

INSTITUTE OF BARRISTERS' CLERKS

CODE OF CONDUCT FOR INSTITUTE OF BARRISTERS' CLERKS

(1) **Introduction**

- 1.1 The Bar of England and Wales is an important part of the system of the administration of justice serving the needs of the public, the upholding of the rule of law and the maintenance of civil liberties. Members of the Institute of Barristers' Clerks (the "IBC") provide support services to members of the Bar in Chambers, their professional and lay clients. *See rule 3(f) of the rules of The Institute of Barristers' Clerks.*
- 1.2 This Code should be read in conjunction with and as ancillary to the Code of Conduct of the Bar of England and Wales (the "Bar Code"). Members of the IBC should be familiar with all matters set out in the Bar Code.
- 1.3 It is the duty of a member of the IBC to guide and advise members of his/her chambers where necessary ensuring that at all times they adhere to the Bar Code of Conduct.
- 1.4 Any barrister's clerk who is in doubt about matters of conduct of business or practice may refer to Appendix A.

2. **Commencement and Amendment of Code of Conduct**

- 2.1 This Code was adopted by the IBC on 9.7.96 following its approval in principle by the Institute in General Meeting on 9.7.96 and replaces all earlier codes. It will come into force on 9.7.96.
- 2.2 Amendments and additions to the Code may be made by the Institute in General Meeting and may be revoked by the Institute in General Meeting.

3. **General Principles**

- 3.1 Upon becoming a member of the Institute such member must undertake that, so long as they remain a Barrister's Clerk, they will observe the Code of Conduct. For those not in membership of the IBC the application of this Code will only apply to those employees of Counsel whose employers make the same a condition of their employment.
- 3.2 The IBC has no jurisdiction over any persons employed by Chambers who is not a member of this Institute and whose contract of employment does not make the application of this Code a condition, but Senior Clerks and Practice Managers or Chambers Administrators wherever possible should make such persons aware of the contents of this Code of Conduct.
- 3.3 It is the duty of any Clerk, Practice Manager or Chambers administrator employed by a member of the Bar not to engage in conduct which is prejudicial to the administration of justice; which is dishonest or otherwise discreditable to his/her position, or which is likely to bring the IBC into disrepute.

4. **Definitions**

- 4.1 A "Clerk" is a person who is contractually engaged by a member or members of the Bar for the promotion and organisation of his or their practice(s). This includes Practice Managers and Chambers Administrators. *See rule 4A(iii) of the rules of The Institute.*
- 4.2 "Client" includes both professional client and lay client unless stated to refer to one or the other alone.
- 4.3 "Court" includes any court or tribunal or any other person or body before whom a barrister may appear as an advocate.

- 4.4 "Employer"
- (a) shall normally mean each Barrister to whom the clerk is contractually bound, or,
 - (b) the Head of Chambers where members of such chambers have delegated authority to the Head of Chambers to act as employer,
 - (c) where the employer is a company shall include a holding, subsidiary or associated company of the employer.
- 4.5 "Bar Code" refers to the Code of Conduct of the Bar of England and Wales.
5. **Qualification and Membership of the Institute**
- 5.1 The requirements for qualification and membership of the Institute are set out in the Rules of the Institute.
6. **Subscription to the Institute**
- The rules relating to subscription are set out in the Rules of the Institute (rules 5 and 6) and the Disciplinary Rules and Regulations Appendix.
7. **Administration of Chambers - General**
- 7.1 Guidance as to the administration of chambers is to be found in Appendix A of this Code.
- 7.2 Failure to comply with any of the provisions referred to in 7.1 shall be relevant in any proceedings relating to the affairs or administration of chambers or to any question arising in such proceedings and will be taken into account in determining those proceedings or that question.
- 7.3 Complaints of misconduct or misdemeanour against a clerk shall be investigated under the rules governing the Etiquette and Disciplinary Committee's procedures set out in Appendix B to this Code. The decision of this Committee shall be binding on the person bringing the complaint and the person complained of.

APPENDIX A

1. **Relationships with Barristers**

- 1.1 A Clerk to Chambers shall have a separate contract, whether in writing or otherwise, of employment with each member of Chambers, save in the circumstances of Service Companies or other such arrangements.
- 1.2 A Clerk will use his best endeavours at all times to promote the professional welfare of each member of Chambers.
- 1.3 A Clerk will arrange the diary and general work programme of the Barrister to the best of his/her ability.
- 1.4 A Clerk will submit the accounts to those instructing and follow, as far as is practicable, the fee rendering and letter follow-up procedures recommended by The General Council of the Bar.
- 1.5 In appropriate circumstances a Clerk can report to the Head of Chambers and the IBC where the agreed remuneration between himself and a Member of Chambers has not been paid within three months of the close of the accounting period.
- 1.6 It is the duty of a Barristers' Clerk to advise the Members of Chambers of any monies due from such employing Barrister to any other members of the Bar or any other person/s or organisation to whom that member of the Bar is indebted in receipt of goods and services applicable to his practice as a Barrister.
- 1.7 In the event of a Clerk having to return Instruction/Briefs to alternative Counsel it should, whenever possible, be in consultation with and subject to the agreement of those instructing.
- 1.8 It is the duty of a Clerk to treat all confidential information as such.
- 1.9 A Clerk shall use his/her best endeavours, save in circumstances beyond his/her control, to make sure that any Brief that has to be returned either within or out of Chambers shall be returned in sufficient time to enable the Barrister to whom the Brief is to be returned to have the necessary time properly to prepare the case.
- 1.10 A Clerk shall keep and maintain in an orderly manner fee and receipt records for each Member of Chambers. All such records shall be confidential to the Clerk and the Barrister unless agreed otherwise.
- 1.11 A Clerk shall inform the Barrister at the earliest possible moment of any circumstances which may result in the Barrister being placed in a conflicting situation, either with the Barrister's Code of Conduct, those Instructing or Lay Client.
- 1.12 Any matter which may result in an irreconcilable dispute between a Clerk and Member of Chambers, past or present, should at first instance be referred to the Head of Chambers for his determination. Thereafter, where appropriate, to be referred to the General Council of the Bar's Arbitration Panel or The Institute of Barristers' Clerks Etiquette and Disciplinary Sub-Committee.

2. **Relationships with Solicitors and Lay Clients**

2.1 *Introduction*

A Clerk is responsible firstly to his principal the Barrister who employs him. However his relationship with Solicitors and Lay Clients is important and although the responsibility falls with the individual Barrister the Clerk must advise his principal of possible conflicts or situations which may not be in the interest of the Solicitor or the Lay Client.

Definitions

Solicitor - shall mean, Partner, Assistant Solicitor, Articled Clerk, Legal Executive, Managing Clerk,

Professional Client and other persons as set out in the Code of Conduct of the Bar.

- 2.2 A Clerk has a duty to deal with all enquiries from those instructing with competence and efficiency.
- 2.3 A Clerk should at all times keep records of instructions or briefs received and keep proper fee accounts.
- 2.4 It is the duty of a Clerk to inform those instructing if the instructions received are not within the Barrister's competence or expertise.
- 2.5 A Clerk must inform those instructing of any brief which is received in Chambers which the Barrister instructed is unable to undertake and may if so requested recommend a Barrister who will be competent to undertake such a brief.
- 2.6 When instructions are received with a date deadline and the clerk knows that the Barrister instructed is unable to meet the said deadline the Clerk should inform those instructing him as soon as possible and may if so requested suggest an alternative Counsel either within Chambers or alternatively within another Chambers who may be able to assist.
- 2.7 A Clerk when asked by those instructing to fix a date for hearing in any Court or Tribunal must consider the interests of the Lay Client. It is the duty of the Clerk to inform those instructing of any delay that may arise due to the other commitments of his principal.
- 2.8 A Clerk should, wherever practical arrange the Barrister's diary in order that the Barrister has sufficient time to consult with either the Professional or Lay client as requested.
- 2.9 A Clerk must give an accurate description of the work undertaken in chambers and any expertise relating to any of the Barristers therein when promoting chambers orally or in writing.
- 2.10 A Clerk may accept an invitation by a Solicitor, Professional or Lay Client for entertainment purposes.
- 2.11 A Clerk should endeavour that sufficient time is given to those instructing when agreeing brief fees particularly when the case is of a substantial nature.
- 2.12 A Clerk who gains information as to Brief fees agreed for other parties in a case in which his Principal is instructed must not use such information to justify his Principal's fee.
- 2.13 A Clerk must ensure confidentiality on all instructions or brief/s received in Chambers.
- 2.14 A Clerk should take care to ensure that unauthorised persons do not have access to any such instructions particularly with regard to the same awaiting collection in or around the Clerks' Room.
- 2.15 A Clerk may communicate direct with a Lay Client with the consent of those instructing.

3. Relationships with Chambers

- 3.1 Chambers should be administered competently and efficiently to the best of a Clerk's ability.
- 3.2 A Clerk shall be fully aware of the current Code of Conduct of the Bar.
- 3.3 A Clerk shall maintain appropriate procedures for prompt payment of fees and collection and provide the information necessary for payment of Value Added Tax.
- 3.4 Wherever applicable, a Clerk shall, in conjunction with the Head of Chambers, the Chambers Finance Committee, the Chambers Accountant or such other relevant person/s or Committee, or any combination

thereof, keep in a proper form Annual Chambers Accounts, and with the said above, proper Budgeted Chambers Expenses.

- 3.5 Wherever applicable, a Clerk shall keep and maintain in a proper form Chambers Ledger and/or Petty Cash books.
- 3.6 Subject to Chambers' policy it is the duty of a Clerk to report to the Head of Chambers, the Chambers Finance Committee, the Chambers Accountant or such other relevant person/s or Committee, or any combination thereof, any member who is in default of his Chambers expenses.
- 3.7 Any dispute that arises in the Clerk's Room should at first instance be reported to the Senior Clerk and thereafter, if necessary to the Head of Chambers.
- 3.8 A Clerk shall advise the Head of Chambers, the Chambers Finance Committee, the Chambers Accountant or such other relevant person/s or Committee, or any combination thereof, where in the Clerk's opinion there are insufficient numbers of staff and the necessary office equipment to run Chambers efficiently.
- 3.9 The allocation of work to members of Chambers shall be carried out on the basis that they are of sufficient ability and experience to deal with the matter competently and, in all instances, in consultation with and with the agreement of, those instructing.
- 3.10 A Clerk shall ensure that no Brief is returned without the prior consent of those instructing save in circumstances beyond the Clerk's control.
- 3.11 A Clerk shall, whenever advised, inform the relevant member of Chambers of any time limit relating to instructions.
- 3.12 A Clerk shall, whenever possible, endeavour to aid and assist any pupil with the common practices within Chambers and wherever possible, properly to advise the said Pupil on a career at the Bar.
- 3.13 Wherever applicable, the Clerk shall advise Chambers of his/her opinion regarding the intake of Pupils and/or prospective Tenants.
- 3.14 When a Barrister/s leave Chambers to practice elsewhere the Clerk will ensure, wherever possible that no brief/s and/or instructions are transferred to an existing member of Chambers from the Barrister/s who have left, without informing those instructing of where the said Barrister/s now practice. It must be those instructing who instigate the transfer of such cases.
- 3.15 Subject to any terms or reference in the Code of Conduct of the Bar, the Clerk shall abide by such Contract/s and/or private agreement/s as shall be agreed between him/her and any non-practising Door Tenants.
- 3.16 Subject to any terms of reference in the Code of Conduct of the Bar, and subject to any private agreement and/or contract as shall have been agreed between a Clerk and practising Door Tenants, the following shall apply:-

The Principal Chambers shall mean the Chambers from which the Barrister/s conducts his main day to day practice.

The Door Tenancy Chambers shall mean the Chambers from which the Barrister shall conduct his practice as and when the need shall arise with the full knowledge of the Clerk in his/her principal Chambers.

Save as where otherwise agreed where a case emanates from the principal Chambers the conduct and administration of that case is the responsibility of a Clerk in the Principal Chambers irrespective of where the Instructions/Brief are delivered.

Wherever possible, it shall be the duty of the Clerk to the Door Tenancy Chambers immediately to inform the Clerk to the Principal Chambers upon receipt, of any Instructions/Briefs bearing the name and address of the Barrister/s principal Chambers.

4. Relationships with the Court Service

A Clerk to Chambers shall when dealing with the Courts service:-

- 4.1 Act in an honourable, courteous and responsible manner at all times.
- 4.2 Wherever possible, provide the relevant listing officers with any information which may be helpful to facilitate the smooth running of the Courts.
- 4.3 Co-operate fully, whenever possible, in dealing with requests from the courts as to the length of hearings, availability of Counsel, Solicitors and witnesses, and the likelihood of cases suddenly lasting longer or shorter than originally estimated.
- 4.4 A Clerk shall provide to the Court, a list of Authorities in good time before a Hearing.
- 4.5 The Clerk shall make arrangements for the swift removal of the Barrister's papers and books from the Courts at the conclusion of a hearing.
- 4.6 Ensure that Law Reports and textbooks are returned to the appropriate Court Libraries after use.
- 4.7 Wherever possible, and in as far as the common practices dictate, in the appropriate Court or Division, inform the other side/s when arranging for adjournments, late markings etc. of cases listed before the Court.
- 4.8 A Clerk shall keep him/herself fully acquainted and apprised of current listing procedures.
- 4.9 A Clerk shall keep him/herself fully acquainted and apprised with correct procedures for taxations or appeals from taxation of Counsel's fees
- 4.10 At all times act on the Instructions of those instructing, unless such Instructions are contrary to this Code of Conduct or the Code of Conduct of the Bar.

5. Relationships with Clerks

- 5.1 A Clerk shall behave in such a manner towards his/her colleagues as befitting his/her position to preserve the good offices and relationships which Clerks have enjoyed for a long time. A Clerk shall conduct him/herself in such a manner both within the position and its precincts as he/she is both a representative of his/her Chambers and the Legal Profession as a whole.
- 5.2 A Clerk when arranging a fixture should only do so in consultation with the Clerk to the Barrister representing any other party.
- 5.3 In as far as the common practices dictate in the appropriate Court or Division a Clerk shall use his best endeavours when altering a date or time of hearing to contact the Clerk to the Barrister representing any other party.
- 5.4 A Clerk shall provide to the Clerk to other Counsel instructed, a list of Authorities in good time, before a Hearing.
- 5.5 A Clerk shall, whenever possible, ensure that when any direct approach is made on behalf of Chambers, to a person to fill a vacancy in his/her Chambers, he/she must inform the Senior Clerk to Chambers, Practice Manager or Chambers Administrator where the said person is currently employed, of such an approach.

APPENDIX B

DISCIPLINARY COMMITTEE RULES AND REGULATIONS

1. **Constitution**

- (a) The Disciplinary Committee shall consist of not more than ten members of the Management Committee, one of which shall be a junior clerk. The Chairman of the Disciplinary Committee, or his appointed nominee within that committee, shall appoint four members from that committee to consider, determine or if need be, hear any matter referred to it in accordance with these rules or the rules of the Institute.
- (b) The Chairman of the Disciplinary Committee shall be appointed by the Chairman of the Institute who may consult the management committee before making such appointment. [*See rule 9A of The Rules of The Institute of Barristers' Clerks.*]
- (c) A Secretary to the Disciplinary Committee (hereinafter called "the Secretary") shall be appointed by the Chairman of The Institute of Barristers' Clerks and the Chairman of the Disciplinary Committee. He/she will be a member of the IBC Management Committee and a member of the Disciplinary Committee. He/she will attend all oral hearings of the Committee, but shall not take part in their deliberations or determinations. He/she shall be responsible for all documentation to be considered by the Committee. He/she may attend all other meetings of the Disciplinary Committee.

2. **Complaints against a Member**

- (a) A complaint may be made by any member, or any person, having reason to believe that a member has behaved in a manner unbecoming a member of the Institute (hereinafter called "the Complainor").
- (b) A complaint must be in writing and whenever possible be supported by documentary evidence.
- (c) A list of all possible witnesses, their names and addresses, must be lodged with any complaint or as soon as possible thereafter.
- (d) Upon receipt of a complaint, any member must pass the same to the Chairman or Secretary of the Disciplinary Committee.
- (e) The Secretary shall within 14 days of receipt, inform the Chairman of the Disciplinary Committee that the complaint has been received and will ensure that in the same period a copy of the same is sent by hand or recorded delivery to the member of the Institute so complained of.
- (f) The Chairman of the Disciplinary Committee shall give the member (hereinafter called "the Complainee") 14 days to consider the matter, inviting the Complainee within that timescale to acknowledge receipt of the papers (hereinafter called "the Complaint") and give a written indication of whether the Complainee accepts or denies all or part of the said Complaint.
- (g) Within 14 days of the Complainee's reply being received by the Chairman of the Disciplinary Committee a meeting will be held composed of the Secretary, the Chairman and 4 other members of that Committee.
- (h) The Disciplinary Committee shall sit in private to discuss the matter, after which they will invite the Complainee and Complainor to give their written arguments or to elect for an oral hearing. If

either party requests an oral hearing the Disciplinary Committee shall adjourn until a date to be fixed suitable to all parties. The Secretary to the Disciplinary Committee will then inform all parties of the fresh date.

- (i) If neither party requires an oral hearing and are content for the Disciplinary Committee to consider the matter in committee, based on the written evidence before them, then the Committee shall consider it and inform the Complainor and Complainee of their decision.
- (j) Such a decision must be in writing and sent by hand or recorded delivery to both parties.
- (k) If either party is dissatisfied with the decision of the Disciplinary Committee they may request an oral hearing in front of the same members who came to the original decision.
- (l) Such a wish for an oral hearing must be made to the Secretary to the Disciplinary Committee within 14 days of receipt of that written decision.
- (m) At an oral hearing either party can elect to represent themselves, or be represented by a solicitor, counsel, member of the Institute, or any other responsible person of their choice.
- (n) When the Secretary to the Committee informs both parties of the oral hearing date the Complainee must deliver his/her answer to the Complaint in writing to the Secretary to the Disciplinary Committee who will send it by hand or recorded delivery to the Complainor.
- (o) At the oral hearing the Complaint must be presented to the Disciplinary Committee by a member of the Institute acting on behalf of the Complainor, or a solicitor or barrister. Such person will be called "the Presentor".

3. **Duties of Presentor to put forward Complaint to Committee**

- (a) The Presentor shall procure from the Secretary a copy of the Complaint and any supporting documents.
- (b) If it appears necessary on consideration of such documents to do so, he shall obtain statements, or additional statements, from any person or persons involved in the Complaint.
- (c) He/she will assemble all the documents in a chronological or other convenient order and arrange for sufficient numbers of copies to be available for the use of the Disciplinary Committee, the Complainor, the Complainee and him/herself.
- (d) The Presentor must ensure that any additional statements he intends to take from potential witnesses are disclosed to the Complainee and Complainor at the same time. There must be a full disclosure to all parties at all times.

4. **Assembly of the Committee**

- (a) It shall assemble not later than 15 minutes before the time appointed for the hearing of the Complaint.
- (b) The Secretary shall satisfy the Committee
 - (i) that the Complainee has received and acknowledged the safe receipt of the Complaint;
 - (ii) that all interested parties in the matter have been properly notified and are present;
 - (iii) that a properly qualified shorthand writer has been appointed and is in attendance.
- (c) The Chairman shall then cause the hearing to commence, witnesses are to remain outside the Committee Room until invited to give evidence.

5. **The Procedure before the Committee**
 - (a) The Chairman will invite the Presenter to put forward the formal Complaint, and the procedure will then follow that commonly adopted before disciplinary tribunals.
 - (b) At the conclusion of the hearing all parties will be asked to retire and the Committee will deliberate in private. The Secretary will not take part in such deliberations.
6. **Findings and Orders**
 - (a) The Committee is only empowered to arrive at findings of proven and not proven. It can order expulsion or suspension from the membership of the Institute or an official reprimand.
 - (b) If the Committee is of the opinion that the Complaint has been proved it shall make a finding to that effect and it shall have the power to order that the member concerned be expelled or suspended from the membership of the Institute for such period as the Committee shall decide, provided that if in the opinion of the Committee the Complainee shall not have been guilty of conduct sufficiently serious to be visited by expulsion or suspension, it shall then have power to reprimand.
7. **Pronouncement of Findings**

The Committee having arrived at its conclusion, will invite all interested parties to return and the Chairman will then pronounce its findings. In the event of a finding of proven the Complainee or his/her representative may mitigate, before the Chairman and Committee make any order against the Complainee.
8. **Notice of the Order made by the Committee**

Confirmation of the order made shall be sent to the Complainee by the Secretary in writing within 7 days of the committee's decision.
9. **Appeal Procedure**
 - (a) A Complainee who has been ordered by the Disciplinary Committee to be expelled or suspended from membership, or who has suffered reprimand may, within 28 days of the date of the notice to him/her of the order of the Disciplinary Committee, appeal to the Executive Committee of the Institute of not less than five members, excluding any members of the Disciplinary Committee, to include where a member of the Bar is the Complainor the Bar Chairman of the Joint Bar/Clerks' Joint Liaison Committee, or his nominee.
 - (b) In the event of such Appeal the same procedure shall apply as that of the Disciplinary Committee.
 - (c) Such findings of the Executive Committee shall be binding, from which there is no appeal.
10. **Publication of Findings and Orders**

At the conclusion of 28 days from the date of the notice of the Disciplinary Committee, there not having been a notice of appeal, the Disciplinary Committee shall decide whether in their discretion there should be published either in a Bulletin and/or the Annual Report of the Institute, particulars of the findings and orders relating to the Complainee and will further, should a decision to publish be made, state whether the Complainee shall be named or remain anonymous.
11. **Records of Proceedings**

These are confidential and must remain in the custody of either the Chairman or the Secretary to the Committee. They must not be disclosed or released to any other source without an order of a Court or after a decision by a full meeting of the Disciplinary Committee.
12. **Sub-Committee Power**

The Disciplinary Sub-Committee shall have power to make such rules and regulations (not inconsistent with

the Rules of the Institute) as may be considered by them necessary for the performance of their functions.

APPENDIX “C”

1. Any Barrister’s Clerk, Practice Manager or Chambers Administrator who is a member of The Institute of Barristers’ Clerks is bound by the rules of the Institute and by the Code of Conduct published by the Institute, together with these Disciplinary Rules.
2. Breaches of this Code and/or the rules of the Institute may result in a finding of proven by the Disciplinary Committee
3. Non-payment of the professional subscription fees for the Institute are covered in Rule 6 of the Institute.
4. It is the duty of all Clerks to ensure that they are paying the correct subscription for their classification of membership. Junior Clerks on becoming Senior Clerks must inform the Secretariat of the Institute without delay. Practice Managers and Chambers Administrators are covered under Rule 4A(iii) and Rule 5 of the Rules of the Institute. Any doubt or dispute must be referred to the General Purposes and Finance Sub-Committee.
5. No ex-member of the Institute may be eligible to re-join until all outstanding dues in terms of past membership have been paid.
6. Members of the Institute are reminded of and are referred to :
 - Advertising Standards
 - The Data Protection Act 1984
 - The Code of Conduct of the Bar of England and Wales
 - The Sex Discrimination Act 1975
 - The Race Relations Acts 1965, 1968, 1976
 - The Employment Protection (Consolidation) Act 1978
 - The Equality Code of the General Council of the Bar

 - Practice Management for the Bar (Standards and Guidelines for Barristers and Chambers)
 - Disability Act.