

ANNEX

Extract

BSB Handbook

Part 2 C The Conduct Rules

Rules C29-C30 - The cab rank rule

rC29

If you receive instructions from a professional client, and you are:

- .1 a self-employed barrister instructed by a professional client; or
- .2 an authorised individual working within a BSB entity; or
- .3 a BSB entity 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 and/or field of practice of yourself or (as appropriate) of the named authorised individual you must, subject to Rule rC30 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.

rC30

The cab rank Rule rC29 does not apply if:

- .1 you are required to refuse to accept the instructions pursuant to Rule rC21; or
- .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
- .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
- .4 you are a King'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
- .5 accepting the instructions would require you to do any foreign work; or

.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

.7 the professional client:

.a is not accepting liability for your fees; or

.b represents, in your reasonable opinion, an unacceptable credit risk; or

.c is instructing you as a lay client and not in their capacity as a professional client; or

.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

.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 2020 as published on the Bar Council's website; or (B) if you publish standard terms of work, on those standard terms of work.

Guidance to Rules C29-C30

gC89

Rule rC30 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.

gC90

In determining whether or not a fee is proper for the purposes of Rule C30.8, regard shall be had to the following:

.1 the complexity length and difficulty of the case;

.2 your ability, experience and seniority; and

.3 the expenses which you will incur.

gC91

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 or damages based agreement.

gC91A

Examples of when you might reasonably conclude (subject to the following paragraph) that a professional client represents an unacceptable credit risk for the purposes of Rule C30.7.b include:

- .1 Where they are included on the Bar Council's List of Defaulting Solicitors;
- .2 Where to your knowledge a barrister has obtained a judgment against a professional client, which remains unpaid;
- .3 Where a firm or sole practitioner is subject to insolvency proceedings, an individual voluntary arrangement or partnership voluntary arrangement; or
- .4 Where there is evidence of other unsatisfied judgments that reasonably call into question the professional client's ability to pay your fees.

Even where you consider that there is a serious credit risk, you should not conclude that the professional client represents an unacceptable credit risk without first considering alternatives. This will include considering whether the credit risk could be mitigated in other ways, for example by seeking payment of the fee in advance or payment into a third party payment service as permitted by rC74, rC75 and associated guidance.

gC91B

The standard terms referred to in Rule C30.9.c may be drafted as if the professional client were an authorised person regulated by the Solicitors Regulation Authority (SRA). However, the cab rank rule applies (subject to the various exceptions in Rule C30) to instructions from any professional client, therefore you may be instructed under the cab rank rule by authorised persons who are regulated by another approved regulator.

The BSB expects all authorised persons to be able to access the cab rank rule on behalf of their clients in the same way. Therefore, if you are instructed by an authorised person who is not regulated by the SRA, you are obliged to act on the same terms. You should therefore apply the standard terms referred to in Rule C30.9.c as if (i) the definition of professional client includes that authorised person, and (ii) any references to the SRA or its regulatory arrangements are references to that person's approved regulator and its regulatory arrangements.

Rule C28 - Requirement not to discriminate

rC28

You must not withhold your services or permit your services to be withheld:

- .1 on the ground that the nature of the case is objectionable to you or to any section of the public;
- .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;
- .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 to Rule C28

gC88

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 the Equality Rules in the BSB Handbook and the BSB's website 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 Criminal Legal Aid and Civil Legal Aid.

The Core Duties Core Duties

CD1 You must observe your duty to the court in the administration of justice [CD1].

CD2 You must act in the best interests of each client [CD2].

CD3 You must act with honesty, and with integrity [CD3].

CD4 You must maintain your independence [CD4].

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].

CD6 You must keep the affairs of each client confidential [CD6].

CD7 You must provide a competent standard of work and service to each client [CD7]

CD8 You must not discriminate unlawfully against any person [CD8].

CD9 You must be open and co-operative with your regulators [CD9].

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].