent is refused to your revealing the information you will have to cease to act. In situations where mandatory sentences do not apply, and your *client* does not agree to disclose the previous *convictions*, you can continue to represent your *client* but in doing so

must not say anything that misleads the *court*. This will constrain what you can say in mitigation. For example, you could not advance a positive case of previous good character knowing that there are undisclosed prior *convictions*. Moreover, if the *court* asks you a direct question you must not give an untruthful answer and therefore you would have to withdraw if, on your being asked such a question, your *client* still refuses to allow you to answer the question truthfully. You should explain this to your *client*. See further the guidance on this issue on the *Bar Standards Board's* website which can be accessed here [hyperlink].

II.C1.G11. Similarly, if you become aware that your *client* has a document which should be disclosed but has not been disclosed, you cannot continue to act unless your *client* agrees to the disclosure of the document. In these circumstances you must not reveal the existence or contents of the document to the *court*.

Not abusing your role as an advocate

II.C1.R5. Where you are acting as an advocate, your duty not to abuse your role includes the following obligations:

II.C1.R5.1 you must not make statements or ask questions merely to insult, humiliate or annoy a witness or any other person;

II.C1.R5.2 you must not make a serious allegation against a witness whom you have had an opportunity to cross-examine unless you have given that witness a chance to answer the allegation in cross-examination;

II.C1.R5.3 you must not make a serious allegation against any person, or suggest that a person is guilty of a crime with which your *client* is charged unless:

- (a) you have reasonable grounds for the allegation; and
- (b) the allegation is relevant to your *client's* case or the credibility of a witness; and
- (c) where the allegation relates to a third party, you avoid naming them in open *court* unless this is reasonably necessary.

II.C1.R5.4 you must not put forward to the *court* a personal opinion of the facts or the law unless you are invited or required to do so by the *court* or by law.

C2. BEHAVING ETHICALLY

Outcomes

- II.C2.O1. Those ~~and entities~~ regulated by the *Bar Standards Board* maintain standards of honesty, integrity and independence, and are seen as so doing.
- II.C2.O2. The proper administration of justice, access to justice and the best interests of *clients* are served.
- II.C2.O3. Those ~~and entities~~ regulated by the *Bar Standards Board* do not discriminate unlawfully and take appropriate steps to prevent *discrimination* occurring in their practices.
- II.C2.O4. Those ~~and entities~~ regulated by the *Bar Standards Board* and *clients* understand the obligations of honesty, integrity and independence.

Rules

Honesty, integrity and independence

- II.C2.R1. You must not do anything which could reasonably be seen by the public to undermine your honesty, integrity (CD3) and independence (CD4).
- II.C2.R2. Your duty to act with honesty and integrity under CD3 includes the following requirements:
- II.C2.R2.1 you must not knowingly or recklessly mislead or attempt to mislead anyone;
- II.C2.R2.2 you must not draft any statement of case, witness statement, affidavit or other document containing:
- (a) any statement of fact or contention which is not supported by your *client* or by your *instructions*;
 - (b) any contention which you do not consider to be properly arguable;

- (c) any allegation of fraud, unless you have clear instructions to allege fraud and you have reasonably credible material which establishes an arguable case of fraud;
 - (d) (in the case of a witness statement or affidavit) any statement of fact other than the evidence which you reasonably believe the witness would give if the witness were giving evidence orally;
- II.C2.R2.3 you must not encourage a witness to give evidence which is misleading or untruthful;
- II.C2.R2.4 you must not rehearse, practise with or coach a witness in respect of their evidence;
- II.C2.R2.5 unless you have the permission of the representative for the opposing side or of the *court*, you must not communicate with any witness (including your *client*) about the case while the witness is giving evidence;
- II.C2.R2.6 you must not make, or offer to make, payments to any witness which are contingent on his evidence or on the outcome of the case;
- II.C2.R2.7 you must only propose, or accept, fee arrangements which are legal.

Guidance on Rules II.C2.R1 and II.C2.R2 and their relationship to CD1, CD2, CD3, CD4 and CD5

II.C2.G1. Your honesty, integrity and independence are fundamental. The interests of justice (CD1) and the *client's* best interests (CD2) can only be properly served, and any conflicts between the two properly resolved, if you conduct yourself honestly and maintain your independence from external pressures, as required by CD3 and CD4. You should also refer to Rule II.C3.R2 which subjects your duty to act in the best interests of your *client* (CD2) to your observance of CD3 and CD4, as well as to your duty to the *court* (CD1).

II.C2.G2. Other rules deal with specific aspects of your obligation to act in your *client's* best interests (CD2) while maintaining honesty, integrity (CD3) and independence (CD4), such as rule II.C3.R7.10 (not acting where your independence is compromised), rule II.C2.R3 (not paying or accepting *referral fees*) and Rule II.C3.R7

(not acting in circumstances of a conflict of interest or where you risk breaching one *client's* confidentiality in favour of another's).

II.C2.G3. Rule II.C2.R1 addresses how your conduct is perceived by the public. Conduct on your part which the public may reasonably perceive as undermining your honesty, integrity or independence is likely to diminish the trust and confidence which the public places in you or in the profession, in breach of CD5. Rule II.C2.R1 is not exhaustive of the ways in which CD5 may be breached.

II.C2.G4. In addition to your obligation to only propose, or accept, fee arrangements which are legal in Rule II.C2.R2.7, you must also have regard to your obligations in relation to *referral fees* in Rule II.C2.R3 and the associated Guidance.

Examples of how you may be seen as compromising your independence

II.C2.G5. The following may reasonably be seen as compromising your independence in breach of Rule II.C2.R1 (whether or not the circumstances are such that Rule II.C2.R3 is also breached):

II.C2.G5.1 offering, promising or giving:

a. any commission or referral fee (of whatever size) – note that these are in any case prohibited by rule II.C2.R3 and associated guidance; or

b. a gift (apart from items of modest value),

to any *client*, *professional client* or other *intermediary*; or

II.C2.G5.2 lending money to any such *client*, *professional client* or other *intermediary*; or

II.C2.G5.3 accepting any money (whether as a loan or otherwise) from any *client*, *professional client* or other *intermediary*, unless it is a payment for your professional services or re-imbusement of expenses or of disbursements made on behalf of the *client*,

II.C2.G6. If you are offered a gift by a current, prospective or former *client*, *professional client* or other *intermediary*, you should consider carefully whether the circumstances

and size of the gift would reasonably lead others to think that your independence had been compromised. If this would be the case, you should refuse to accept the gift.

II.C2.G7. The giving or receiving of entertainment at a disproportionate level may also give rise to a similar issue and so should not be offered or accepted if it would lead others reasonably to think that your independence had been compromised.

II.C2.G8. Guidance II.C2.G5 to II.C2.G7 above is likely to be more relevant where you are a *self-employed barrister*, ~~a BSB authorised body, an authorised (non-BSB) individual, an employed barrister (BSB authorised body) or a BSB regulated manager~~. If you are a *BSB authorised individual* who is an *employee or manager* of an *authorised (non-BSB) body* or you are an *employed barrister (non-authorised body)* and your *approved regulator or employer* (as appropriate) permits payments to which Rule II.C2.R3 applies, you may make or receive such payments only in your capacity as such and as permitted by the rules of your *approved regulator or employer* (as appropriate). For further information on referral fees, see the guidance at II.C2.G19).

II.C2.G9. The former prohibition on *practising barristers* expressing a personal opinion in the media in relation to any future or current proceedings in which they are briefed has been removed. *Practising barristers* must, nevertheless, ensure that any comment they may make does not undermine, and is not reasonably seen as undermining, their independence. Furthermore, any such comment must not bring the profession, nor any other *barrister* into disrepute. Further guidance is available on the *Bar Standards Board's* website [hyperlink] or by clicking on the relevant link.

Examples of what your duty to act with honesty and integrity may require

II.C2.G10. Rule II.C2.R2 sets out some specific aspects of your duty under CD3 to act with honesty and integrity. Further guidance in relation to drafting witness statements and other documents [hyperlink] (which relates to Rule II.C2.R2.2) and making allegations of fraud (which relates to Rule II.C2.R2.2(c)) can be found on the *Bar Standards Board's* website [hyperlink] or by clicking on the relevant links.

II.C2.G11. In addition to the above, where the other side is legally represented and you are conducting correspondence in respect of the particular matter, you are expected to correspond at all times with that other party's legal representative – otherwise you

may be regarded as breaching CD3 or Rule II.C2.R2.

Other possible breaches of CD3 and/or CD5

II.C2.G12. A breach of Rule II.C2.R2 may also constitute a breach of CD3 and/or CD5. Other conduct which is likely to be treated as a breach of CD3 and/or CD5 includes (but is not limited to):

II.C2.G12.1 subject to Guidance II.C2.G13 below, breaches of Rule II.C2.R1;

II.C2.G12.2 breaches of Rule II.C2.R3;

II.C2.G12.3 criminal conduct, other than *minor criminal offences* (see Guidance II.C2.G14);

II.C2.G12.4 seriously offensive or discreditable conduct towards third parties;

II.C2.G12.5 dishonesty;

II.C2.G12.6 unlawful *victimisation* or *harassment*; or

II.C2.G12.7 abuse of your professional position.

II.C2.G13. For the purposes of Guidance II.C2.G12.7 above, referring to your status as a *barrister*, for example on professional notepaper, in a context where it is irrelevant, such as in a private dispute, may well constitute abuse of your professional position and thus involve a breach of CD3 and/or CD5.

II.C2.G14. Conduct which is not likely to be treated as a breach of Rules II.C2.R1 or II.C2.R2, or CD3 or CD5, includes (but is not limited to):

II.C2.G14.1 *minor criminal offences*;

II.C2.G14.2 your conduct in your private or personal life, unless this involves:

(a) abuse of your professional position; or

(b) committing a *criminal offence*, other than a *minor criminal offence*.

II.C2.G15. For the purpose of Guidance II.C2.G14 above, *minor criminal offences*

include:

II.C2.G15.1 an offence committed in the United Kingdom which is a fixed-penalty offence under the Road Traffic Offenders Act 1988; or

II.C2.G15.2 an offence committed in the United Kingdom or abroad which is dealt with by a procedure substantially similar to that for such a fixed-penalty offence; or

II.C2.G15.3 an offence whose main ingredient is the unlawful parking of a motor vehicle.

Referral Fees

II.C2.R3. You must not pay or receive *referral fees*.

Guidance on Rule II.C2.R3 and their relationship to CD2, CD3, CD4 and CD5

II.C2.G16. Making or receiving payments in order to procure or reward the referral to you by an intermediary of professional *instructions* is inconsistent with your obligations under CD2 and/or CD3 and/or CD4 and may also breach CD5.

II.C2.G17. Moreover:

II.C2.G17.1 where *public* funding is in place, the *Legal Aid Agency's* Unified Contract Standard Terms explicitly prohibit contract-holders from making or receiving any payment (or any other benefit) for the referral or introduction of a *client*, whether or not the lay *client* knows of, and consents to, the payment;

II.C2.G17.2 whether in a private or publicly funded case, a *referral fee* to which the *client* has not consented may constitute a bribe and therefore a *criminal offence* under the Bribery Act 2010;

II.C2.G17.3 *referral fees* are prohibited where they relate to a claim or potential claim for damages for personal injury or death or arise out of circumstances involving personal injury or death personal injury claims: section 56 Legal Aid, Sentencing and Punishment of Offenders Act 2012;

- II.C2.G18. Rule II.C2.R3 does not prohibit proper expenses that are not a reward for referring work, such as genuine and reasonable payments for:
- II.C2.G18.1 clerking *and* administrative services (including where these are outsourced);
 - II.C2.G18.2 membership subscriptions to ADR bodies that appoint or recommend a person to provide *mediation*, arbitration or adjudication services; or
 - II.C2.G18.3 *advertising* and publicity, which are payable whether or not any work is referred. On the other hand, payments which purport to represent fees payable for the out-sourcing of clerking or administrative or other services but which in fact are expressly or implicitly linked to, or conditional on, or vary in amount with, the receipt of instructions, are *referral fees* and are prohibited.
- II.C2.G19. Further guidance is available at [\[add links\]](#).

Undertakings

- II.C2.R4. You must within an agreed timescale or within a reasonable period of time comply with any undertaking you give in the course of conducting litigation.

Guidance on Rule II.C2.R4

- II.C2.G20. You should ensure your insurance covers you in respect of any liability incurred in giving an undertaking.

Discrimination

- II.C2.R5. You must not discriminate unlawfully against, victimise or harass any other person on the grounds of race, colour, ethnic or national origin, nationality, citizenship, sex, gender re-assignment, sexual orientation, marital or civil partnership status, disability, age, religion or belief.

Guidance on Rule II.C2.R5

II.C2.G21. Rules II.D1.R12 and associated Guidance (which can also be found here) are also relevant to equality and diversity.

Foreign work

II.C2.R6. In connection with any *foreign work* you must comply with any applicable rule of conduct prescribed by the law or by any national or local bar of:

II.C2.R6.1 the place where the work is or is to be performed; and

II.C2.R6.2 the place where any proceedings or matters to which the work relates are taking place or contemplated;

unless such rule is inconsistent with any requirement of the Core Duties.

II.C2.R7. If you solicit work in any jurisdiction outside England and Wales, you must not do so in a manner which would be prohibited if you were a member of the local bar.

Guidance on Rules II.C2.R6 and II.C2.R7

II.C2.G22. When you are engaged in *cross border activities* within a *CCBE State* other than the UK, you must comply with the rules at II.D5 which implement the part of the *Code of Conduct for European Lawyers* not otherwise covered by this Handbook as well as with any other applicable rules of conduct relevant to that particular *CCBE State*. It is your responsibility to inform yourself as to any applicable rules of conduct.

C3. YOU AND YOUR CLIENT

Outcomes

- II.C3.O1. *Clients* receive a competent standard of work and service.
- II.C3.O2. *Clients'* best interests are protected and promoted by those acting for them.
- II.C3.O3. *BSB authorised persons* do not accept instructions from *clients* where there is a conflict between their own interests and the *clients'* or where there is a conflict between one or more *clients* except when permitted in this *Handbook*.
- II.C3.O4. *Clients* know what to expect and understand the advice they are given.
- II.C3.O5. Care is given to ensure that the interests of vulnerable *clients* are taken into account and their needs are met.
- II.C3.O6. *Clients* have confidence in those who are instructed to act on their behalf.
- II.C3.O7. *Instructions* are not accepted, refused, or returned in circumstances which adversely affect the administration of justice, access to justice or (so far as compatible with these) the best interests of the *client*.
- II.C3.O8. *Clients* and *BSB authorised persons* ~~and authorised (non-BSB) individuals and BSB regulated managers~~ are clear about the circumstances in which *instructions* may not be accepted or may or must be returned.
- II.C3.O9. *Clients* are adequately informed as to the terms on which work is to be done.
- II.C3.O10. *Clients* understand how to bring a *complaint* and *complaints* are dealt with promptly, fairly, openly and effectively.
- II.C3.O11. *Clients* understand who is responsible for work done for them

Rules

Best interests of each client, provision of a competent standard of work and confidentiality

II.C3.R1. Your duty to act in the best interests of each *client* (CD2), to provide a competent standard of work and service to each *client* (CD7) and to keep the affairs of each *client* confidential (CD6) includes the following obligations:

II.C3.R1.1 you must promote fearlessly and by all proper and lawful means the *client's* best interests;

II.C3.R1.2 you must do so without regard to your own interests or to any consequences to you (which may include, for the avoidance of doubt, you being required to take reasonable steps to mitigate the effects of any breach of this *Handbook*);

II.C3.R1.3 you must do so without regard to the consequences to any other person (whether to your *professional client*, *employer* or any other person);

II.C3.R1.4 you must not permit your *professional client*, *employer* or any other person to limit your discretion as to how the interests of the *client* can best be served; and

II.C3.R1.5 you must protect the confidentiality of each *client's* affairs, except for such disclosures as are required by law or to which your *client* gives informed consent.

II.C3.R2. Your duty to act in the best interests of each *client* (CD2) is subject to your duty to the *court* (CD1) and to your obligations to act with honesty, and integrity (CD3) and to maintain your independence (CD4).

Guidance on Rules II.C3.R1 and II.C3.R2 and their relationship to CD2, CD6 and CD7

II.C3.G1. Your duty is to your *client*, not to your *professional client* or other *intermediary* (if any).

II.C3.G2. Rules II.C3.R1 and II.C3.R2 are expressed in terms of the interests of each *client*. This is because you may only accept *instructions* to act for more than one *client* if you are able to act in the best interests of each *client* as if that *client* were your only *client*, as CD2 requires of you. See, further, Rule II.C3.R3 on the circumstances when you are obliged to advise your *client* to seek other legal representation and Rules II.C3.R7.2 and II.C3.R7.3 on conflicts of interest and the

guidance to those rules at II.C3.G34.

II.C3.G3. CD7 requires not only that you provide a competent standard of work but also a competent standard of service to your *client*. Rule II.C3.R1 is not exhaustive of what you must do to ensure your compliance with CD2 and CD7. By way of example, a competent standard of work and of service also includes:

II.C3.G3.1 treating each *client* with courtesy and consideration; and

II.C3.G3.2 seeking to advise your *client*, in terms they can understand; and

II.C3.G3.3 taking all reasonable steps to avoid incurring unnecessary expense;
and

II.C3.G3.4 reading your instructions promptly. This may be important if there is a time limit or limitation period. If you fail to read your instructions promptly, it is possible that you will not be aware of the time limit until it is too late.

II.C3.G4. In order to be able to provide a competent standard of work, you should keep your professional knowledge and skills up to date, regularly take part in professional development and educational activities that maintain and further develop your competence and performance and, ~~where you are a BSB authorised body or a manager of such body, you should take reasonable steps to ensure that managers and employees within your organisation undertake such training.~~ Merely complying with the minimum Continuing Professional Development requirements may not be sufficient to comply with Rule II.C3.R1. You should also ensure that you comply with any specific *training* requirements of the *Bar Standards Board* before undertaking certain activities – for example, you should not attend a police station to advise a *suspect or interviewee* as to the handling and conduct of police interviews unless you have complied with such *training* requirements as may be imposed by the *Bar Standards Board* in respect of such work. Similarly, you should not undertake public access work without successfully completing the required *training* specified by the *Bar Standards Board*.

II.C3.G5. ~~In addition to Guidance II.C3.G3 above, a BSB authorised body or a manager of such body should ensure that work is allocated appropriately, to managers and/or employees with the appropriate knowledge and expertise to undertake such work.~~

- II.C3.G6. You should remember that your *client* may not be familiar with legal proceedings and may find them difficult and stressful. You should do what you reasonably can to ensure that the *client* understands the process and what to expect from it and from you. You should also try to avoid any unnecessary distress for your *client*. This is particularly important where you are dealing with a vulnerable *client*.
- II.C3.G7. The duty of confidentiality (CD6) is central to the administration of justice. *Clients* who put their confidence in their legal advisers must be able to do so in the knowledge that the information they give, or which is given on their behalf, will stay confidential. In normal circumstances, this information will be privileged and not disclosed to a *court*. CD6, Rule II.C1.R3 and Guidance II.C1.G6 and II.C1.G9 to II.C1.G11 provide further information.
- II.C3.G8. Rule II.C3.R1.5 acknowledges that your duty of confidentiality is subject to an exception if disclosure is required by law. For example, you may be obliged to disclose certain matters by the Proceeds of Crime Act 2002. Disclosure in those circumstances would not amount to a breach of CD6 or Rule II.C3.R1.5. In other circumstances, you may only make disclosure of confidential information where your *client* gives informed consent to the disclosure. See the Guidance to Rule II.C3.R7 at II.C3.G33 for an example of circumstances where it may be appropriate for you to seek such consent.
- II.C3.G9. There may be circumstances when your duty of confidentiality to your *client* conflicts with your duty to the *court*. Rule II.C1.R3 and Guidance II.C1.G6 and II.C1.G9 to II.C1.G11 provide further information.
- II.C3.G10. Similarly, there may be circumstances when your duty of confidentiality to your *client* conflicts with your duty to your regulator. Rule II.C4.R1 and Guidance II.C4.G1 to II.C4.G2 in respect of that rule provide further information. In addition, Rule II.C4.R3 may also apply.
- II.C3.G11. If you are a *pupil* of, or are *devilling* work for, a *self-employed barrister*, Rule II.C3.R1 applies to you as if the *client* of the *self-employed barrister* was your own *client*.
- II.C3.G12. The section You and Your Practice, at II.C5, provides for duties regarding the systems and procedures you must put in place and enforce in order to ensure

compliance with Rule II.C3.R1.5.

~~II.C3.G13. If you are an *authorised individual* or a *manager* working in a *BSB authorised body* your personal duty to act in the best interests of your *client* requires you to assist in the redistribution of *client* files and otherwise assisting to ensure each *client's* interests are protected in the event that the *BSB authorised body* itself is unable to do so for whatever reason (for example, insolvency).~~

II.C3.R3. Your duty to act in the best interests of each *client* (CD2) includes a duty to consider whether the *client's* best interests are served by different legal representation, and if so, to advise the *client* to that effect.

Guidance on Rule II.C3.R3

II.C3.G14. Your duty to comply with Rule II.C3.R3 may require you to advise your *client* that in their best interests they should be represented by:

II.C3.G14.1 a different advocate or legal representative, whether more senior or more junior than you, or with different experience from yours;

II.C3.G14.2 more than one advocate or legal representative;

II.C3.G14.3 fewer advocates or legal representatives than have been instructed; or

II.C3.G14.4 in the case where you are acting through a *professional client*, different *solicitors*.

II.C3.G15. Specific rules apply where you are acting on a public access basis, which oblige you to consider whether *solicitors* should also be instructed. As to these see the public access rules at Section II.D2 ~~and further in respect of *BSB regulated bodies* Rule III.B4.R2 and the associated guidance.~~

II.C3.G16. CD2 and Rules II.C3.R1 and II.C3.R3 require you, subject to Rule II.C3.R2, to put your *client's* interests ahead of your own and those of any other person. If you consider that your *professional client*, another *solicitor* or *intermediary*, another *barrister*, or any other person acting on behalf of your *client* has been negligent, you should ensure that your *client* is advised of this.

II.C3.R4. Your duty to provide a competent standard of work and service to each *client* (CD7) includes a duty to inform your *professional client*, or *your client* if instructed by a *client*, as far as reasonably possible in sufficient time to enable appropriate steps to be taken to protect the *client's* interests, if:

II.C3.R4.1 it becomes apparent to you that you will not be able to carry out the *instructions* within the time requested, or within a reasonable time after receipt of *instructions*; or

II.C3.R4.2 there is an appreciable risk that you may not be able to undertake the *instructions*.

Guidance on Rule II.C3.R4

II.C3.G17. For further information about what you should do in the event that you have a clash of listings, please refer to our guidance which can be accessed on the *Bar Standards Board's* website or by clicking on the relevant link [\[hyperlink\]](#).

Not misleading clients and potential clients

II.C3.R5. If you supply, or offer to supply, *legal services*, you must not mislead, or cause or permit to be misled, any person to whom you supply, or offer to supply, *legal services* about:

II.C3.R5.1 the nature and scope of the *legal services* which you are offering or agreeing to supply;

II.C3.R5.2 the terms on which the *legal services* will be supplied, who will carry out the work and the basis of charging;

II.C3.R5.3 who is legally responsible for the provision of the services;

II.C3.R5.4 whether you are entitled to supply those services and the extent to which you are regulated when providing those services and by whom; or

II.C3.R5.5 the extent to which you are covered by insurance against claims for professional negligence.

Guidance on Rule II.C3.R5

- II.C3.G18. The best interests of *clients* (CD2) and public confidence in the profession (CD5) are undermined if there is a lack of clarity as to whether services are regulated, who is supplying them, on what terms, and what redress *clients* have and against whom if things go wrong. Rule II.C3.R5 may potentially be infringed in a broad variety of situations. You must consider how matters will appear to the *client*.
- II.C3.G19. *Clients* may, by way of example, be misled if *self-employed barristers* were to share premises with *solicitors* or other professionals without making sufficiently clear to *clients* that they remain separate and independent from one another and are not responsible for one another's work.
- II.C3.G20. Likewise, it is likely to be necessary to make clear to *clients* that any entity established as a "ProcureCo" is not itself able to supply *reserved legal activities* and is not subject to regulation by the *Bar Standards Board*.
- II.C3.G21. A set of *chambers* dealing directly with unsophisticated lay *clients* might breach Rule II.C3.R5 if its branding created the appearance of an entity or *partnership* and it failed to explain that the members of *chambers* are, in fact, self-employed individuals who are not responsible for one another's work.
- II.C3.G22. Knowingly or recklessly publishing advertising material which is inaccurate or likely to mislead could also result in you being in breach of Rule II.C3.R5. You should be particularly careful about making comparisons with other persons as these may often be regarded as misleading.
- II.C3.G23. If you carry out public access work but are not authorised to *conduct litigation*, you would breach Rule II.C3.R5 if you caused or permitted your *client* to be misled into believing that you are entitled to, or will, provide services that include the *conduct of litigation* on behalf of your *client*.
- II.C3.G24. If you are a *self-employed barrister*, you would, for example, likely be regarded as having breached Rule II.C3.R5 if you charged at your own hourly rate for work done by a *devil* or *pupil*. Moreover, such conduct may well breach your duty to act with honesty and integrity (CD3).

II.C3.G25. If you are an *unregistered barrister*, you would breach Rule II.C3.R5 if you misled your *client* into thinking that you were providing *legal services* to them as a *barrister* or that you were subject to the same regulation as a *practising barrister*. You would also breach the rule if you implied that you were covered by insurance if you were not, or if you suggested that your *clients* could seek a remedy from the *Bar Standards Board* or the *Legal Ombudsman* if they were dissatisfied with the services you provided. You should also be aware of the rules set out in Section D5 of this Code of Conduct and the additional guidance for *unregistered barristers* available on the *Bar Standards Board* website which can be accessed here [\[hyperlink\]](#).

II.C3.G26. Rule II.C3.R5.3 is particularly relevant where you act in more than one capacity, for example as a *BSB authorised individual* as well as a manager or employee of an *authorised (non BSB) body*. This is because you should make it clear to each *client* in what capacity you are acting and, therefore, who has legal responsibility for the provision of the services.

II.C3.G27. If you are a *pupil*, you should not hold yourself out as a member of *chambers* or permit your name to appear as such. You should describe yourself as a *pupil barrister*.

II.C3.G28. A number of other rules impose positive obligations on you, in particular circumstances, to make clear your regulatory status and the basis and terms on which you are acting. See, for example, rule II.C3.R9 and II.C3.G39.

Personal responsibility

II.C3.R6. Where you are a *BSB authorised individual*, you are personally responsible for your own conduct and for your professional work. You must use your own professional judgment in relation to those matters on which you are instructed and be able to justify your decisions and actions. You must do this notwithstanding the views of your *client*, *professional client*, *employer* or any other person.

Guidance on Rule II.C3.R6

II.C3.G29. It is fundamental that *BSB authorised individuals* and ~~*authorised (non-BSB) individuals*~~ are personally responsible for their own conduct and for their own

professional work, whether they are acting in a self employed or employed capacity (in the case of *BSB authorised individuals*) ~~or as an employee or manager of a BSB authorised body (in the case of authorised (non-BSB) individuals).~~

II.C3.G30. Nothing in Rule II.C3.R6 is intended to prevent you from delegating or outsourcing to any other person discrete tasks (for example, research) which such other person is well-equipped to provide. However, where such tasks are delegated or outsourced, you remain personally responsible for such work. Further, in circumstances where such tasks are being outsourced, Rule II.C5.R15 which deals with outsourcing, must be complied with.

II.C3.G31. You are responsible for the service provided by all those who represent you in your dealings with your *client*, including your clerks or any other *employees* or agents.

~~II.C3.G32. Nothing in this rule or guidance prevents a BSB authorised body from contracting on the basis that any civil liability for the services provided by a BSB regulated individual lies with the BSB authorised body and the BSB regulated individual is not to be liable. However, any such stipulation as to civil liability does not affect the regulatory obligations of the BSB regulated individual including (but not limited to) that of being personally responsible under Rule II.C3.R6 for the professional judgments made.~~

II.C3.G33. See, further, guidance to Rule II.C3.R5, as regards work by pupils and *devils* Rule II.C3.R1, Rule II.C5.G22 and Rule II.C5.R13 (on outsourcing).

Accepting instructions

II.C3.R7. You must not accept *instructions* to act in a particular matter if:

II.C3.R7.1 due to any existing or previous *instructions* you are not able to fulfil your obligation to act in the best interests of the prospective *client*; or

II.C3.R7.2 there is a conflict of interest between your own personal interests and the interests of the prospective *client* in respect of the particular matter; or

II.C3.R7.3 there is a conflict of interest between the prospective *client* and one or more of your former or existing *clients* in respect of the particular matter

unless all of the *clients* who have an interest in the particular matter give their informed consent to your acting in such circumstances; or

II.C3.R7.4 there is a real risk that information confidential to another former or existing *client*, or any other person to whom you owe duties of confidence, may be relevant to the matter, such that if, obliged to maintain confidentiality, you could not act in the best interests of the prospective *client*, and the former or existing *client* or person to whom you owe that duty does not give informed consent to disclosure of that confidential information ; or

II.C3.R7.5 your instructions seek to limit your ordinary authority or discretion in the conduct of proceedings in *court*; or

II.C3.R7.6 your instructions require you to act other than in accordance with law or with the provisions of this *Handbook*; or

II.C3.R7.7 you are not authorised and/or otherwise accredited to perform the work required by the relevant *instruction*; or

II.C3.R7.8 you are not competent to handle the particular matter or otherwise do not have enough experience to handle the matter; or

II.C3.R7.9 you do not have enough time to deal with the particular matter, unless the circumstances are such that it would nevertheless be in the *client's* best interests for you to accept; or

II.C3.R7.10 there is a real prospect that you are not going to be able to maintain your independence.

Guidance on Rule II.C3.R7

II.C3.G34. Rules II.C3.R7.2, II.C3.R7.3 and II.C3.R7.4 are intended to reflect the law on conflict of interests and confidentiality and what is required of you by your duty to act in the *client's* best interests (CD2), independently (CD4), and maintaining *client* confidentiality (CD6). You are prohibited from acting where there is a conflict of interest between your own personal interests and the interests of a prospective *client*. However, where there is a conflict of interest between an existing *client* or *clients* and a prospective *client* or *clients* or two or more prospective *clients*, you may be entitled

to accept instructions or to continue to act on a particular matter where you have fully disclosed to the relevant *clients* and prospective *clients* (as appropriate) the extent and nature of the conflict; they have each provided their informed consent to you acting; and you are able to act in the best interests of each *client* and independently as required by CD2 and CD4.

II.C3.G35. Examples of where you may be required to refuse to accept *instructions* in accordance with Rule II.C3.R7.7 include:

II.C3.G35.1 where the *instructions* relate to the provision of litigation services and you have not been authorised to *conduct litigation* in accordance with the requirements of this *Handbook*; and

II.C3.G35.2 where the matter would require you to conduct correspondence with parties other than your *client* (in the form of letters, faxes, emails or the like), you do not have adequate systems, experience or resources for managing appropriately such correspondence and/or you do not have adequate insurance in place in accordance with Rule II.C5.R3 which covers, amongst other things, any loss suffered by the *client* as a result of the conduct of such correspondence.

II.C3.G36. Competency and experience under Rule II.C3.R7.8 includes your ability to work with vulnerable *clients*.

II.C3.G37. Rule II.C3.R7.9 recognises that there may be exceptional circumstances when *instructions* are delivered so late that no suitable, competent advocate would have adequate time to prepare. In those cases you are not required to refuse *instructions* as it will be in the *client's* best interests that you accept. Indeed, if you are obliged under the cab rank rule to accept the *instructions*, you must do so.

II.C3.G38. Rule II.C3.R7.10 is an aspect of your broader obligation to maintain your independence (CD4). Your ability to perform your duty to the *court* (CD1) and act in the best interests of your *client* (CD2) may be put at risk if you act in circumstances where your independence is compromised. Examples of when you may not be able to maintain your independence include appearing as an advocate in a matter in which you are likely to be called as a witness (unless the matter on which you are likely to be called as a witness is peripheral or minor in the context of the litigation as

a whole and is unlikely to lead to your involvement in the matter being challenged at a later date).

II.C3.G39. Where the *instructions* relate to public access or licensed access work and you are a self-employed barrister you will also need to have regard to the relevant rules at II.D2. ~~If you a BSB authorised body, you should have regard to the guidance to Rule III.B4.R2.~~

Defining terms or basis on which instructions are accepted

II.C3.R8. Where you first accept *instructions* to act in a matter:

II.C3.R8.1 you must, subject to Rule II.C3.R9, confirm in writing acceptance of the *instructions* and the terms and/or basis on which you will be acting, including the basis of charging;

II.C3.R8.2 where your instructions are from a *professional client*, the confirmation required by II.C3.R8.1 must be sent to the *professional client*;

II.C3.R8.3 where your instructions are from a *client*, the confirmation required by II.C3.R8.1 must be sent to the *client*.

II.C3.R9. In the event that, following your acceptance of the *instructions* in accordance with Rule II.C3.R8, the scope of the *instructions* is varied by the relevant *client* (including where the *client* instructs you on additional aspects relating to the same matter), you are not required to confirm again in writing acceptance of the instructions or the terms and/or basis upon which you will be acting. In these circumstances, you will be deemed to have accepted the instructions when you begin the work, on the same terms or basis as before, unless otherwise specified.

II.C3.R10. You must comply with the requirements set out in Rules II.C3.R8 and II.C3.R9 before doing the work unless that is not reasonably practicable, in which case you should do so as soon as reasonably practicable.

Guidance to Rules II.C3.R8 to II.C3.R10

II.C3.G40. Compliance with the requirement in Rule II.C3.R8 to set out the terms and/or

basis upon which you will be acting may be achieved by including a reference or link to the relevant terms in your written communication of acceptance. You may, for example, refer the *client* or *professional client* (as the case may be) to the terms of service set out on your website or to standard terms of service set out on the *Bar Council's* website (in which regard, please also refer to the guidance on the use of the standard terms of service which can be found here [\[hyperlink\]](#)). Where you agree to do your work on terms and conditions that have been proposed to you by the *client* or by the *professional client*, you should confirm in writing that that is the basis on which your work is done. Where there are competing sets of terms and conditions, which terms have been agreed and are the basis of your retainer will be a matter to be determined in accordance with the law of contract.

II.C3.G41. Your obligation under Rule II.C3.R9 is to ensure that the basis on which you act has been defined, which does not necessarily mean governed by your own contractual terms. In circumstances where Rule II.C3.R9 applies, you should take particular care to ensure that the *client* is clear about the basis for charging for any variation to the work where it may be unclear. You must also ensure that you comply with the requirements of the Provision of Services Regulations 2009 [\[hyperlink\]](#). See, further, Rule II.C3.R5 (not misleading *clients* or prospective *clients*) and the guidance to that rule at II.C3.G17-27.

II.C3.G42. If you are a *self-employed barrister* a clerk may confirm on your behalf your acceptance of *instructions* in accordance with Rules II.C3.R8 and II.C3.R9 above.

II.C3.G43. When accepting *instructions*, you must also ensure that you comply with the *complaints* handling rules set out in Section II.D.

II.C3.G44. When accepting instructions in accordance with Rule II.C3.R8, confirmation by email will satisfy any requirement for written acceptance.

II.C3.G45. You may have been instructed in relation to a discrete and finite task, such as to provide an opinion on a particular issue, or to provide ongoing services, for example, to conduct particular litigation. Your confirmation of acceptance of instructions under Rule II.C3.R8 should make clear the scope of the *instructions* you are accepting, whether by cross-referring to the *instructions*, where these are in writing or by summarising your understanding of the scope of work you are instructed

to undertake.

II.C3.G46. Disputes about costs are one of the most frequent complaints. The provision of clear information before work starts is the best way of avoiding such complaints. *The Legal Ombudsman* has produced a useful guide "An Ombudsman's view of good costs service" which can be found here [hyperlink].

II.C3.G47. Where the *instructions* relate to public access or licensed access work and you are a self-employed barrister, you will also need to have regard to the relevant rules at II.D2 ~~If you a BSB authorised body, you should have regard to the guidance to Rule III.B4.R2.~~

Returning instructions

II.C3.R11. Where you have accepted *instructions* to act but one or more of the circumstances set out in Rules II.C3.R7.1 to II.C3.R7.10 above then arises, you must cease to act and return your *instructions* promptly. In addition, you must cease to act and return your *instructions* if:

II.C3.R11.1 in a case funded by the *Legal Aid Agency* as part of the Community Legal Service or Criminal Defence Service it has become apparent to you that this funding has been wrongly obtained by false or inaccurate information and action to remedy the situation is not immediately taken by your *client*; or

II.C3.R11.2 the *client* refuses to authorise you to make some disclosure to the *court* which your duty to the *court* requires you to make; or

II.C3.R11.3 you become aware during the course of a case of the existence of a document which should have been but has not been disclosed, and the *client* fails to disclose it or fails to permit you to disclose it, contrary to your advice.

II.C3.R12. You may cease to act on a matter on which you are instructed and return your *instructions* if:

II.C3.R12.1 your professional conduct is being called into question; or

II.C3.R12.2 the *client* consents; or

II.C3.R12.3 you are a *self-employed barrister* and:

- (a) despite all reasonable efforts to prevent it, a hearing becomes fixed for a date on which you have already entered in your professional diary that you will not be available; or
- (b) illness, injury, pregnancy, childbirth, a bereavement or a similar matter makes you unable reasonably to perform the services required in the *instructions*; or
- (c) you are unavoidably required to attend on jury service;

~~II.C3.R12.4 you are a *BSB authorised body* and the only appropriate *authorised individual(s)* are unable to continue acting on the particular matter due to one or more of the grounds referred to at Rules II.C3.R12.3(a) to II.C3.R12.3(e) above occurring;~~

II.C3.R12.5 you do not receive payment when due in accordance with terms agreed, subject to Rule II.C3.R12.7 (if you are conducting litigation) and in any other case subject to your giving reasonable notice requiring the non-payment to be remedied and making it clear to the *client* in that notice that failure to remedy the non-payment may result in you ceasing to act and returning your *instructions* in respect of the particular matter; or

II.C3.R12.6 you become aware of confidential or privileged information or documents of another person which relate to the matter on which you are instructed; or

II.C3.R12.7 if you are conducting litigation, and your *client* does not consent to your ceasing to act, your application to come off the record has been granted; or

II.C3.R12.8 there is some other substantial reason for doing so (subject to Rules II.C3.R13 to II.C3.R15 below).

Guidance on Rule II.C3.R12

II.C3.G48. In deciding whether to cease to act and to return existing instructions in

accordance with Rule II.C3.R12, you should, where possible and subject to your overriding duty to the *court*, ensure that the *client* is not adversely affected because there is not enough time to engage other adequate legal assistance.

II.C3.G49. If you are working on a referral basis and your *professional client* withdraws, you are no longer instructed and cannot continue to act unless appointed by the *court*, or you otherwise receive new instructions. For these purposes working on a “referral basis “ means where a *professional client* instructs a BSB authorised individual to provide legal services on behalf of one of that professional client's own clients;

II.C3.G50. You should not rely on Rule II.C3.R12.3 to break an engagement to supply legal services so that you can attend or fulfil a non-professional engagement of any kind other than those indicated in Rule II.C3.R12.3.

II.C3.G51. When considering whether or not you are required to return instructions in accordance with Rule II.C3.R12.6 you should have regard to relevant case law including Mills & Reeve v Ablett and Herbert Smith v America [citations to be added].

II.C3.G52. If a fundamental change is made to the basis of your remuneration, you should treat such a change as though your original instructions have been withdrawn by the *client* and replaced by an offer of new instructions on different terms. Accordingly:

II.C3.G52.1 you must decide whether you are obliged by Rule II.C3.R15 to accept the new instructions;

II.C3.G52.2 if you are obliged under Rule II.C3.R15 to accept the new instructions, you must do so;

II.C3.G52.3 if you are not obliged to accept the new instructions, you may decline them;

II.C3.G52.4 if you decline to accept the new instructions in such circumstances, you are not to be regarded as returning your instructions, nor as withdrawing from the matter, nor as ceasing to act, for the purposes of Rules II.C3.R11 to II.C3.R12, because the previous instructions have been withdrawn by the

client.

II.C3.R13. Notwithstanding the provisions of Rules II.C3.R11 and II.C3.R12, you must not:

II.C3.R13.1 cease to act or return *instructions* without either:

- (a) obtaining your *client's* consent; or
- (b) clearly explaining to your *client* or your *professional client* the reasons for doing so; or

II.C3.R13.2 return instructions to another person without the consent of your *client* or your *professional client*.

Requirement not to discriminate

II.C3.R14. You must not withhold your services or permit your services to be withheld:

II.C3.R14.1 on the ground that the nature of the case is objectionable to you or to any section of *the public*;

II.C3.R14.2 on the ground that the conduct, opinions or beliefs of the prospective *client* are unacceptable to you or to any section of *the public*;

II.C3.R14.3 on any ground relating to the source of any financial support which may properly be given to the prospective *client* for the proceedings in question.

Guidance on Rule II.C3.R14

II.C3.G53. As a matter of general law you have an obligation not to discriminate unlawfully as to those to whom you make your services available on any of the statutorily prohibited grounds such as gender or race. See [add link] for guidance as to your obligations in respect of equality and diversity. This rule of conduct is concerned with a broader obligation not to withhold your services on grounds that are inherently inconsistent with your role in upholding access to justice and the rule of law and therefore in this rule “discriminate” is used in this broader sense. This

obligation applies whether or not the *client* is a member of any protected group for the purposes of the Equality Act 2010. For example, you must not withhold services on the ground that any financial support which may properly be given to the prospective *client* for the proceedings in question will be available as part of the Community Legal Service or Criminal Defence Service.

The 'Cab-rank' rule

II.C3.R15. If you receive *instructions* from a *professional client*, and you are:

~~II.C3.R15.1 a self-employed barrister instructed by a professional client; or~~

~~II.C3.R15.2 an authorised individual working within a BSB authorised body; or~~

~~II.C3.R15.3 a BSB authorised body and the instructions seek the services of a named authorised individual working for you;~~

and the *instructions* are appropriate taking into account the experience, seniority ~~or~~ and field of practice of yourself ~~or (as appropriate) of the named authorised individual~~ you must, subject to Rule II.C3.R16 below, accept the *instructions* addressed specifically to you, irrespective of:

- (a) the identity of the *client*;
- (b) the nature of the case to which the *instructions* relate;
- (c) whether the *client* is paying privately or is publicly funded; and
- (d) any belief or opinion which you may have formed as to the character, reputation, cause, conduct, guilt or innocence of the *client*.

II.C3.R16. The cab rank rule (II.C3.R15) does not apply if:

II.C3.R16.1 you are required to refuse to accept the *instructions* pursuant to Rule II.C3.R7; or

II.C3.R16.2 accepting the *instructions* would require you or the named authorised individual to do something other than in the course of their ordinary working time or to cancel a commitment already in their diary; or

- II.C3.R16.3 the potential liability for professional negligence in respect of the particular matter could exceed the level of professional indemnity insurance which is reasonably available and likely to be available in the market for you to accept; or
- II.C3.R16.4 you are a Queen's Counsel, and the acceptance of the *instructions* would require you to act without a junior in circumstances where you reasonably consider that the interests of the *client* require that a junior should also be instructed; or
- II.C3.R16.5 accepting the *instructions* would require you to do any *foreign work*; or
- II.C3.R16.6 accepting the *instructions* would require you to act for a *foreign lawyer* (other than a *European lawyer*, a lawyer from a country that is a member of EFTA, a *solicitor* or *barrister* of Northern Ireland or a *solicitor* or advocate under the law of Scotland); or
- II.C3.R16.7 the *professional client*:
- (a) is not accepting liability for your fees; or
 - (b) is named on the List of Defaulting Solicitors; or
 - (c) is instructing you as a lay *client* and not in their capacity as a professional *client*; or
- II.C3.R16.8 you have not been offered a proper fee for your services (except that you shall not be entitled to refuse to accept *instructions* on this ground if you have not made or responded to any fee proposal within a reasonable time after receiving the *instructions*); or
- II.C3.R16.9 except where you are to be paid directly by (i) the *Legal Aid Agency* as part of the Community Legal Service or the Criminal Defence Service or (ii) the Crown Prosecution Service:
- (a) your fees have not been agreed (except that you shall not be entitled to refuse to accept *instructions* on this ground if you have not taken reasonable steps to agree fees within a reasonable time after receiving the *instructions*);

- (b) having required your fees to be paid before you accept the *instructions*, those fees have not been paid.
- (c) accepting the *instructions* would require you to act other than on (A) the Standard Contractual Terms for the Supply of Legal Services by Barristers to Authorised Persons 2012 as published on the *Bar Standards Board's* website; or (B) if you publish standard terms of work, on those standard terms of work.

Guidance on Rule II.C3.15 and II.C3.16

II.C3.G54. Rule II.C3.16 means that you would not be required to accept *instructions* to, for example, *conduct litigation* or attend a police station in circumstances where you do not normally undertake such work or, in the case of litigation, are not authorised to undertake such work.

II.C3.G55. In determining whether or not a fee is proper for the purposes of Rule II.C3.16.2, regard shall be had to the following:

II.C3.G55.1 the complexity length and difficulty of the case;

II.C3.G55.2 your ability, experience and seniority; and

II.C3.G55.3 the expenses which you will incur.

II.C3.G56. Further, you may refuse to accept instructions on the basis that the fee is not proper if the instructions are on the basis that you will do the work under a *conditional fee agreement*.

Quality Assurance Scheme for Advocates Rules

[To be inserted once approved by the LSB]

C4 YOU AND YOUR REGULATOR

Outcomes

- II.C4.O1. *BSB regulated persons are effectively regulated.*
- II.C4.O2. *The public have confidence in the proper regulation of persons regulated by the Bar Standards Board.*
- II.C4.O3. *The Bar Standards Board has the information that it needs in order to be able to assess risks and regulate effectively and in accordance with the regulatory objectives.*

Rules

Provision of information to the Bar Standards Board

- II.C4.R1. You must:
 - II.C4.R1.1 promptly provide all such information to the *Bar Standards Board* as it may, for the purpose of its regulatory functions, from time to time require of you, and notify it of any material changes to that information; and
 - II.C4.R1.2 comply in due time with any decision or sentence imposed by the *Bar Standards Board*, a *Disciplinary Tribunal*, the *Visitors*, an *interim panel*, a *review panel*, an *appeal panel* or a *medical panel*.

Guidance to Rule II.C4.R1:

- II.C4.G1. Your obligations under Rule II.C4.R1 include, for example, responding promptly to any request from the *Bar Standards Board* for comments or information relating to any matter whether or not the matter relates to you, or to another *BSB regulated person*.
- II.C4.G2. The documents that you may be required to disclose pursuant to Rule II.C4.R1 may include *client* information that is subject to legal privilege. It has been recognised in *R v Special Commissioner and Another, Ex P Morgan Grenfell & Co Ltd* ([2003] 1 A.C. 563) that the disclosure of a *client's* privileged information to a legal regulator does not infringe the *client's* right to privilege. This is because the

information is not being sought for the purposes of making it public or to be used against the person entitled to the privilege. Note the difference where you are being required to report serious misconduct by others. In those circumstances, where legal professional privilege applies, this will override the requirement to report serious misconduct by another.

Duty to Report Certain Matters to the Bar Standards Board

II.C4.R2. You must report promptly to the *Bar Standards Board* if:

II.C4.R2.1 you are charged with an *indictable offence*; in the jurisdiction of England and Wales or with a *criminal offence* of comparable seriousness in any other jurisdiction;

II.C4.R2.2 you are convicted of, or accept a caution, for any *criminal offence*, in any jurisdiction, other than a *minor criminal offence*;

II.C4.R2.3 you (or an entity of which you are a *manager*) to your knowledge are the subject of any disciplinary or other regulatory or enforcement action by another *Approved Regulator* or other regulator, including being the subject of disciplinary proceedings;

II.C4.R2.4 you are a *manager* of an *non-BSB authorised body* which is the subject of an intervention by the *approved regulator* of that body;

II.C4.R2.5 you are a *registered European lawyer* and:

- (a) to your knowledge any investigation into your conduct is commenced by your *home regulator*; or
- (b) any finding of professional misconduct is made by your *home regulator*; or
- (c) your authorisation in your *home state* to pursue professional activities under your *home professional title* is withdrawn or *suspended*; or
- (d) you are charged with a disciplinary offence.

II.C4.R2.6 any of the following occur:

- (a) bankruptcy proceedings are initiated in respect of or against you;
 - (b) *director's disqualification* proceedings are initiated against you;
 - (c) a *bankruptcy order* or *director's disqualification order* is made against you;
 - (d) you have made a composition or arrangement with, or granted a trust deed for, your creditors;
 - ~~(e) winding up proceedings are initiated in respect of or against you~~
 - ~~(f) you have had an administrator, administrative receiver, receiver or liquidator appointed in respect of you;~~
 - ~~(g) administration proceedings are initiated in respect of or against you;~~
- II.C4.R2.7 you have otherwise committed serious misconduct;
- II.C4.R2.8 you become authorised to *practise* by another *approved regulator*.

Guidance to Rule II.C4.R2

II.C4.G3. In circumstances where you have committed serious misconduct you should take all reasonable steps to mitigate the effects of such serious misconduct.

Reporting Serious Misconduct by others

~~II.C4.R3.~~ Subject to your duty to keep the affairs of each *client* confidential and subject also to Rules II.C4.R4 and II.C4.R5, you must report to the *Bar Standards Board* if you have reasonable grounds to believe that there has been serious misconduct by a *barrister* or a *registered European lawyer*, ~~a *BSB authorised body*, a *BSB regulated manager* or an *authorised (non-BSB) individual* who is working as a *manager* or an *employee of a BSB authorised body*.~~

II.C4.R4. You must never make, or threaten to make, a report under Rule II.C4.R3 without a genuine and reasonably held belief that Rule II.C4.R3 applies.

II.C4.R5. You are not under a duty to report serious misconduct by others if:

II.C4.R5.1 you become aware of the facts giving rise to the belief that there has serious misconduct from matters that are in the public domain and the circumstances are such that you reasonably consider it likely that the facts will have come to the attention of the *Bar Standards Board*; or

II.C4.R5.2 you are aware that the relevant person that committed the serious misconduct has already reported the serious misconduct to the *Bar Standards Board*; or

II.C4.R5.3 the events which led to you becoming aware of that other person's serious misconduct are subject to their legal professional privilege; or

II.C4.R5.4 you become aware of such serious misconduct as a result of your work on the *Bar Council's* ethical enquiry service.

II.C4.R6. You must not victimise anyone for making in good faith a report under Rule II.C4.R3.

Guidance on Rules II.C4.R2.7 to II.C4.R5

II.C4.G4. It is in the public interest that the *Bar Standards Board*, as an *Approved Regulator*, is made aware of, and is able to investigate, potential instances of serious misconduct. The purpose of Rules II.C4.R2.7 to II.C4.R6, therefore, is to assist the *Bar Standards Board* in undertaking this regulatory function.

II.C4.G5. Serious misconduct includes, without being limited to:

II.C4.G5.1 dishonesty (CD3);

II.C4.G5.2 assault or harassment (CD3 and/or CD5 and/or CD8);

II.C4.G5.3 seeking to gain access without consent to *instructions* or other confidential information relating to the opposing party's case (CD3 and/or CD5); or

II.C4.G5.4 seeking to gain access without consent to confidential information relating to another member of *chambers*, member of staff or *pupil* (CD3 and/or CD5);

- II.C4.G5.5 encouraging a witness to give evidence which is untruthful or misleading (CD1 and/or CD3);
- II.C4.G5.6 knowingly or recklessly misleading, or attempting to mislead, the *court* or an opponent (CD1 and/or CD3); or
- II.C4.G5.7 being drunk or under the influence of drugs in *court* (CD2 and/or CD7); or
- II.C4.G5.8 failure by a *barrister* to report promptly to the *Bar Standards Board* pursuant to II.C4.R3 above;
- II.C4.G5.9 a breach by a *barrister* of II.C4.R7 below.
- II.C4.G6. If you believe (or suspect) that there has been serious misconduct, then the first step is to carefully consider all of the circumstances. The circumstances include:
- II.C4.G6.1 whether that person's *instructions* or other confidential matters might have a bearing on the assessment of their conduct;
- II.C4.G6.2 whether that person has been offered an opportunity to explain their conduct, and if not, why not;
- II.C4.G6.3 any explanation which has been or could be offered for that person's conduct;
- II.C4.G6.4 whether the matter has been raised, or will be raised, in the litigation in which it occurred, and if not, why not.
- II.C4.G7. Having considered all of the circumstances, the duty to report arises if you have reasonable grounds to believe there has been serious misconduct. This will be so where, having given due consideration to the circumstances, including the matters identified at Guidance II.C4.G6, you have material before you which as it stands establishes a reasonably credible case of serious misconduct. Your duty under Rule II.C4.R3 is then to report the potential instance of serious misconduct so that the *Bar Standards Board* can investigate whether or not there has in fact been misconduct.
- II.C4.G8. Circumstances which may give rise to the exception from the general requirement to report serious misconduct set out in Rule II.C4.R5.1 include for

example where misconduct has been widely reported in the national media. In these circumstances it would not be in the public interest for every *BSB regulated person* to have an obligation to report such serious misconduct.

II.C4.G9. In Rule II.C4.R5.4 “work on the *Bar Council’s* ethical enquiry service” means:

II.C4.G9.1 dealing with queries from *BSB regulated persons* who contact the ethical enquiry service operated by the *Bar Council* for the purposes of providing advice to those *persons*; and

II.C4.G9.2 either providing advice to *BSB regulated persons* in the course of working for the ethical enquiry service or to any individual working for the ethical enquiry service where (i) you are identified on the list of *BSB regulated persons* maintained by the *Bar Council* as being permitted to provide such advice (the “approved list”); and (ii) the advice which you are being asked to provide to the individual working for the ethical enquiry service arises from a query which originated from their work for that service; and

II.C4.G9.3 providing advice to *BSB regulated persons* where any individual working for ethical enquiry service arranges for you to give such advice and you are on the approved list.

II.C4.G10. Rule II.C4.R5.4 has been carved out of the general requirement to report serious misconduct of others because it is not in the public interest that the duty to report misconduct should constrain *BSB authorised persons* appointed by or on behalf of the *Bar Council* to offer ethical advice to others from doing so or inhibit *BSB regulated persons* needing advice from seeking it. Consequently, *BSB authorised persons* appointed by or on behalf of the *Bar Council* to offer ethical advice to *BSB regulated persons* through the *Bar Council’s* ethical enquiry service will not be under a duty to report information received by them in confidence from persons seeking such advice, subject only to the requirements of the general law. However, in circumstances where Rule II.C4.R5.3 applies, the relevant *BSB authorised person* will still be expected to encourage the relevant *BSB regulated person* who has committed serious misconduct to disclose such serious misconduct to the *Bar Standards Board* in accordance with Rule II.C4.R2.7.

~~II.C4.G11. Misconduct which falls short of serious misconduct should, where applicable, be reported to your *HOLP* so that they can keep a record of non-compliance in~~

~~accordance with Rule II.C5.R24.4.~~

Access to Premises

II.C4.R7. You must permit the *Bar Council*, or the *Bar Standards Board*, or any person appointed by them, reasonable access, on request, to inspect:

II.C4.R7.1 any premises from which you provide, or are believed to provide, *legal services* ; and

II.C4.R7.2 any documents or records relating to those premises and your ~~*practice, or BSB authorised body,*~~

and the *Bar Council*, *Bar Standards Board*, or any person appointed by them, shall be entitled to take copies of such documents or records as may be required by them for the purposes of their functions.

Co-operation with the Legal Ombudsman

II.C4.R8. You must give the *Legal Ombudsman* all reasonable assistance requested of you, in connection with the investigation, consideration, and determination, of *complaints* made under the Ombudsman scheme.

Ceasing to practise

II.C4.R9. Once you are aware that you (if you are a *self-employed barrister*) ~~or a *BSB authorised body*~~ ~~or the *BSB authorised body* within which you work~~ (if you are an ~~authorised individual or manager of such *BSB authorised body*~~) will cease to practise, you shall effect the orderly wind-down of activities, including:

II.C4.R9.1 informing the *Bar Standards Board* and providing them with a contact address;

II.C4.R9.2 notifying those *clients* for whom you have current matters and liaising with them in respect of the arrangements that they would like to be put in place in respect of those matters;

II.C4.R9.3 providing such information to the *Bar Standards Board* in respect of your practice and your proposed arrangements in respect of the winding down of your activities as the *Bar Standards Board* may require.

C5 YOU AND YOUR PRACTICE

Outcomes

- II.C5.O1. Your *practice* is run competently in a way that achieves compliance with the Core Duties and your other obligations under this *Handbook*. Your *employees, pupils* and trainees understand, and do, what is required of them in order that you meet your obligations under this *Handbook*.
- II.C5.O2. *Clients* are clear about the extent to which your services are regulated and by whom, and who is responsible for providing those services.

Rules

C5.1 GENERAL

Client money

- II.C5.R1. Except where you are acting in your capacity as a *manager* of an *authorised (non-BSB) body*, you must not receive, control or handle *client money* apart from what the client pays you for your services.
- II.C5.R2. If you make use of a third party payment service for making payments to or from or on behalf of your *client* you must:
- II.C5.R2.1 Ensure that the service you use will not result in your receiving, controlling or handling *client money*; and
 - II.C5.R2.2 Only use the service for payments to or from or on behalf of your *client* that are made in respect of legal services, such as fees, disbursements or settlement monies; and
 - II.C5.R2.3 Take reasonable steps to check that making use of the service is consistent with your duty to act competently and in your *client's* best interests.
- II.C5.R3. The *Bar Standards Board* may give notice under this rule that (effective from the date of that notice) you may only use third party payment services approved by the *Bar Standards Board* or which satisfy criteria set by the *Bar Standards Board*

Guidance on Rules II.C5.R1 and II.C5.R2

II.C5.G1. The prohibition in Rule II.C5.R1 applies to you and to anyone acting on your behalf, including any "ProcureCo" being a company established as a vehicle to enable the provision of *legal services* but does not in itself supply or provide those *legal services*. Rule II.C5.R1 prohibits you from holding *client money* or other *client assets* yourself, or through any agent, third party or nominee.

II.C5.G2. Receiving, controlling or handling *client money* includes entering into any arrangement which gives you de facto control over the use and/or destination of funds provided by or for the benefit of your *client* or intended by another party to be transmitted to your *client*, whether or not those funds are beneficially owned by your client and whether or not held in an account of yours.

II.C5.G3. The circumstances in which you will have de facto control within the meaning of Rule II.C5.R1 include when you can cause money to be transferred from a balance standing to the credit of your *client* without that *client's* consent to such a withdrawal. For large withdrawals, explicit consent should usually be required. However, the *client's* consent may be deemed to be given if:

II.C5.G3.1 the *client* has given informed consent to an arrangement which enables withdrawals to be made after the *client* has received an invoice; and

II.C5.G3.2 the *client* has not objected to the withdrawal within a pre-agreed reasonable period (which should not normally be less than one week from receipt of the invoice).

II.C5.G4. A fixed fee paid in advance is not *client money* for the purposes of Rule II.C5.R1.

II.C5.G5. If you agree with a *client*, who can reasonably be expected to understand the implications of such an agreement, that (1) your fee for any work will be charged according to the time spent on it, but (2) you will be paid a fixed fee in advance for it, and (3), when the work has been done, you will pay the *client* any difference between that fixed fee and the fee which has actually been earned, and (4) you will not hold the difference between the fixed fee and the fee which has been earned on trust for the *client*, that difference will not be *client money*. Such fees may be considered as

client money if you cannot demonstrate that the agreement was made in advance and on clear terms. You should also consider carefully whether such an arrangement is in the client's interest and that the client fully understands the implications. Further guidance on this issue published on the *Bar Standards Board's* website which can be accessed here [hyperlink].

II.C5.G6. Acting in the following ways may demonstrate compliance with Rules II.C5.R1, II.C5.R2 and II.C5.R3:

II.C5.G7. Checking that any third party payment service you may use is not structured in such a way that the service provider is holding, as your agent, money to which the *client* is beneficially entitled. If this is so you will be in breach of Rule II.C5.R1.

II.C5.G8. Considering whether your *client* will be safe in using the third party payment service as a means of transmitting or receiving funds. The steps you should take in order to satisfy yourself will depend on what would be expected in all the circumstances of a reasonably competent legal adviser acting in their *client's* best interests. However, you are unlikely to demonstrate that you have acted competently and in your *client's* best interests if you have not:

- (a) ensured that the payment service is authorised or regulated as a payment service by the *Financial Conduct Authority (FCA)* and taken reasonable steps to satisfy yourself that it is in good standing with the FCA;
- (b) if the payment service is classified as a small payment institution, ensured that it has arrangements to safeguard *clients'* funds or adequate insurance arrangements;
- (c) ensured that the payment service segregates *client* money from its own funds;
- (d) satisfied yourself that the terms of the service are such as to ensure that any money paid in by or on behalf of the *client* can only be paid out with the *client's* consent;
- (e) informed your *client* that moneys held by the payment service provider

are not covered by the *Financial Services Compensation Scheme*.

II.C5.G9. Unless you are reasonably satisfied that it is safe for your client to use the third party payment service (see II.C5.R2.3, II.C5.G7 and II.C5.G8 above), advising your *client* against using the third party payment service and not making use of it yourself.

II.C5.G10. The *Bar Standards Board* has not yet given notice under rule II.C5.R3

Insurance

II.C5.R4. You must:

II.C5.R4.1 ensure that you have insurance (taking into account the nature of your practice) which covers all the *legal services* you supply to *the public*; and

II.C5.R4.2 if you are a *BSB authorised person* ~~or *BSB authorised body* or a manager of a *BSB authorised body*~~, then in the event that the *Bar Standards Board*, by any notice it may from time to time issue under this Rule II.C5.R3, stipulates a minimum level of insurance and/or minimum terms for the insurance which must be taken out by *BSB authorised persons*, you must ensure that you have or put in place within the time specified in such notice, insurance meeting such requirements as apply to you.

II.C5.R5. Where you are acting as a *self-employed barrister*, you must be a member of *BMIF*, unless:

II.C5.R5.1 you are a *pupil* who is covered by his *pupil supervisor's* insurance; or

II.C5.R5.2 you were called to the *Bar* under Rule IV.B6.R20, in which case you must either be insured with *BMIF* or be covered by insurance against claims for professional negligence arising out of the supply of your services in England and Wales in such amount and on such terms as are currently required by the *Bar Standards Board*, and have delivered to the *Bar Standards Board* a copy of the current insurance policy, or the current certificate of insurance, issued by the insurer.

II.C5.R6. If you are a member of *BMIF*, you must:

II.C5.R6.1 pay promptly the insurance premium required by *BMIF*; and

II.C5.R6.2 supply promptly such information as *BMIF* may from time to time require pursuant to its rules.

Guidance on Rules II.C5.R3 to II.C5.R5

~~II.C5.G11. Where you are working in a *BSB authorised body*, you will satisfy the requirements of Rule II.C5.R4.1 so long as the *BSB authorised body* has taken out insurance, which covers your activities.~~

II.C5.G12. Any notice issued under Rule II.C5.R3 will be posted on the *Bar Standards Board's* website and may also be publicised by such other means as the *Bar Standards Board* may judge appropriate.

II.C5.G13. Where you are working in an *authorised (non-BSB) body*, the rules of the *approved regulator* of that body will determine what insurance the *authorised (non-BSB) body* must have.

II.C5.G14. Where you are working as an *employed barrister (non-authorised body)*, the rule does not require you to have your own insurance if you provide *legal services* only to your *employer*. If you supply *legal services* to other people (to the extent permitted by the *Scope of Practice, Authorisation and Licensing Rules* set out at Section III.B you should consider whether you need insurance yourself having regard to the arrangements made by your *employer* for insuring against claims made in respect of your services. If your *employer* already has adequate insurance for this purpose, you need not take out any insurance of your own. You should ensure that your *employer's* policy covers you, for example, for any pro-bono work you may do.

II.C5.G15. Where you are a *registered European lawyer*, the rule does not require you to have your own insurance if:

II.C5.G9.1 you provide to the *Bar Standards Board* evidence to show that you are covered by insurance taken out or a guarantee provided in accordance with the rules of your *home State*; and

II.C5.G9.2 the *Bar Standards Board* is satisfied that such insurance or guarantee is fully equivalent in terms of conditions and extent of cover to the cover

required pursuant to Rule II.C5.R4. However, where the *Bar Standards Board* is satisfied that the equivalence is only partial, the *Bar Standards Board* may require you to arrange additional insurance or an additional guarantee to cover the elements which are not already covered by the insurance or guarantee contracted by you in accordance with the rules of your *home state*

Associations with others

II.C5.R7. You may not do anything, practising in *an association*, which you are otherwise prohibited from doing.

II.C5.R8. Where you are in *an association* on more than a one-off basis, you must notify the *Bar Standards Board* that you are in *an association*, and provide such details of that association as are required by the *Bar Standards Board*.

II.C5.R9. If you have a material commercial interest in an organisation to which you plan to refer a *client*, you must:

II.C5.R9.1 tell the *client* in writing about your interest in that organisation before you refer the *client*; and

II.C5.R9.2 keep a record of your referrals to any such organisation for review by the *Bar Standards Board* on request.

II.C5.R10. If you have a material commercial interest in an organisation which is proposing to refer a matter to you, you must:

II.C5.R10.1 tell the *client* in writing about your interest in that organisation before you accept such *instructions*;

II.C5.R10.2 make a clear agreement with that organisation or other public statement about how relevant issues, such as conflicts of interest, will be dealt with; and

II.C5.R10.3 keep a record of referrals received from any such organisation for review by the *Bar Standards Board* on reasonable request.

II.C5.R11. If you refer a *client* to a third party which is not a *BSB authorised person* or an *authorised (non-BSB) person*, you must take reasonable steps to ensure that the *client* is not wrongly led to believe that the third party is subject to regulation by the *Bar Standards Board* or by another *approved regulator*.

II.C5.R12. You must not have a material commercial interest in any organisation which gives the impression of being, or may be reasonably perceived as being, subject to the regulation of the *Bar Standards Board* or of another *approved regulator*, in circumstances where it is not so regulated.

II.C5.R13. A material commercial interest for the purposes of Rules II.C5.R6 to II.C5.R12 is an interest which an objective observer with knowledge of the salient facts would reasonably consider might potentially influence your judgment.

Guidance on Rules II.C5.R6 to II.C5.R12 and CD5

II.C5.G16. You may not use an association with the purpose of, or in order to evade rules which would otherwise apply to you. You may not do anything, practising in an *association*, which you are individually prohibited from doing.

II.C5.G17. You will bring yourself and your profession into disrepute (CD5) if you are personally involved in arrangements which breach the restrictions imposed by the Legal Services Act 2007 on those who can provide reserved legal activities. For example, you must not remain a member of any “ProcureCo” arrangement where you know or are reckless as to whether the ProcureCo is itself carrying on reserved legal activities without a licence or where you have failed to take reasonable steps to ensure this is not so before joining or continuing your involvement with the Procureco.

II.C5.G18. The purpose of Rules II.C5.R6 to II.C5.R12 is to ensure that *clients* and members of *the public* are not confused by any such association. In particular, the public should be clear who is responsible for doing work, and about the extent to which that person is regulated in doing it: see Rules II.C3.R5 and II.C3.R8.

II.C5.G19. This *Handbook* applies in full whether or not you are practising in an association. You are particularly reminded of the need to ensure that, notwithstanding any such association, you continue to comply with Rules II.C2.R1,

II.C2.R2, II.C2.R3, II.C2.R5, II.C3.R1, II.C3.R5, II.C3.R6, II.C3.R14, II.C5.R1, II.C5.R3, II.C5.R7, II.C5.R10 and II.C5.R14 (and, where relevant II.C5.R8, II.C5.R9, II.C5.R11 and II.C5.R2) and [Rule 12 of section E]

II.C5.G20. References to "organisation" in Rules II.C5.R9 and 10 include ~~BSB authorised bodies~~ and *authorised (non-BSB) bodies*, as well as non-authorised bodies. So, if you have an interest, as owner, or manager, in any such body, your relationship with any such organisation is caught by these rules.

II.C5.G21. These rules do not permit you to accept *instructions* from a third party in any case where that would give rise to a potential conflict of interest contrary to CD2 or any relevant part of Rule II.C3.R7.

II.C5.G22. You should only refer a *client* to an organisation in which you have a material commercial interest if it is in the *client's* best interest to be referred to that organisation. This is one aspect of what is required of you by CD2. Your obligations of honesty and integrity, in CD3, require you to be open with *clients* about any interest you have in, or arrangement you have with, any organisation to which you properly refer the *client*, or from which the *client* is referred to you. It is inherently unlikely that a general referral arrangement obliging you (whether or not you have an interest in such organisation) to refer to that organisation, without the option to refer elsewhere if the *client's* circumstances make that more appropriate, could be justified as being in the best interests of each individual *client* (CD2) and it may well also be contrary to your obligations of honesty and integrity (CD3) and compromise your independence (CD4).

II.C5.G23. The *Bar Standards Board* may require you to provide copies of any protocols that you may have in order to ensure compliance with these rules.

II.C5.G24. Your obligations under CD5 require you not to act in an *association* with a person where, merely by being associated with such person, you may reasonably be considered as bringing the profession into disrepute or otherwise diminishing the trust that the public places in you and your profession.

II.C5.G25. Members of *chambers* are not in partnership but are independent of one another and are not responsible for the conduct of other members. However, each individual member of *chambers* is responsible for his own conduct and the

constitution of *chambers* enables, or should enable, each individual member of *chambers* to take steps to terminate another person's membership in specified circumstances. Rule II.C5.R6 does not require you to sever connection with a member of *chambers* solely because to your knowledge he or she is found to breach this *Handbook*, provided that he or she is not disbarred and complies with such sanctions as may be imposed for such breach; however, your *chambers* constitution should be drafted so as to allow you to exclude from *chambers* a member whose conduct is reasonably considered such as to diminish the trust the public places in you and your profession and you should take such steps as are reasonably available to you under your constitution to exclude any such member.

Outsourcing

II.C5.R14. Where you outsource to a third party any support services that are critical to the delivery of any *legal services* in respect of which you are instructed:

II.C5.R14.1 any outsourcing does not alter your obligations to your *client*;

II.C5.R14.2 you remain responsible for compliance with your obligations under this *Handbook* in respect of the *legal services*;

II.C5.R14.3 you must ensure that such outsourcing is subject to contractual arrangements which ensure that such third party:

- (a) is subject to confidentiality obligations similar to the confidentiality obligations placed on you in accordance with this *Handbook*;
- (b) complies with any other obligations set out in this Code of Conduct which may be relevant to or affected by such outsourcing;
- (c) processes any personal data in accordance with your *instructions* and, for the avoidance of doubt, as though it were a data controller under the Data Protection Act; and
- (d) is required to allow the *Bar Standards Board* or its agent to obtain information from, inspect the records (including electronic records) of, or enter the premises of such third party in relation to the outsourced activities or functions.

Guidance on Rule II.C5.R13

- II.C5.G26. Rule II.C5.R14 applies to the outsourcing of clerking services.
- II.C5.G27. Rule II.C5.R14 does not apply where the *client* enters into a separate agreement with the third party for the services in question.
- II.C5.G28. Rule II.C5.R14 does not apply where you are instructing a *pupil* or a *devil* to undertake work on your behalf. Instead II.C3.R1 will apply in those circumstances.
- II.C5.G29. Notwithstanding Rule II.C5.R14.3(c), you are still likely to remain the data controller of the personal data in question. Therefore, Rule II.C5.R14.3(c) does not relieve you of your obligations to comply with the Data Protection Act in respect of such data.

C5.2 ADMINISTRATION AND CONDUCT OF SELF-EMPLOYED PRACTICE

- II.C5.R15. You must take reasonable steps to ensure that:
- II.C5.R15.1 your practice is efficiently and properly administered having regard to the nature of your practice; and
 - II.C5.R15.2 proper records of your practice are kept.

Guidance on Rule II.C5.R14

- II.C5.G30. Please refer to the *Bar Standards Board* website [[hyperlink here](#)] for further guidance about what constitutes proper records for the purposes of Rule II.C5.R15.2.

- II.C5.R16. You must:
- II.C5.R16.1 ensure that adequate records supporting the fees charged or claimed in a case are kept at least until the later of the following:
 - (a) your fees have been paid; and
 - (b) any determination or assessment of costs in the case has been completed and the time for lodging an appeal against that assessment

or determination has expired without any such appeal being lodged, or any such appeal has been finally determined;

II.C5.R16.2 provide your *client* with such records or details of the work you have done as may reasonably be required for the purposes of verifying your charges.

C5.3 ADMINISTRATION OF CHAMBERS

II.C5.R17. Taking into account the provisions of Rule II.C5.R18, you must take reasonable steps to ensure that:

II.C5.R17.1 your *chambers* is administered competently and efficiently;

II.C5.R17.2 your *chambers* has appointed an individual or individuals to liaise with the *Bar Standards Board* in respect of any regulatory requirements and has notified the *Bar Standards Board*;

II.C5.R17.3 your *chambers* does not employ any person who has been disqualified from being employed by an authorised person or a *licensed body* by another *approved regulator* pursuant to its or their powers as such and such disqualification is continuing in force;

II.C5.R17.4 proper arrangements are made in your *chambers* for dealing with *pupils* and pupillage;

II.C5.R17.5 proper arrangements are made in *chambers* for the management of conflicts of interest and for ensuring the confidentiality of *clients'* affairs;

II.C5.R17.6 all non-authorised persons working in your *chambers* (irrespective of the identity of their *employer*):

- (a) are competent to carry out their duties;
- (b) carry out their duties in a correct and efficient manner;
- (c) are made clearly aware of such provisions of this *Handbook* as may affect or be relevant to the performance of their duties;

- (d) do nothing which causes or substantially contributes to a breach of this *Handbook* by any *BSB authorised individual* ~~or authorised (non-BSB) individual within Chambers,~~

and all *complaints* against them are dealt with in accordance with the *complaints rules*;

II.C5.R17.7 all *registered European lawyers* and all *foreign lawyers* in your *chambers* comply with this *Handbook* insofar as applicable to them;

II.C5.R17.8 appropriate risk management procedures are in place and are being complied with; and

II.C5.R17.9 there are systems in place to check that:

- (a) all persons practising from your *chambers* whether they are members of the *chambers* or not have insurance in place in accordance with Rules II.C5.R3 to II.C5.R5 above (other than any *pupil* who is covered under his *pupil supervisor's* insurance); and
- (b) every *BSB authorised individual* practising from your *chambers* has a current *practising certificate* ~~and every other authorised (non-BSB) individual providing reserved legal activities is currently authorised by their Approved Regulator.~~

II.C5.R18. For the purposes of Rule II.C5.R17 the steps which it is reasonable for you to take will depend on all the circumstances, which include, but are not limited to:

II.C5.R18.1 the arrangements in place in your *chambers* for the management of *chambers*;

II.C5.R18.2 any role which you play in those arrangements; and

II.C5.R18.3 the independence of individual members of *chambers* from one another.

Guidance on Rule II.C5.R16 and II.C5.R17

- II.C5.G31. Your duty under Rule II.C5.R17.4 to have proper arrangements in place for dealing with pupils includes ensuring:
- II.C5.G31.1 that all *pupillage* vacancies are advertised in the manner prescribed by the *Pupillage* Funding and Advertising Rules (II.D.1.3);
 - II.C5.G31.2 that arrangements are made for the funding of *pupils* by *chambers* which comply with the *Pupillage* Funding and Advertising Rules (II.D.1.3);
- II.C5.G32. Your duty under Rule II.C5.R17.5 to have proper arrangements in place for ensuring the confidentiality of each *client's* affairs includes:
- II.C5.G32.1 putting in place and enforcing adequate procedures for the purpose of protecting confidential information;
 - II.C5.G32.2 complying with data protection obligations imposed by law;
 - II.C5.G32.3 taking reasonable steps to ensure that anyone who has access to such information or data in the course of their work for you complies with these obligations; and
 - II.C5.G32.4 taking into account any further guidance on confidentiality which is available on the *Bar Standards Board's* website and which can be accessed here [hyperlink].
- II.C5.G33. In order to ensure compliance with Rule II.C5.R17.6(d), you may want to consider incorporating an obligation along these lines in all new employment contracts entered into after the date of this *Handbook*.
- II.C5.G34. For further guidance on what may constitute appropriate risk management procedures in accordance with Rule II.C5.R17.8 please refer to the further guidance published by the *Bar Standards Board* which can be accessed here [hyperlink].
- II.C5.G35. Rule II.C5.R18.3 means that you should consider, in particular, the obligation of each individual members of *chambers* to act in the best interests of his or her own *client* (CD2) and to preserve the confidentiality of his or her own *client's* affairs (CD6), in circumstances where other members of *chambers* are free (and, indeed, may be obliged by the cab rank rule (II.C3.R15) to act for *clients* with conflicting interests.

~~5.4 ADMINISTRATION OF BSB AUTHORISED BODIES~~

~~Duties of the BSB authorised body, authorised (non-BSB) individuals and BSB regulated managers~~

~~II.C5.R19. — If you are a BSB authorised body, you must ensure that (or, if you are a BSB regulated individual working within such BSB authorised body, you must use reasonable endeavours (taking into account the provisions of Rule II.C5.R23) to procure that the BSB authorised body ensures that):~~

~~II.C5.R19.1 — the BSB authorised body has at all times a person appointed by it to act as its HOLP, who shall be a manager;~~

~~II.C5.R19.2 — the BSB authorised body has at all times a person appointed by it to act as its HOFA; and~~

~~II.C5.R19.3 — subject to II.C5.R19, the BSB authorised body does not appoint any individual to act as a HOLP or a HOFA, or to be a manager or employee of that BSB authorised body, in circumstances where that individual has been disqualified from being appointed to act as a HOLP or a HOFA or from being a manager or employed by an authorised person (as appropriate) by the Bar Standards Board or another Approved Regulator pursuant to its or their powers as such and such disqualification is continuing in force.~~

~~II.C5.R20. — Rule II.C5.R19.3 shall not apply where the BSB authorised body obtains the express written consent of the Bar Standards Board to the appointment of a person who has been disqualified before he is appointed.~~

~~II.C5.R21. — If you are a manager or employee, you must not do anything to cause (or substantially to contribute to) a breach by the BSB authorised body or by any BSB authorised individual in it of their duties under this Handbook.~~

~~II.C5.R22. — If you are a BSB authorised body, you must at all times have (or, if you are a BSB regulated individual working in such BSB authorised body, you must use reasonable endeavours (taking into account the provisions of Rule II.C5.R23) to procure that the BSB authorised body shall have) suitable arrangements to ensure that:~~

~~II.C5.R22.1 the managers and other BSB regulated individuals working as employees of the BSB authorised body comply with the Bar Standards Board's regulatory arrangements as they apply to them, as required under section 176 of the LSA;~~

~~II.C5.R22.2 all employees:~~

- ~~(a) are competent to carry out their duties;~~
- ~~(b) carry out their duties correctly and efficiently;~~
- ~~(c) are made clearly aware of such provisions of this Handbook as may affect or be relevant to the performance of their duties; and~~
- ~~(d) do nothing which causes or substantially contributes to, a breach of this Handbook by the BSB authorised body or any of the BSB regulated individuals employed by it;~~

~~II.C5.R22.3 the BSB authorised body is administered competently and efficiently, is properly staffed and keeps proper records of its practice;~~

~~II.C5.R22.4 pupils and pupillages are dealt with properly;~~

~~II.C5.R22.5 conflicts of interest are managed appropriately and that the confidentiality of clients' affairs is maintained at all times;~~

~~II.C5.R22.6 all registered European lawyers and all foreign lawyers employed by or working for you comply with this Handbook insofar as it applies to them;~~

~~II.C5.R22.7 every BSB authorised individual employed by, or working for, the BSB authorised body has a current practising certificate (except where a barrister is working as an unregistered barrister, in which case there must be appropriate systems to ensure that they are complying with the provisions of this Handbook which apply to unregistered barristers) and every other authorised (non-BSB) individual providing reserved legal activities is currently authorised by their Approved Regulator; and~~

~~II.C5.R22.8 adequate records supporting the fees charged or claimed in a case are kept at least until the later of the following:~~

~~(a) — your fees have been paid; and~~

~~(b) — any determination or assessment of costs in the case has been completed and the time for lodging an appeal against that assessment or determination has expired without any such appeal being lodged, or any such appeal has been finally determined;~~

~~II.C5.R22.9 — your *client* is provided with such records or details of the work you have done as may reasonably be required for the purpose of verifying your charges;~~

~~II.C5.R22.10 — appropriate procedures are in place requiring all *managers* and *employees* to work with the *HOLP* with a view to ensuring that the *HOLP* is able to comply with his obligations under Rule II.C5.R24;~~

~~II.C5.R22.11 — appropriate risk management procedures are in place and are being complied with; and~~

~~II.C5.R22.12 — appropriate financial management procedures are in place and are being complied with.~~

~~II.C5.R23. — For the purposes of Rule II.C5.R19 and II.C5.R22 the steps which it is reasonable for you to take will depend on all the circumstances, which include, but are not limited to:~~

~~II.C5.R23.1 — the arrangements in place in your *BSB authorised body* for the management of it; and~~

~~II.C5.R23.2 — any role which you play in those arrangements.~~

Guidance to Rules II.C5.R19 to II.C5.R22

~~II.C5.G36. — Section 90 of the *LSA* places obligations on *non-authorised individuals* who are *employees* and *managers* of *licensed bodies*, as well as on *non-authorised individuals* who hold an ownership interest in such a *licensed body* (whether by means of a shareholding or voting powers in respect of the same) to do nothing which causes, or substantially contributes to a breach by the *licensed body* or by its *employees* or *managers*, of this *Handbook*. Rule II.C5.R19 extends this obligation to~~

BSB legal services bodies

~~II.C5.G37. — Your duty under Rule II.C5.R22.4 to have proper arrangements for dealing with pupils includes ensuring:~~

~~II.C5.G37.1 — that all pupillage vacancies are advertised in the manner prescribed by the Pupillage Funding and Advertising Rules (II.D.1.3);~~

~~II.C5.G37.2 — that arrangements are made for the funding of *pupils by chambers* which comply with the Pupillage Funding and Advertising Rules (II.D.1.3).~~

Duties of the HOLP/HOFA

~~II.C5.R24. — If you are a *HOLP*, in addition to complying with the more general duties placed on the *BSB authorised body* and on the *BSB regulated individuals* employed by it, you must:~~

~~II.C5.R24.1 — take all reasonable steps to ensure compliance with the terms of your *BSB authorised body's* authorisation;~~

~~II.C5.R24.2 — take all reasonable steps to ensure that the *BSB authorised body* and its *employees and managers* comply with the duties imposed by section 176 of the *LSA*;~~

~~II.C5.R24.3 — take all reasonable steps to ensure that *non-authorised individuals* subject to the duty imposed by section 90 of the *LSA* comply with that duty;~~

~~II.C5.R24.4 — keep a record of all incidents of non-compliance with the Core Duties and this *Handbook* of which you become aware and to report such incidents to the Bar Standards Board as soon as reasonably practicable (where such failures are material in nature) or otherwise on request by the *Bar Standards Board* or during the next monitoring visit or review by the *Bar Standards Board*.~~

~~II.C5.R25. — If you are a *HOFA*, in addition to complying with the more general duties placed on the *BSB authorised body* and its *BSB regulated individuals*, you must ensure compliance with Rules II.C5.R1 and II.C5.R2.~~

New managers/HOLP/HOFA

~~II.C5.R26. — A BSB authorised body must not take on a new manager, HOLP or HOFA without first submitting an application to the Bar Standards Board for approval in accordance with the requirements of Section III.D.~~

D. RULES APPLYING TO PARTICULAR GROUPS OF REGULATED PERSONS

D1. SELF-EMPLOYED BARRISTERS, ~~CHAMBERS AND BSB AUTHORISED BODIES~~

Outcomes

- II.D1.O1. *Clients* know that they can make a *complaint* if dissatisfied, and know how to do so.
- II.D1.O2. *Complaints* are dealt with promptly and the *client* is kept informed about the process.
- II.D1.O3. *Self-employed barristers, chambers and BSB authorised bodies* run their practices without *discrimination*.
- II.D1.O4. *Pupils* are treated fairly and all vacancies for *pupillages* are advertised openly.

Rules

D1.1 COMPLAINTS RULES

Provision of information to clients

- II.D1.R1. You must notify *clients* in writing when you are *instructed*, or, if that is if not practicable, at the next appropriate opportunity:
- II.D1.R1.1 of their right to make a *complaint*, including their right to complain to the *Legal Ombudsman* (if they have such a right), how, and to whom, they can complain, and of any time limits for making a *complaint*,
- II.D1.R1.2 if you are doing referral work, that the lay *client* may complain directly to *chambers* or the ~~BSB authorised body~~ without going through *solicitors*.
- II.D1.R2. If you are doing public access, or *licensed access* work using an *intermediary*, the *intermediary* must similarly be informed.
- II.D1.R3. If you are doing referral work, you do not need to give a *professional client* the information set out in Rules II.D1.R1.1 and II.D1.R1.2, in a separate, specific letter. It

is enough to provide it in the ordinary terms of reference letter (or equivalent letter) which you send when you accept *instructions* in accordance with Rule II.C3.R7.

II.D1.R4. If you do not send a letter of engagement to a lay *client* in which this information can be included, a specific letter must be sent to him giving him the information set out at Rules II.D1.R1.1 and II.D1.R1.2.

~~II.D1.R5. *Chambers'* websites and literature must display information about the *chambers'* complaints procedure. A ~~BSB's authorised body's~~ website and literature must carry information about that ~~BSB authorised body's~~ Complaints Procedure.~~

Response to complaints

II.D1.R6. All *complaints* must be acknowledged promptly. When you acknowledge a *complaint*, you must you must give the complainant:

II.D1.R6.1 the name of the person who will deal with the *complaint* and a description of that person's role in *chambers* or in the ~~BSB authorised body~~ (as appropriate);

II.D1.R6.2 a copy of the *chambers'* complaints procedure or the ~~BSB authorised body's~~ Complaints Procedure (as appropriate);

II.D1.R6.3 the date by which the complainant will next hear from *chambers* or the ~~BSB authorised body~~ (as appropriate).

II.D1.R7. When *chambers* has dealt with the *complaint*, complainants must be told in writing of their right to complain to the *Legal Ombudsman* (where applicable), of the time limit for doing so, and how to contact him.

Documents and Record Keeping

II.D1.R8. All communications and documents relating to *complaints* must be kept confidential. They must be disclosed only so far as is necessary for:

II.D1.R8.1 the investigation and resolution of the *complaint*;

II.D1.R8.2 internal review in order to of improve *chambers'* handling of complaints;

- II.D1.R8.3 complying with requests from the *Bar Standards Board* in the exercise of its monitoring and/or auditing functions.
- II.D1.R9. The disclosure to the *Bar Standards Board* of internal documents relating to the handling of the *complaint* (such as the minutes of any meeting held to discuss a particular *complaint*) for the further resolution or investigation of the *complaint* is not required.
- II.D1.R10. A record must be kept of each *complaint*, of all steps taken in response to it, and of the outcome of the *complaint*. Copies of all correspondence, including electronic mail, and all other documents generated in response to the *complaint* must also be kept. The records and copies should be kept for 6 years from resolution of the *complaint*.
- II.D1.R11. The person responsible for the administration of the procedure must report at least annually to ~~either~~:
- II.D1.R11.1 ~~the HOLP; or~~
- II.D1.R11.2 the appropriate member/committee of *chambers*,
- on the number of *complaints* received, on the subject areas of the *complaints* and on the outcomes. The *complaints* should be reviewed for trends and possible *training* issues.

D1.2 EQUALITY AND DIVERSITY

- II.D1.R12. You must take reasonable steps to ensure that in relation to your *chambers* ~~or BSB authorised body~~:
- II.D1.R12.1 there is in force a written statement of policy on equality and diversity;
and
- II.D1.R12.2 there is in force a written plan implementing that policy;
- II.D1.R12.3 the following requirements are complied with:

Equality and Diversity Officer

- (a) ~~chambers or BSB authorised body~~ has at least one *Equality and Diversity Officer*;

Training

- (b) except in unforeseen and exceptional circumstances, the person with lead responsibility for any *selection panel* and at least one member of any *selection panel* (who may be the same person) has received recent and appropriate *training* in fair recruitment and selection processes;
- (c) save in exceptional circumstances, every member of all *selection panels* has been trained in fair recruitment and selection processes;

Fair and Objective Criteria

- (d) recruitment and selection processes use objective and fair criteria;

Equality monitoring

- (e) your ~~chambers or BSB authorised body~~:
- (i) conducts a *regular review* of its policy on equality and diversity and of its implementation in order to ensure that it complies with the requirements of this Rule II.D1.R12; and
 - (ii) takes any appropriate *remedial action* identified in the light of that review;
- (f) subject to Rule II.D1.R12.3(h), ~~chambers or BSB authorised body~~ regularly reviews:
- (i) the number and percentages of its *workforce* from different groups; and
 - (ii) applications to become a member of its *workforce*; and
 - (iii) in the case of *chambers*, the *allocation of unassigned work*,

- (g) the reviews referred to in Rule II.D1.R12.3(f) above include:
- (i) collecting and analysing data broken down by race, disability and gender;
 - (ii) *investigating* the reasons for any disparities in that data; and
 - (iii) taking appropriate *remedial action*;
- (h) the requirement to collect the information referred to in Rule II.D1.R12(3)(f) does not apply to the extent that the people referred to in Rule II.D1.R12(f)(i) and Rule II.D1.R12(f)(ii) refuse to disclose it.

Fair access to work

- (i) if you are a *self-employed barrister*, the affairs of your *chambers* are conducted in a manner which is fair and equitable for all members of *chambers, pupils* and/or *employees* (as appropriate). This includes, but is not limited to, the fair distribution of work opportunities among *pupils* and members of *chambers*;

Harassment

- (j) ~~chambers or BSB authorised body~~ has a written anti-*harassment* policy which, as a minimum:
- (i) states that *harassment* will not be tolerated or condoned and that ~~managers, employees,~~ members of *chambers, pupils* and others temporarily in your *chambers or BSB authorised body* such as mini-pupils have a right to complain if it occurs;
 - (ii) sets out how the policy will be communicated;
 - (iii) sets out the procedure for dealing with *complaints of harassment*;

Parental leave

- (k) ~~chambers~~ has a *parental leave* policy which, in the case of a ~~chambers~~, must cover as a minimum:
- (i) the right of a member of *chambers* to return to *chambers* after a specified period (which must be at least one year) of parental or adoption leave;
 - (ii) the extent to which a member of *chambers* is or is not required to contribute to *chambers'* rent and expenses during *parental leave*;
 - (iii) the method of calculation of any waiver, reduction or reimbursement of *chambers'* rent and expenses during *parental leave*;
 - (iv) where any element of rent is paid on a flat rate basis, the *chambers* policy must as a minimum provide that *chambers* will offer members taking a period of *parental leave*, or leave following adoption, a minimum of 6 months free of *chambers'* rent;
 - (v) the procedure for dealing with grievances under the policy;
 - (vi) *chambers'* commitment to regularly review the effectiveness of the policy;

Flexible Working

- (l) ~~chambers or BSB authorised body~~ has a flexible working policy which covers the right of a member of *chambers*, ~~manager~~ or *employee* (as the case may be) to take a career break, to work part-time, to work flexible hours, or to work from home, so as to enable him to manage his *family responsibilities* or disability without giving up work;

Reasonable Adjustments Policy

- (m) ~~chambers or BSB authorised body~~ has a reasonable adjustments policy aimed at supporting disabled *clients*, its *workforce* and others including temporary visitors;

Appointment of Diversity Data Officer

- (n) ~~chambers or BSB authorised body~~ has a Diversity Data Officer;
- (o) ~~chambers or BSB authorised body~~ must provide the name and contact details of the Diversity Data Officer to the *Bar Standards Board* and must notify the *Bar Standards Board* of any change to the identity of the Diversity Data Officer, as soon as reasonably practicable;

Responsibilities of Diversity Data Officer

- (p) The Diversity Data Officer shall comply with the requirements in relation to the collection, processing and publication of *diversity data* set out in the paragraphs (q) to (t) below;

Collection and Publication of Diversity Data

- (q) The Diversity Data Officer shall invite the members of the *workforce* to provide *diversity data* in respect of themselves to the Diversity Data Officer using the model questionnaire at Annex C of the BSB Guidance on these Rules;
- (r) The Diversity Data Officer shall ensure that such data is anonymised and that an accurate and updated summary of it is published on ~~chambers' or BSB authorised body's~~ website every three years. If ~~chambers or the BSB authorised body~~ does not have a website, the Diversity Data Officer shall make such data available to the public on request;
- (s) The published summary of anonymised data shall:
- (i) exclude *diversity data* relating to the characteristics of sexual orientation and religion or belief, unless there is consent from each of the members of the *workforce*; and

- (ii) exclude diversity data in relation to any characteristic where there is a real risk that individuals could be identified, unless all affected individuals consent; and
 - (iii) subject to the foregoing, include anonymised data in relation to each characteristic, categorised by reference to the job title and seniority of the *workforce*.
- (t) The Diversity Data Officer shall:
- (i) ensure that ~~chambers or BSB authorised body~~ has in place a written policy statement on the collection, publication, retention and destruction of *diversity data* which shall include an explanation that the provision of *diversity data* is voluntary;
 - (ii) notify the *workforce* of the contents of the written policy statement; and
 - (iii) ask for explicit consent from the *workforce* to the provision and processing of their *diversity data* in accordance with the written policy statement and these rules, in advance of collecting their *diversity data*.

II.D1.R13. For the purposes of Rule II.D1.R12 above, the steps which it is reasonable for you to take will depend on all the circumstances, which include, but are not limited to:

II.D1.R13.1 the arrangements in place in your ~~chambers or BSB authorised body~~ for the management of ~~chambers or the BSB authorised body~~; and

II.D1.R13.2 any role which you play in those arrangements.

II.D1.R14. For the purposes Rule II.D1.R12 above “allocation of unassigned work” includes, but is not limited to work allocated to:

II.D1.R14.1 *pupils*;

II.D1.R14.2 *barristers* of fewer than four *years' standing*; and

II.D1.R14.3 *barristers* returning from *parental leave*;

Guidance to Rule II.D1.R12 and Rule II.D1.R13

II.D1.G1. Rule II.D1.R12 places a personal obligation on all *self-employed barristers*, however they practise, ~~and on the managers of BSB authorised bodies, as well as on the entity itself,~~ to take reasonable steps to ensure that they have appropriate policies which are enforced.

II.D1.G2. In relation to Rule II.D1.R12, if you are a Head of *chambers* ~~or a HOLP~~ it is likely to be reasonable for you to ensure that you have the policies required by Rule II.D1.R12, that an *Equality and Diversity Officer* is appointed to monitor compliance, and that any breaches are appropriately punished. If you are a member of a *chambers* you are expected to use the means available to you under your constitution to take reasonable steps to ensure there are policies and that they are enforced. ~~If you are a manager of a BSB authorised body, you are expected to take reasonable steps to ensure that there are policies and that they are enforced.~~

II.D1.G3. For the purpose of Rule II.D1.R12 training means any course of study covering all the following areas:

- a) Fair and effective selection & avoiding unconscious methods of discrimination
- b) Attraction and advertising
- c) Application processes
- d) Shortlisting skills
- e) Interviewing skills
- f) Assessment and making a selection decision
- g) Monitoring and evaluation

II.D1.G4. Training may be undertaken in any of the following ways:

- a) Classroom sessions.
- b) Online sessions
- c) Private study of relevant materials and guidance.
- d) Completion of CPD covering fair recruitment and selection processes

II.D1.G5. The purpose of Rule II.D1.R12.3(d) is to ensure that *applicants* with relevant characteristics are not refused *employment* because of such characteristics. In order to ensure compliance with this rule, therefore, it is anticipated that the *Equality and Diversity Officer* will compile and retain data about the relevant characteristics of all *applicants* for the purposes of reviewing the data in order to see whether there are any apparent disparities in recruitment.

II.D1.G6. For the purpose of Rule II.D1.R12 “regular review”, means as often as is necessary in order to ensure effective monitoring and review takes place. In respect of data on pupils it is likely to be considered reasonable that "regularly" should mean annually. In respect of ~~managers of a BSB authorised body~~ or tenants, it is likely to be considered reasonable that "regularly" should mean every three years unless the numbers change to such a degree as to make more frequent monitoring appropriate.

II.D1.G7. For the purposes of Rule II.D1.R12, “remedial action” means any action aimed at removing or reducing the disadvantage experienced by particular relevant groups. Remedial action cannot, however, include positive discrimination in favour of members of relevant groups.

II.D1.G8. Rule II.D1.R12.3(f)(iii) places an obligation on *practices* to take reasonable steps to ensure the work opportunities are shared fairly among its *workforce*. In the case of *chambers*, this obligation includes work which has not been allocated by the solicitor to a named *barrister*. It includes fairness in presenting to solicitors names for consideration and fairness in opportunities to attract future named work (for example, fairness in arrangements for marketing). These obligations apply even if individual members of *chambers* ~~incorporate their practices, or~~ use a "ProcureCo" to obtain or distribute work, as long as their relationship between each other remains one of independent service providers competing for the same work while sharing clerking arrangements and costs.

II.D1.G9. Rule 12.3(k)(iv) sets out the minimum requirements which must be included in a parental and adoption leave policy if any element of rent is paid on a flat rate. If rent is paid on any other basis, then the policy should be drafted so as not to put any *self-employed barrister* in a worse position than he would have been in if any element of the rent were paid on a flat rate.

II.D1.G10. For the purposes of Rule II.D1.R12 above investigation means, considering the reasons for disparities in data such as:

- (a) Under or overrepresentation of particular groups e.g. men, women, different ethnic groups or disabled people
- (b) Absence of particular groups e.g. men, women, different ethnic groups

or disabled people.

- (c) Success rates of particular groups.
- (d) In the case of *chambers*, over or under allocation of unassigned work to particular groups

II.D1.G11. These rules are supplemented by the equality and diversity good practice guidelines ("*The Guidelines*"). [add hyperlink] These describe the legal and regulatory requirements relating to equality and diversity and provide guidance on how they should be applied in *chambers* and in ~~BSB authorised bodies~~. If you are a ~~self-employed barrister, a BSB authorised body, or a manager of a BSB authorised body~~, you should seek to comply with *the Guidelines* as well as with the rules as set out above.

II.D1.G12. *The Guidelines* are also relevant to all *pupil supervisors* and *authorised training organisations*. These will be expected to show how they comply with *the Guidelines* as a condition of authorisation.

II.D1.G13. Although *the Guidelines* do not apply directly to *BSB authorised persons* working as *employed barristers* (non-authorised bodies) or *employed barristers (authorised non-BSB body)*, they provide helpful guidance which you are encouraged to take into account in your practice.

D1.3 PUPILLAGE FUNDING

Funding

II.D1.R15. The members of a set of ~~*chambers* or *the BSB authorised body*~~ must pay to each non-practising *pupil* (as appropriate), by the end of each month of the non-practising six months of his *pupillage* no less than:

II.D1.R15.1 the *specified amount*, and

II.D1.R15.2 such further sum as may be necessary to reimburse expenses reasonably incurred by the *pupil* on:

- (a) travel for the purposes of his *pupillage* during that month; and

- (b) attendance during that month at courses which he is required to attend as part of his *pupillage*.

II.D1.R16. The members of a set of *chambers*, ~~or the BSB authorised body~~, must pay to each practising *pupil* by the end of each month of the practising six months of his *pupillage* no less than:

II.D1.R16.1 the *specified amount*, plus

II.D1.R16.2 such further sum as may be necessary to reimburse expenses reasonably incurred by the *pupil* on:

- (a) travel for the purposes of his *pupillage* during that month; and
- (b) attendance during that month at courses which he is required to attend as part of his *pupillage*; less
- (c) such amount, if any, as the *pupil* may receive during that month from his *practice* as a *barrister*, and less
- (d) such amounts, if any, as the *pupil* may have received during the preceding months of his practising *pupillage* from his *practice* as a *barrister*, save to the extent that the amount paid to the *pupil* in respect of any such month was less than the total of the sums provided for in sub-paragraphs (a) and (b) above.

II.D1.R17. The members of a set of *chambers*, ~~or the BSB authorised body~~, may not seek or accept repayment from a *chambers pupil* ~~or an entity pupil~~ of any of the sums required to be paid under Rules II.D1.R14 and II.D1.R15 above, whether before or after he ceases to be a *chambers pupil* ~~or an entity pupil~~, save in the case of misconduct on his part.

II.D1.R18. If you are a *self-employed barrister*, you must pay any *chambers pupil* for any work done for you which because of its value to you warrants payment, unless the *pupil* is receiving an award or remuneration which is paid on terms that it is in lieu of payment for any individual item of work.

Application

II.D1.R19. The requirements set out in Rules II.D1.R14 to II.D1.R17 above:

II.D1.R19.1 do not apply in the case of *pupils* who were granted exemption from the *vocational stage of training* under Rule IV.B6.R1;

II.D1.R19.2 do not apply in the case of *pupils* who are doing a period of *pupillage* in a set of *chambers*, ~~or in a BSB authorised body~~, as part of a *training* programme offered by another organisation which is authorised by the *Bar Standards Board* to take *pupils*;

II.D1.R19.3 do not apply in the case of *pupils* who have completed both the non-practising and the practising six months of *pupillage*;

II.D1.R19.4 save as provided in Rule II.D1.R19.3 above, do not apply in respect of any period after a *pupil* ceases, for whatever reason, to be a *chambers pupil* ~~or an entity pupil~~; and

II.D1.R19.5 may be waived in part or in whole by the *Pupillage Funding Committee* of the BSB.

II.D1.R20. For the purposes of these requirements:

II.D1.R20.1 “*chambers pupil*” means, in respect of any set of *chambers*, a *pupil* doing the non-practising or practising six months of *pupillage* with a *pupil supervisor*, or *pupil supervisors*, who is or are a member, or members, of that set of *chambers*;

~~II.D1.R20.2 “entity pupil” means, in respect of a BSB authorised body, a pupil doing the non-practising or practising six months of pupillage with a pupil-master or pupil-masters who are managers or employees of such BSB authorised body;~~

II.D1.R20.3 “non-practising *pupil*” means a *chambers pupil* ~~or an entity pupil~~ doing the non-practising six months of *pupillage*;

II.D1.R20.4 “practising *pupil*” means a *chambers pupil* ~~or an entity pupil~~ doing the practising six months of *pupillage*;

II.D1.R20.5 “month” means calendar month starting on the same day of the month as that on which the *pupil* began the non-practising, or practising, six months *pupillage*, as the case may be;

II.D1.R20.6 any payment made to a *pupil* by a *barrister* pursuant to Rule II.D1.R17 above shall constitute an amount received by the *pupil* from his *practice* as a *barrister*, and

II.D1.R20.7 the following travel by a *pupil* shall not constitute travel for the purposes of his *pupillage*:

- (a) travel between his home and *chambers* ~~or, for an entity *pupil*, his place of work~~; and
- (b) travel for the purposes of his *practice* as a *barrister*.

D2. BARRISTERS UNDERTAKING PUBLIC ACCESS AND LICENSED ACCESS WORK

Outcomes

- II.D2.O1. *Barristers* undertaking public access or licensed access work have the necessary skills and experience required to do work on that basis.
- II.D2.O2. *Barristers* undertaking public access or licensed access work maintain appropriate records in respect of such work.
- II.D2.O3. *Clients* only instruct via public access when it is in their interests to do so and they fully understand what is expected of them

Rules

D2.1 PUBLIC ACCESS RULES

- II.D2.R1. These rules apply to *barristers* instructed by or on behalf of a lay *client* (other than a *licensed access client*) who has not also instructed a *solicitor* or other *professional client* (public access clients). Guidance on public access rules is available on the *Bar Standards Board website* [insert hyperlink]
- II.D2.R2. Before accepting any *public access instructions* from or on behalf of a *public access client*, a *barrister* must:
- II.D2.R2.1 be properly qualified by having been issued with a full *practising certificate*, by having satisfactorily completed the appropriate public access training, and by registering with the *Bar Council* as a public access practitioner;
- II.D2.R2.2 if a barrister was already registered with the *Bar Council* to undertake public access work on [insert date] then he must undertake any additional training required by the *Bar Standards Board* within 24 months of that date or cease to undertake public access work;
- II.D2.R2.3 take such steps as are reasonably necessary to ascertain whether it would be in the best interests of the *client* or in the interests of justice for *the* public access client to instruct a *solicitor* or other *professional client*, and

- II.D2.R2.4 take such steps as are reasonably necessary to ensure that the *client* is able to make an informed decision about whether to apply for legal aid or whether to proceed with public access.
- II.D2.R3. A barrister with less than three *years' standing* who has completed the necessary training must:
- II.D2.R3.1 Have a *barrister* who is a qualified person within Rule III.B2.R7.2 and has registered with the *Bar Council* as a public access practitioner readily available to provide guidance to the barrister;
- II.D2.R3.2 Maintain a log of public access cases they have dealt with, including any issues or problems which have arisen;
- II.D2.R3.3 Seek appropriate feedback from their public access *clients* on the service provided;
- II.D2.R3.4 Make this log available, on request, to the *Bar Standards Board* for review.
- II.D2.R4. A *barrister* may not accept direct *instructions* from or on behalf of a public access *client* in or in connection with any matter of proceedings in which, in all the circumstances, it would be in the best interests of the public access *client* or in the interests of justice for the public access *client* to instruct a *solicitor* or other *professional client*.
- II.D2.R5. In any case where a *barrister* is not prohibited from accepting *instructions*, the *barrister* must at all times consider the developing circumstances of the case, and whether at any stage it is in the best interests of the public access *client* or in the interests of justice for the public access *client* to instruct a *solicitor* or other *professional client*. If, after accepting direct *instructions* from a public access *client* a *barrister* forms the view that circumstances are such that it would be in the best interests of the public access *client*, or in the interests of justice for the public access *client* to instruct a *solicitor* or other *professional client* the *barrister* must:
- II.D2.R5.1 inform the public access *client* of his view; and

II.D2.R5.2 withdraw from the case in accordance with the provisions of Rules II.C3.R11 and II.C3.R12 and associated guidance unless the *client* instructs a *solicitor* or other *professional client* to act in the case.

II.D2.R6. A *barrister* must have regard to guidance published from time to time by the *Bar Standards Board* in considering whether to accept and in carrying out any *public access instructions*.

II.D2.R7. A *barrister* who accepts *public access instructions* must forthwith notify his public access *client* in writing, and in clear and readily understandable terms, of:

II.D2.R7.1 the work which the *barrister* has agreed to perform;

II.D2.R7.2 the fact that in performing his work the *barrister* will be subject to the requirements of Parts II and III of this *Handbook* and, in particular, Rules II.C3.R11 and II.C3.R12;

II.D2.R7.3 unless authorised to *conduct litigation* by the *Bar Standards Board*, the fact that the *barrister* cannot be expected to perform the functions of a *solicitor* or other authorised litigator and in particular to fulfil limitation obligations, disclosure obligations and other obligations arising out of or related to the *conduct of litigation*;

II.D2.R7.4 the fact that the *barrister* is a sole practitioner, is not a *member* of a firm and does not take on any arranging role;

II.D2.R7.5 in any case where the *barrister* has been instructed by an *intermediary*:

(a) the fact that the *barrister* is independent of and has no liability for the *intermediary*; and

(b) the fact that the *intermediary* is the agent of the lay *client* and not the agent of the *barrister*;

II.D2.R7.6 the fact that the *barrister* may be prevented from completing the work by reason of his professional duties or conflicting professional obligations, and what the *client* can expect of the *barrister* in such a situation;

- II.D2.R7.7 the fees which the *barrister* proposes to charge for that work, or the basis on which his fee will be calculated;
- II.D2.R7.8 the *barrister's* contact arrangements; and
- II.D2.R7.9 the information about the *barrister's* complaints procedure required by E1 of this Part II
- II.D2.R8. Save in exceptional circumstances, a *barrister* will have complied with Rule II.D2.R6 above if he has written promptly to the public access *client* in the terms of the model letter provided on the *Bar Standards Board* website.
- II.D2.R9. In any case where a *barrister* has been instructed by an *intermediary*, he must give the notice required by Rule II.D2.R6 above both:
- II.D2.R9.1 directly to the public access *client*; and
- II.D2.R9.2 to the *intermediary*.
- II.D2.R10. A *barrister* who accepts *public access instructions* must keep a case record which sets out:
- II.D2.R10.1 the date of receipt of the *instructions*, the name of the lay *client*, the name of the case, and any requirements of the *client* as to time limits;
- II.D2.R10.2 the date on which the *instructions* were accepted;
- II.D2.R10.3 the dates of subsequent *instructions*, of the despatch of advices and other written work, of conferences and of telephone conversations;
- II.D2.R10.4 when agreed, the fee.
- II.D2.R11. A *barrister* who accepts *public access instructions* must either himself retain or take reasonable steps to ensure that the lay *client* will retain for at least seven years after the date of the last item of work done:
- II.D2.R11.1 copies of all *instructions* (including supplemental *instructions*);
- II.D2.R11.2 copies of all advices given and documents drafted or approved;

II.D2.R11.3 the originals, copies or a list of all documents enclosed with any *instructions*;

II.D2.R11.4 notes of all conferences and of all advice given on the telephone.

II.D2.R12. A *barrister* who has accepted *public access instructions* may undertake correspondence where it is ancillary to permitted work, and in accordance with the guidance published by the *Bar Standards Board*.

II.D2.R13. Save where otherwise agreed:

II.D2.R13.1 a *barrister* shall be entitled to copy all documents received from his lay *client*, and to retain such copies permanently;

II.D2.R13.2 a *barrister* shall return all documents received from his lay *client* on demand, whether or not the *barrister* has been paid for any work done for the lay *client*;

II.D2.R13.3 a *barrister* shall not be required to deliver to his lay *client* any documents drafted by the *barrister* in advance of receiving payment from the lay *client* for all work done for that *client*;

II.D2.R13.4 a *barrister* who has accepted *public access instructions* in any civil matter may take a proof of evidence from his *client* in that matter.

D2.2 LICENSED ACCESS RULES

II.D2.R14. Subject to these rules and to compliance with the Code of Conduct (and to the *Scope of Practice, Authorisation and Licensing Rules*) a *barrister* in self-employed *practice* may accept *instructions* from a *licensed access client* in circumstances authorised in relation to that *client* by the Licensed Access Recognition Regulations whether that *client* is acting for himself or another.

II.D2.R15. These rules apply to every matter in which a *barrister* in self-employed *practice* is instructed by a *licensed access client* save that Rules II.D2.R16.2, II.D2.R18, II.D2.R19 and II.D2.R21 do not apply to any matter in which a *licensed access client* is deemed to be a *licensed access client* by reason only of paragraph 7 or paragraph 8 of the Licensed Access Recognition Regulations.

II.D2.R16. A *barrister* is only entitled to accept *instructions* from a *licensed access client* if at the time of giving *instructions* the *licensed access client*

II.D2.R16.1 is identified; and

II.D2.R16.2 sends the *barrister* a copy of the Licence issued by the *Bar Standards Board*.

II.D2.R17. A *barrister* must not accept any *instructions* from a *licensed access client*:

II.D2.R17.1 unless the *barrister* and his *chambers* are able to provide the services required of them by that *licensed access client*;

II.D2.R17.2 if the *barrister* considers it in the interests of the lay *client* or the interests of justice that a *solicitor* or other authorised litigator or some other appropriate *intermediary* (as the case may be) be instructed either together with or in place of the *barrister*.

II.D2.R18. A *barrister* who accepts *instructions* from a *licensed access client* otherwise than on the terms of the *Licensed Access Terms of Work*:

II.D2.R18.1 must first agree in writing the terms upon which he has agreed to do the work and the basis upon which he is to be paid;

II.D2.R18.2 must keep a copy of the agreement in writing with the *licensed access client* setting out the terms upon which he has agreed to do the work and the basis upon which he is to be paid.

II.D2.R19. A *barrister* who accepts *instructions* from a *licensed access client*:

II.D2.R19.1 must promptly send the *licensed access client*.

II.D2.R19.2 a statement in writing that the *instructions* have been accepted (as the case may be) (1) on the standard terms previously agreed in writing with that *licensed access client* or (2) on the terms of the *Licensed Access Terms of Work* (and thereafter if requested a copy of the *Licensed Access Terms of Work*); or

II.D2.R19.3 if he has accepted *instructions* otherwise than on such standard terms or on the terms of the *Licensed Access Terms of Work*, a copy of the

agreement in writing with the *licensed access client* setting out the terms upon which he has agreed to do the work and the basis upon which he is to be paid;

II.D2.R19.4 unless he has accepted *instructions* on the terms of the *Licensed Access Terms of Work* or on terms which incorporate the following particulars must at the same time advise the *licensed access client* in writing of:

- (a) the effect of II.C3.R7 as it relevantly applies in the circumstances;
- (b) unless authorised by the *Bar Standards Board* to *conduct litigation*, the fact that the *barrister* cannot be expected to perform the functions of a *solicitor* or other authorised litigator and in particular to fulfil limitation obligations disclosure obligations and other obligations arising out of or related to the *conduct of litigation*;
- (c) the fact that circumstances may require the *client* to retain a *solicitor* or other authorised litigator at short notice and possibly during the case.

II.D2.R20. If at any stage a *barrister* who is instructed by a *licensed access client* considers it in the interests of the lay *client* or the interests of justice that a *solicitor* or other authorised litigator or some other appropriate *intermediary* (as the case may be) be instructed either together with or in place of the *barrister*:

II.D2.R20.1 the *barrister* must forthwith advise the *licensed access client* in writing to instruct a *solicitor* or other authorised litigator or other appropriate *intermediary* (as the case may be); and

II.D2.R20.2 unless a *solicitor* or other authorised litigator or other appropriate *intermediary* (as the case may be) is instructed as soon as reasonably practicable thereafter the *barrister* must cease to act and must return any *instructions*.

II.D2.R21. If at any stage a *barrister* who is instructed by a *licensed access client* considers that there are substantial grounds for believing that the *licensed access client* has in some significant respect failed to comply either with the terms of the Licence granted by the *Bar Standards Board* or (where applicable) with the terms of

the *Licensed Access Terms of Work* the *barrister* must forthwith report the facts to the *Bar Standards Board*.

II.D2.R22. A *barrister* who accepts *instructions* from a *licensed access client* must keep a case record (whether on card or computer) which sets out:

II.D2.R22.1 the date of receipt of the *instructions*, the name of the *licensed access client*, the name of the case, and any requirements of the *licensed access client* as to time limits;

II.D2.R22.2 the date on which the *instructions* were accepted;

II.D2.R22.3 the dates of subsequent *instructions*, of the despatch of advices and other written work, of conferences and of telephone conversations;

II.D2.R22.4 when agreed, the fee.

II.D2.R23. A *barrister* who accepts *instructions* from a *licensed access client* must either himself retain or take reasonable steps to ensure that the *licensed access client* will retain for six years after the date of the last item of work done:

II.D2.R23.1 copies of *instructions* (including supplemental *instructions*);

II.D2.R23.2 copies of all advices given and documents drafted or approved;

II.D2.R23.3 a list of all documents enclosed with any *instructions*;

II.D2.R23.4 notes of all conferences and of all advice given on the telephone.

D3. REGISTERED EUROPEAN LAWYERS

Outcomes

II.D3.01. *Clients are not confused about the qualifications and status of registered European lawyers.*

Rules

II.D3.R1. If you are a *registered European lawyer* and not a *barrister*, you must not hold yourself out to be a *barrister*.

II.D3.R2. You must in connection with all professional work undertaken in England and Wales as a *registered European lawyer*:

II.D3.R2.1 use your *home professional title*;

II.D3.R2.2 indicate the name of your *home professional body* or the *court* before which you are entitled to practise in that *Member State*; and

II.D3.R2.3 indicate that you are registered with the *Bar Standards Board* as a *European lawyer*.

D4. UNREGISTERED BARRISTERS

Outcomes

II.D4.O1. *Clients who receive legal services from unregistered barristers are aware that such unregistered barristers are not subject to the same regulatory safeguards that would apply if they instructed a practising barrister.*

Rules

II.D4.R1. If you are an *unregistered barrister* and you supply *legal services* (other than as provided for in Rule II.D4.R2) to any inexperienced *client* then, before supplying such services:

II.D4.R2.1. you must explain to the *client* that:

- (a) (unless you are supplying *legal services* pursuant to Rule III.B1.R10) you are not acting as a *barrister*;
- (b) you are not subject to those parts of the Code of Conduct and other provisions of this *Handbook* which apply only to *BSB authorised persons*;
- (c) the *Bar Standards Board* will only consider *complaints* about you which concern the Core Duties or those parts of the Code of Conduct and other provisions of this *Handbook* which apply to you;
- (d) (unless you are covered by professional indemnity insurance) you are not covered by professional indemnity insurance;
- (e) they have the right to make a *complaint*, how they can complain, to whom, of any time limits for making a *complaint* but that they have no right to complain to the *Legal Ombudsman* about the services you supply;

II.D4.R2.2. you must get written confirmation from the *client* that you have given this explanation.

For the purposes of this Rule II.D4.R1, an inexperienced *client* includes any individual or other person who would, if you were a *BSB authorised person*, have a right to bring a *complaint* pursuant to the Legal Ombudsman Scheme Rules.

Guidance on Rule II.D4.R1

II.D4.G1. For the purposes of determining whether Rule II.D4.R1 applies, the people who would be entitled to complain to the *Legal Ombudsman* if you were a *BSB authorised person* are:

II.D4.G1.1. an individual; or

II.D4.G1.2. a business or enterprise that was a micro-enterprise within the meaning of Article 1 and Article 2(1) and (3) of the Annex to Commission Recommendation 2003/361/EC (broadly a business or enterprise with fewer than 10 employees and turnover or assets not exceeding €2 million), when it referred the *complaint* to you; or

II.D4.G1.3. a charity with an annual income net of tax of less than £1 million at the time at which the complainant refers the *complaint* to you; or

II.D4.G1.4. a club, association or organisation, the affairs of which are managed by its members or a committee of its members, with an annual income net of tax of less than £1 million at the time at which the complainant refers the *complaint* to you; or

II.D4.G1.5. a trustee of a trust with an asset value of less than £1 million at the time at which the complainant refers the *complaint* to you; or

II.D4.G1.6. a personal representative or beneficiary of the estate of a person who, before he or she died, had not referred the complaint to the *Legal Ombudsman*.

II.D4.R2. Rule II.D4.R1 does not apply to you if you supply *legal services*:

II.D4.R2.1. as an *employee* or *manager* of an *authorised body*;

- II.D4.R2.2. as an *employee* or *manager* of a body subject to regulation by a professional body or regulator;
- II.D4.R2.3. as provided for in Section III.B9 (*Legal Advice Centres*);
- II.D4.R2.4. pursuant to an authorisation that you have obtained from another *approved regulator*, or
- II.D4.R2.5. in accordance with Rules III.B1.8 and 9.

Guidance on Rule II.D4.R2

II.D4.G2. Guidance on the disclosures which unregistered barristers should consider making to *clients* covered by Rule II.D4.R2, and other *clients* who are not inexperienced *clients*, to ensure that they comply with Rule II.C3.R5 and do not mislead those *clients* is available on BSB website [hyperlink]

D5 CROSS-BORDER ACTIVITIES WITHIN THE EUROPEAN UNION AND THE EUROPEAN ECONOMIC AREA

Outcomes

II.D5.O1. *BSB regulated persons who undertake cross-border activities comply with the terms of the Code of Conduct for European Lawyers.*

Rules

II.D5.R1. If you are a *BSB regulated person* undertaking *cross-border activities* then, in addition to complying with the other provisions of this *Handbook* which apply to you, you must also comply with Rules II.D5.R2 to II.D5.R13 below.

Guidance on Rule II.D5.R1

II.D5.G1. Where the *cross-border activities* constitute *foreign work* (in other words, limb (a) of the definition of *cross-border activities*), you should note, in particular, Rules II.C2.R6 and II.C2.R7 and the associated guidance.

II.D5.G2. The purpose of this section D5 is to implement those provisions of the *Code of Conduct for European Lawyers* which are not otherwise covered by the *Handbook*. If a provision of the *Code of Conduct for European Lawyers* has not been included here then the equivalent provisions of *Handbook* need to be complied with in respect of all *cross-border activities* (including where they place a higher burden on the *BSB regulated person* than the *Code of Conduct for European Lawyers* itself which is the case, for example, in respect of the handling of *client* money (Rule II.C5.R1 and II.C5.R2)).

Incompatible Occupations

II.D5.R2. If you act in legal proceedings or proceedings before public authorities in a *CCBE State* other than the *UK*, you must, in that *CCBE State*, observe the rules regarding incompatible occupations as they are applied to lawyers of that *CCBE State*.

II.D5.R3. If you are established in a *CCBE State* other than the *UK* and you wish to participate directly in commercial or other activities not connected with the practice of the law in that *CCBE State*, you must respect the rules regarding forbidden or incompatible occupations as they are applied to lawyers of that *CCBE State*.

Fee Sharing with Non-Lawyers

II.D5.R4. You must not share your fees with a person situated in a *CCBE State* other than the *UK* who is not a lawyer except where otherwise permitted by the terms of this *Handbook* or Rule II.D5.R5 below.

II.D5.R5. Rule II.D5.R4 shall not preclude you from paying a fee, commission or other compensation to a deceased lawyer's heirs or to a retired lawyer in respect of taking over the deceased or retired lawyer's practice.

Co-operation among Lawyers of Different Member States

II.D5.R6. If you are approached by a lawyer of a *CCBE State* other than the *UK* to undertake work which you are not competent to undertake, you must assist that lawyer to obtain the information necessary to find and instruct a lawyer capable of providing the service asked for.

II.D5.R7. When co-operating with a lawyer of a *CCBE State* other than the *UK* you must take into account the differences which may exist between your respective legal systems and the professional organisations, competencies and obligations of lawyers in your respective states.

Correspondence between lawyers in different CCBE States

II.D5.R8. If you want to send to a lawyer in a *CCBE State* other than the *UK* a communication which you wish to remain "confidential" or "without prejudice", you must, before sending the communication, clearly express your intention in order to avoid misunderstanding, and ask if the lawyer is able to accept the communication on that basis.

II.D5.R9. If you are the intended recipient of a communication from a lawyer in another *CCBE State* which is stated to be "confidential" or "without prejudice", but which you are unable to accept on the basis intended by that lawyer, you must inform that lawyer accordingly without delay.

Responsibility for Fees

II.D5.R10. If in the course of practice you instruct a lawyer of a *CCBE State* other than the UK to provide *legal services* on your behalf, you must pay the fees, costs and outlays which are properly incurred by that lawyer (even where the *client* is insolvent) unless:

II.D5.R10.1 you were simply introducing the *client* to him and the lawyer of the *CCBE State* other than the UK has since had a direct contractual relationship with the *client*; or

II.D5.R10.2 you have expressly disclaimed that responsibility at the outset, or at a later date you have expressly disclaimed responsibility for any fees incurred after that date; or

II.D5.R10.3 the lawyer of the *CCBE State* other than the UK is, in the particular matter, practising as a lawyer in England or Wales (whether authorised by the *BSB* or any other *Approved Regulator*).

Disputes Amongst Lawyers in Different Member States

II.D5.R11. If you consider that a lawyer in a *CCBE State* other than the UK has acted in breach of a rule of professional conduct you must draw the breach to the other lawyer's attention.

II.D5.R12. If any personal dispute of a professional nature arises between you and a lawyer in a *CCBE State* other than the UK you must first try to settle it in a friendly way.

II.D5.R13. You must not commence any form of proceedings against a lawyer in a *CCBE State* other than the UK on matters referred to in Rules II.D5.R11 or II.D5.R12 without first informing the *Bar Council* and the other lawyer's bar or law society in order to allow them an opportunity to assist in resolving the matter.