Part 2: Code of Conduct

Part 2 - A. Application

Rules

rC1

Who?

.1 Section 2.B (Core Duties): applies to all *BSB regulated persons* and *unregistered barristers* except where stated otherwise, and references to “you” and “your” in Section 2.B shall be construed accordingly.

.2 Section 2.C (Conduct Rules):

.a Applies to all *BSB regulated persons*.

.b Rules rC3.5, rC4, rC8, rC16, rC19 and rC64 to rC70 (and associated guidance to those rules) and the guidance on Core Duties also apply to *unregistered barristers*. If an *unregistered barrister* practises as a *barrister* as set out in rS9 then those rules which apply to practising barristers shall also apply.

References to “you” and “your” in Section 2.C shall be construed accordingly

.3 Section 2.D (Specific Rules): applies to specific groups as defined in each sub-section and references to “you” and “your” shall be construed accordingly.

rC2

When?

.1 Section 2.B applies when practising or otherwise providing *legal services*. In addition, CD5 and CD9 apply at all times.

.2 Section 2.C applies when practising or otherwise providing *legal services*. In addition, rules rC8, rC16 and rC64 to rC70 and the associated guidance apply at all times.

.3 Section 2.D applies when practising or otherwise providing *legal services*.

.4 Sections 2.B, 2.C and 2.D only apply to *registered European lawyers* in connection with professional work undertaken by them in that capacity in England and Wales.

Part 2 - B. 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].

Guidance to the Core Duties Guidance

gC1

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

.1 CD1 overrides any other core duty, if and to the extent the two are inconsistent. Rules rC3.5 and rC4 deal specifically with the relationship between CD1, CD2 and CD4 and you should refer to those rules and to the related Guidance;

.2 in certain other circumstances set out in this Code of Conduct one Core Duty overrides another. Specifically, Rule rC16 provides that CD2 (as well as being subject to CD1) is subject to your obligations under CD3, CD4 and CD8.

gC2

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.

Part 2 - C. The Conduct Rules Rules

Part 2 - C1. You and the court Rules

Outcomes C1-C5 Outcomes

oC1

The *court* is able to rely on information provided to it by those conducting litigation and by advocates who appear before it.

oC2

The proper administration of justice is served.

oC3

The interests of *clients* are protected to the extent compatible with outcomes oC1 and oC2 and the Core Duties.

oC4

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*.

oC5

The public has confidence in the administration of justice and in those who serve it.

Rules C3-C6 Rules

rC3

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 C3.1 below, which applies when acting as an advocate):

.1 you must not knowingly or recklessly mislead or attempt to mislead the *court*;

.2 you must not abuse your role as an advocate;

.3 you must take reasonable steps to avoid wasting the *court's* time;

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

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

rC4

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

rC5

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

rC6

Your duty not to mislead the *court* will include the following obligations:

.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.

.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 to Rules C3-C6 and relationship to CD1-CD2 Guidance

gC3

Rules rC3 – rC6 set out some specific aspects of your duty to the *court* (CD1). See CD1 and associated Guidance at gC1.

gC4

As to your duty not to mislead the court:

.1 knowingly misleading the *court* includes being complicit in another person misleading the court;

.2 knowingly misleading the *court* also includes inadvertently misleading the court if you later realise that you have misled the *court*, and you fail to correct the position;

.3 recklessly means being indifferent to the truth, or not caring whether something is true or false; and

.4 the duty continues to apply for the duration of the case.

gC5

Your duty under Rule rC3.4 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.

gC6

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.

gC7

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 rC6 if you make the position clear to the *court*. See, further, the guidance at gC14.

gC8

As set out in Rule rC5, 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 rC6 requires you not knowingly to mislead the *court*. There may be situations where you have obligations under both these rules.

gC9

Rule rC4 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 they have committed the crime with which they were charged, in order to be able to ensure compliance with Rule rC4 on the one hand and Rule rC3 and Rule rC6 on the other:

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

.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.

gC10

However, you would be misleading the *court* and would therefore be in breach of Rules rC5 and rC6 if you were to set up a positive case inconsistent with the confession, as for example by:

.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

.2 suggesting that someone else had done so; or

.3 putting forward an alibi.

gC11

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 rC25 to rC27 below. In these circumstances you must not reveal the information to the *court*.

gC12

For example, if your *client* tells you that they have previous *convictions* of which the prosecution is not aware, you may not disclose this without their 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*.

gC13

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*.

Rule C7 - Not abusing your role as an advocate Rules

rC7

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

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

.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;

.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.

.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.

Part 2 - C2. Behaving ethically Rules

Outcomes C6-C9 Outcomes

oC6

Those regulated by the *Bar Standards Board* maintain standards of honesty, integrity and independence, and are seen as so doing.

oC7

The proper administration of justice, access to justice and the best interests of *clients* are served.

oC8

Those regulated by the *Bar Standards Board* do not discriminate unlawfully and take appropriate steps to prevent *discrimination* occurring in their practices.

oC9

Those regulated by the *Bar Standards Board* and *clients* understand the obligations of honesty, integrity and independence.

Rules C8-C9 - Honesty, integrity and independence Rules

rC8

You must not do anything which could reasonably be seen by the public to undermine your honesty, integrity (CD3) and independence (CD4).

rC9

Your duty to act with honesty and with integrity under CD3 includes the following requirements:

.1 you must not knowingly or recklessly mislead or attempt to mislead anyone;

.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;

.3 you must not encourage a witness to give evidence which is misleading or untruthful;

.4 you must not rehearse, practise with or coach a witness in respect of their evidence;

.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;

.6 you must not make, or offer to make, payments to any witness which are contingent on their evidence or on the outcome of the case;

.7 you must only propose, or accept, fee arrangements which are legal.

Guidance to Rules C8-C9 and relationship to CD1-CD5 Guidance

gC14

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 rC16 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).

gC15

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 rC21.10 (not acting where your independence is compromised), rule rC10 (not paying or accepting *referral fees*) and rC21 (not acting in circumstances of a conflict of interest or where you risk breaching one *client's* confidentiality in favour of another's).

gC16

Rule C8 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 C9 is not exhaustive of the ways in which CD5 may be breached.

gC17

In addition to your obligation to only propose, or accept, fee arrangements which are legal in Rule C9.7, you must also have regard to your obligations in relation to referral fees in Rule rC10 and the associated guidance.

Examples of how you may be seen as compromising your independence

gC18

The following may reasonably be seen as compromising your independence in breach of Rule 8 (whether or not the circumstances are such that Rule rC10 is also breached):

.1 offering, promising or giving:

.a any commission or referral fee (of whatever size) – note that these are in any case prohibited by Rule rC10 and associated guidance; or

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

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

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

.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 reimbursement of expenses or of disbursements made on behalf of the *client*;

gC19

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.

gC20

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.

gC21

Guidance gC18 to gC20 above is likely to be more relevant where you are a *self-employed barrister*, a *BSB entity*, an *authorised (non-BSB) individual*, an *employed barrister (BSB entity)* or a *manager* of a *BSB entity*. If you are a *BSB authorised individual* who is a 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 rC10 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 gC32).

Media comment

gC22

The ethical obligations that apply in relation to your professional practice generally continue to apply in relation to media comment. In particular, *barristers* should be aware of the following:

• Client's best interests: Core Duty 2 and Rules C15.1-.2 require a barrister to promote fearlessly and by all proper and lawful means the lay *client's* best interests and to do so without regard to their own interests.

• Independence: Core Duties 3 and 4 provide that you must not permit your absolute independence, integrity and freedom from external pressures to be compromised.

• Trust and confidence: Core Duty 5 provides that you must not behave in a way which is likely to diminish the trust and confidence which the public places in you or the profession.

• Confidentiality: Core Duty 6 and Rule C15.5 require you to preserve the confidentiality of your lay client's affairs and you must not undermine this unless permitted to do so by law or with the express consent of the lay client.

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

gC23

Rule rC9 sets out some specific aspects of your duty under CD3 to act with honesty and also with integrity.

gC24

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 C9.

Other possible breaches of CD3 and/or CD5

gC25

A breach of Rule rC9 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):

.1 subject to Guidance gC26 below, breaches of Rule rC8;

.2 breaches of Rule rC10;

.3 criminal conduct, other than *minor criminal offences* (see Guidance C27);

.4 seriously offensive or discreditable conduct towards third parties;

.5 dishonesty;

.6 unlawful *victimisation* or *harassment*; or

.7 abuse of your professional position.

gC26

For the purposes of Guidance gC25.7 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.

gC27

Conduct which is not likely to be treated as a breach of Rules rC8 or rC9, or CD3 or CD5, includes (but is not limited to):

.1 *minor criminal offences*;

.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*.

gC28

For the purpose of Guidance rC27 above, *minor criminal offences* include:

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

.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

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

Rule C10 - Referral fees Rules

rC10

You must not pay or receive *referral fees*.

Guidance to Rule C10 and relationship to CD2-CD5 Guidance

gC29

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.

gC30

Moreover:

.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;

.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;

gC31

Referral fees and inducements (as defined in the Criminal Justice and Courts Act 2015) 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 and section 58 Criminal Justice and Courts Act 2015. Rule rC10 does not prohibit proper expenses that are not a reward for referring work, such as genuine and reasonable payments for:

.1 clerking and administrative services (including where these are outsourced);

.2 membership subscriptions to ADR bodies that appoint or recommend a person to provide mediation, arbitration or adjudication services; or

.3 advertising and publicity, which are payable whether or not any work is referred. However, the fact that a fee varies with the amount of work received does not necessarily mean that that it is a *referral fee*, if it is genuinely for a marketing service from someone who is not directing work to one provider rather than another, depending on who pays more.

gC32

Further guidance is available on the BSB's website.

Rule C11 - Undertakings Rules

rC11

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 to Rule C11 Guidance

gC33

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

Rule C12 - Discrimination Rules

rC12

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, or pregnancy and maternity.

Guidance to Rule C12 Guidance

gC34

Rules rC110 and associated guidance are also relevant to equality and diversity. The BSB's Supporting Information on the BSB Handbook Equality Rules is available on the BSB website.

Rules C13-C14 - Foreign work Rules

rC13

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:

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

.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.

rC14

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 to Rules C13-14 Guidance

gC35

When you are engaged in *cross border activities* within a *CCBE State* other than the UK, you must comply with the rules at 2.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.

Part 2 - C3. You and your client Rules

Outcomes C10-C20 Outcomes

oC10

Clients receive a competent standard of work and service.

oC11

Clients' best interests are protected and promoted by those acting for them.

oC12

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*.

oC13

Clients know what to expect and understand the advice they are given.

oC14

Care is given to ensure that the interests of vulnerable *clients* are taken into account and their needs are met.

oC15

Clients have confidence in those who are instructed to act on their behalf.

oC16

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*.

oC17

Clients and *BSB authorised persons* and *authorised (non-BSB) individuals* and *managers* of *BSB entities* are clear about the circumstances in which *instructions* may not be accepted or may or must be returned.

oC18

Clients are adequately informed as to the terms on which work is to be done.

oC19

Clients understand how to bring a *complaint* and *complaints* are dealt with promptly, fairly, openly and effectively.

oC20

Clients understand who is responsible for work done for them.

Rules C15-C16 - Best interests of each client, provision of a competent standard of work and confidentiality

Rules

rC15

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:

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

.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*);

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

.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

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

rC16

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 with integrity (CD3) and to maintain your independence (CD4).

Guidance to Rules C15-C16 and relationship to CD2 and CD6-CD7

Guidance

gC36

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

gC37

Rules rC15 and rC16 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 rC17 on the circumstances when you are obliged to advise your *client* to seek other legal representation and Rules rC21.2 and rC21.3 on conflicts of interest and the guidance to those rules at gC69.

gC38

CD7 requires not only that you provide a competent standard of work but also a competent standard of service to your *client*. Rule rC15 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:

.1 treating each *client* with courtesy and consideration; and

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

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

.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.

gC39

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 entity* 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 Continuing Professional Development requirements may not be sufficient to comply with Rule rC15. 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 the following training requirements imposed by the *Bar Standards Board*: *barristers* undertaking publicly funded police station work under a criminal contract must comply with the training requirements specified by the Legal Aid Agency. *Barristers* undertaking privately funded police station work must complete the Police Station Qualification ("PSQ") and (if they do not hold higher rights of audience) the Magistrates Court Qualification. Similarly, you should not undertake public access work without successfully completing the required training specified by the *Bar Standards Board*.

gC40

In addition to Guidance gC38 above, a *BSB entity* 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.

gC41

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*.

gC42

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, rC4 and Guidance gC8 and gC11 to gC13 provide further information.

gC43

Rule rC15.5 acknowledges that your duty of confidentiality is subject to an exception if disclosure is required or permitted 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 rC15.5 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 rC21 at gC68 for an example of circumstances where it may be appropriate for you to seek such consent.

gC44

There may be circumstances when your duty of confidentiality to your *client* conflicts with your duty to the *court*. Rule rC4 and Guidance gC8 and gC11 to gC13 provide further information.

gC45

Similarly, there may be circumstances when your duty of confidentiality to your *client* conflicts with your duty to your regulator. Rule rC64 and Guidance gC92 in respect of that rule provide further information. In addition, Rule rC66 may also apply.

gC46

If you are a *pupil* of, or are *devilling* work for, a *self-employed barrister*, Rule rC15.5 applies to you as if the *client* of the *self-employed barrister* was your own *client.*

gC47

The section You and Your Practice, at 2.C5, provides for duties regarding the systems and procedures you must put in place and enforce in order to ensure compliance with Rule rC15.5.

gC48

If you are an *authorised individual* or a *manager* working in a *BSB entity* 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 entity* itself is unable to do so for whatever reason (for example, insolvency).

Rule C17 Rules

rC17

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 to Rule C17 Guidance

gC49

Your duty to comply with Rule rC17 may require you to advise your *client* that in their best interests they should be represented by:

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

.2 more than one advocate or legal representative;

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

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

gC50

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 2.D2 and further in respect of *BSB entities* Rule S28 and the associated guidance.

gC51

CD2 and Rules rC15.5 and rC17 require you, subject to Rule rC16, 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.

Rule C18 Rules

rC18

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:

.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

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

Guidance to Rule C18 Guidance

gC52

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.

Rule C19 - Not misleading clients and potential clients Rules

rC19

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:

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

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

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

.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

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

Guidance to Rule C19 Guidance

gC53

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 rC19 may potentially be infringed in a broad variety of situations. You must consider how matters will appear to the *client*.

gC54

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.

gC55

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*.

gC56

A set of *chambers* dealing directly with unsophisticated lay *clients* might breach Rule rC19 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.

gC57

Knowingly or recklessly publishing advertising material which is inaccurate or likely to mislead could also result in you being in breach of Rule rC19. You should be particularly careful about making comparisons with other persons as these may often be regarded as misleading.

gC58

If you carry out public access work but are not authorised to *conduct litigation*, you would breach Rule rC19 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*.

gC59

If you are a *self-employed barrister*, you would, for example, likely be regarded as having breached Rule rC19 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 also with integrity (CD3).

gC60

If you are an *unregistered barrister*, you would breach Rule rC19 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.

gC61

Rule C19.3 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.

gC62

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 ensure the *client* understands your status.

gC63

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 rC23 and guidance gC74.

Rule C20 - Personal responsibility Rules

rC20

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 to Rule C20 Guidance

gC64

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 entity* (in the case of *authorised (non-BSB) individuals*).

gC65

Nothing in Rule rC20 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 rC86 which deals with outsourcing, must be complied with.

gC66

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.

gC67

Nothing in this rule or guidance prevents a *BSB entity* from contracting on the basis that any civil liability for the services provided by a *BSB regulated individual* lies with the *BSB entity* 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 rC20 for the professional judgments made.

gC68

See, further, guidance to Rule rC19, as regards work by *pupils* and *devils* Rule rC15, gC124 and Rule rC86 (on outsourcing).

Rule C21 - Accepting instructions Rules

rC21

You must not accept *instructions* to act in a particular matter if:

.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

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

.3 there is a conflict of interest, or real risk of 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

.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

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

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

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

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

.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

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

Guidance to Rule C21 Guidance

gC69

Rules rC21.2, rC21.3 and rC21.4 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.

gC70

Examples of where you may be required to refuse to accept *instructions* in accordance with Rule rC21.7 include:

.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*;

.2 removed

.3 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 rC75 which covers, amongst other things, any loss suffered by the *client* as a result of the conduct of such correspondence.

gC71

Competency and experience under Rule rC21.8 includes your ability to work with vulnerable *clients*.

gC72

Rule rC21.9 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.

gC73

Rule rC21.10 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). However, if you are planning to withdraw from a case because it appears that you are likely to be a witness on a material question of fact, you should only withdraw if you can do so without jeopardising the *client's* interests.

gC74

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 2.D2. If you are a *BSB entity*, you should have regard to the guidance to Rule S28.

Rules C22-C24 - Defining terms or basis on which instructions are accepted

Rules

rC22

Where you first accept *instructions* to act in a matter:

.1 you must, subject to Rule rC23, confirm in writing acceptance of the *instructions* and the terms and/or basis on which you will be acting, including the basis of charging;

.2 where your instructions are from a *professional client*, the confirmation required by rC22.1 must be sent to the *professional client*;

.3 where your instructions are from a *client*, the confirmation required by rC22.1 must be sent to the *client*.

.4 if you are a *BSB entity*, you must ensure that the terms under which you accept instructions from *clients* include consent from clients to disclose and give control of files to the *Bar Standards Board* or its agent in circumstances where the conditions in rS113.5 are met.

rC23

In the event that, following your acceptance of the *instructions* in accordance with Rule rC22, 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.

rC24

You must comply with the requirements set out in Rules rC22 and rC23 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 C22-C24 Guidance

gC75

Compliance with the requirement in Rule rC22 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). 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.

gC76

Your obligation under Rule rC23 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 rC23 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. See, further Rule rC19 (not misleading *clients* or prospective *clients*) and the guidance to that rule at gC52 to gC62.

gC77

If you are a *self-employed barrister* a clerk may confirm on your behalf your acceptance of *instructions* in accordance with Rules rC22 and rC23 above.

gC78

When accepting instructions, you must also ensure that you comply with the complaints handling rules set out in Section 2.D.

gC79

When accepting instructions in accordance with Rule rC22, confirmation by email will satisfy any requirement for written acceptance.

gC80

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 rC22 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.

gC81

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 on its website.

gC82

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 2.D2. If you are a *BSB entity*, you should have regard to the guidance to Rule S28.

Rules C25-C26 - Returning instructions

Rules

rC25

Where you have accepted *instructions* to act but one or more of the circumstances set out in Rules rC21.1 to rC21.10 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:

.1 in a case funded by the *Legal Aid Agency* as part of Criminal Legal Aid or Civil Legal Aid 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

.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

.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.

rC26

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

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

.2 the *client* consents; or

.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;

.4 you are a *BSB entity* 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 rC26.3.a to rC26.3.c above occurring;

.5 you do not receive payment when due in accordance with terms agreed, subject to Rule rC26.7 (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

.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

.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

.8 there is some other substantial reason for doing so (subject to Rules rC27 to rC29 below).

Guidance to Rule C26

Guidance

gC83

In deciding whether to cease to act and to return existing instructions in accordance with Rule rC26, 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.

gC84

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. You will not be bound by the cab rank rule if appointed by the court. 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

gC85

You should not rely on Rule rC26.3 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 rC26.3.

gC86

When considering whether or not you are required to return instructions in accordance with Rule rC26.6 you should have regard to relevant case law including: English & American Insurance Co Ltd & Others -v- Herbert Smith; ChD 1987; (1987) NLJ 148 and Ablitt -v- Mills & Reeve (A Firm) and Another; ChD (Times, 24-Oct-1995).

gC87

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:

.1 you must decide whether you are obliged by Rule rC29 to accept the new *instructions*;

.2 if you are obliged under Rule rC29 to accept the new *instructions*, you must do so;

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

.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 rC25 to rC26, because the previous *instructions* have been withdrawn by the *client*.

Rule C27 Rules

rC27

Notwithstanding the provisions of Rules rC25 and rC26, you must not:

.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

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

Rule C28 - Requirement not to discriminate Rules

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 Guidance

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.

Rules C29-C30 - The cab rank rule

Rules

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 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

.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 2012 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 Guidance

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.

Rules C31-C63 Rules

Removed.

Part 2 - C4. You and your regulator Rules

Outcomes C21-C23 Outcomes

oC21

BSB regulated persons are effectively regulated.

oC22

The public have confidence in the proper regulation of *persons* regulated by the *Bar Standards Board*.

oC23

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*.

Rule C64 - Provision of information to the Bar Standards Board Rules

rC64

You must:

.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;

.2 comply in due time with any decision or sentence imposed by the *Bar Standards Board*, a *Disciplinary Tribunal*, the High Court, the *First Tier Tribunal*, an *interim panel*, a *review panel*, an *appeal panel*, an *Independent Decision-Making Panel* or a *Fitness to Practise Panel*;

.3 if you are a *BSB entity* or an *owner* or *manager* of a *BSB entity* and the conditions outlined in rS113.5 apply, give the *Bar Standards Board* whatever co-operation is necessary:

.4 comply with any notice sent by the *Bar Standards Board* or its agent; and

.5 register within 28 days if you undertake work in the Youth Court if you did not register when applying for a practising certificate.

Guidance to Rule C64 Guidance

gC92

Your obligations under Rule rC64 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* or *unregistered barrister*.

gC92A

A notice under rC64.4 refers to a notice under any part of the Legal Services Act 2007, or the Legal Services Act 2007 (General

Council of the Bar) (Modification of Functions) Order 2018.

gC93

The documents that you are required to disclose pursuant to Rule C64 may include client information that is subject to legal professional privilege. Pursuant to R (Morgan Grenfell & Co Ltd) v Special Commissioner [2003] 1 A.C. 563, referred to in R (Lumsdon) v Legal Services Board [2013] EWHC 28 (Admin) at [73], the BSB is entitled to serve you with a notice for production of those documents.

Where you are being required to report serious misconduct by others and legal professional privilege applies, this will override the requirement to report serious misconduct by another. However, the BSB may subsequently serve you with a notice for production of documents in which case the same principles set out above apply.

For the avoidance of doubt, none of this casts any doubt on your entitlement to withhold from the BSB any material that is subject to your own legal privilege (such as legal advice given to you about your own position during a BSB investigation).

Rule C65 - Duty to report certain matters to the Bar Standards Board

Rules

rC65

You must report promptly to the *Bar Standards Board* if:

.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;

.2 subject to the Rehabilitation of Offenders Act 1974 (as amended) you are convicted of, or accept a caution, for any *criminal offence*, in any jurisdiction, other than a *minor criminal offence*;

.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;

.4 you are a *manager* of a *regulated entity* (other than a *BSB entity*) which is the subject of an intervention by the *approved regulator* of that body;

.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.

.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;

.7 you have committed serious misconduct;

.8 you become authorised to *practise* by another *approved regulator*.

Guidance to Rule C65 Guidance

gC94

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

gC94.1

For the avoidance of doubt rC65.2 does not oblige you to disclose cautions or criminal convictions that are "spent" under the Rehabilitation of Offenders Act 1974 unless the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (SI 1975/1023) applies. However, unless the caution or conviction is immediately spent, you must notify the BSB before it becomes spent.

Rules C66-C69 - Reporting serious misconduct by others Rules

rC66

Subject to your duty to keep the affairs of each *client* confidential and subject also to Rules rC67 and rC68, 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 entity*, *manager* of a *BSB entity* or an *authorised (non-BSB) individual* who is working as a *manager* or an employee of a *BSB entity*.

rC67

You must never make, or threaten to make, a report under Rule rC66 without a genuine and reasonably held belief that Rule rC66 applies.

rC68

You are not under a duty to report serious misconduct by others if:

.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

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

.3 the information or documents which led to you becoming aware of that other person's serious misconduct are subject to legal professional privilege; or

.4 you become aware of such serious misconduct as a result of your work on a *Bar Council* advice line.

rC69

You must not victimise anyone for making in good faith a report under Rule C66.

Guidance to Rules C65.7-C68 Guidance

gC95

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 rC65.7 to rC69, therefore, is to assist the *Bar Standards Board* in undertaking this regulatory function.

gC96

Serious misconduct includes, without being limited to:

.1 dishonesty (CD3);

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

.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

.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);

.5 encouraging a witness to give evidence which is untruthful or misleading (CD1 and/or CD3);

.6 knowingly or recklessly misleading, or attempting to mislead, the *court* or an opponent (CD1 and/ or CD3); or

.7 being drunk or under the influence of drugs in *court* (CD2 and/or CD7); or

.8 failure to report promptly to the *Bar Standards Board* pursuant to rC65.1-rC65.5 and/or rC66 above or if;

• *director's disqualification* proceedings are initiated against you;

• a *director's disqualification* order is made against you;

• winding up proceedings are initiated in respect of or against you;

• you have had an administrator, administrative receiver, receiver or liquidator appointed in respect of you;

• administration proceedings are initiated in respect of or against you;

.9 a breach of rC67 above; for example, reporting, or threatening to report, another *person* as a litigation tactic or otherwise abusively; or merely to please a *client* or any other *person* or otherwise for an improper motive;

.10 conduct that poses a serious risk to the public.

gC97

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:

.1 whether that person's *instructions* or other confidential matters might have a bearing on the assessment of their conduct;

.2 whether that person has been offered an opportunity to explain their conduct, and if not, why not;

.3 any explanation which has been or could be offered for that person's conduct;

.4 whether the matter has been raised, or will be raised, in the litigation in which it occurred, and if not, why not.

gC98

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 gC97, you have material before you which as it stands establishes a reasonably credible case of serious misconduct. Your duty under Rule rC66 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.

gC99

Circumstances which may give rise to the exception from the general requirement to report serious misconduct set out in Rule rC68.1 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* and *unregistered barrister* to have an obligation to report such serious misconduct.

gC100

In Rule rC68.4 "work on the *Bar Council* advice line" means:

.1 dealing with queries from *BSB regulated persons* and *unregistered barristers* who contact an advice line operated by the *Bar Council* for the purposes of providing advice to those persons; and

.2 either providing advice to *BSB regulated persons* and *unregistered barristers* in the course of working for an advice line or to any individual working for an advice line 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 an advice line arises from a query which originated from their work for that service; and

.3 providing advice to *BSB regulated persons* and *unregistered barristers* where any individual working for an advice line arranges for you to give such advice and you are on the approved list.

.4 for the purposes of Rule C68, the relevant advice lines are:

– the Ethical Queries Helpline;

– the Equality and Diversity Helpline;

– the Remuneration Helpline; and

– the Pupillage Helpline.

gC101

Rule rC68.4 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 regulated persons* or *unregistered barristers* appointed by or on behalf of the *Bar Council* to offer ethical advice to others from doing so or inhibit *BSB regulated persons* or *unregistered barristers* needing advice from seeking it. Consequently, *BSB regulated persons* or *unregistered barristers* appointed by or on behalf of the *Bar Council* to offer ethical advice to *BSB regulated persons* or *unregistered barristers* through a specified advice 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 C68.4 applies, the relevant *BSB regulated person* or *unregistered barrister* will still be expected to encourage the relevant *BSB regulated person* or *unregistered barrister* who has committed serious misconduct to disclose such serious misconduct to the *Bar Standards Board* in accordance with Rule C65.7.

gC102

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 rC96.4.

Rule C70 - Access to premises Rules

rC70

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

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

.2 any documents or records relating to those premises and your *practice*, or *BSB entity*, 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.

Rule C71 - Co-operation with the Legal Ombudsman Rules

rC71

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.

Rule C72 - Ceasing to practise Rules

rC72

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

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

.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;

.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.

Part 2 - C5. You and your practice Rules

Outcomes C24-C25 Outcomes

oC24

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*.

oC25

Clients are clear about the extent to which your services are regulated and by whom, and who is responsible for providing those services.

Rules C73-C75 - Client money Rules

rC73

Except where you are acting in your capacity as a *manager* or employee 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.

rC74

If you make use of a third party payment service for making payments to or from or on behalf of your *client* you must:

.1 Ensure that the service you use will not result in your receiving, controlling or handling *client money*; and

.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

.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.

rC75

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 to Rules C73-C74 Guidance

gC103

The prohibition in Rule rC73 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 rC73 prohibits you from holding *client money* or other *client* assets yourself, or through any agent, third party or nominee.

gC104

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.

gC105

The circumstances in which you will have de facto control within the meaning of Rule rC73 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:

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

.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).

gC106

A fixed fee paid in advance is not *client money* for the purposes of Rule rC73.

gC107

If you have decided in principle to take a particular case you may request an 'upfront' fixed fee from your prospective *client* before finally agreeing to work on their behalf. This should only be done having regard to the following principles:

• You should take care to estimate accurately the likely time commitment and only take payment when you are satisfied that:

– it is a reasonable payment for the work being done; and

– in the case of public access work, that it is suitable for you to undertake.

• If the amount of work required is unclear, you should consider staged payments rather than a fixed fee in advance.

• You should never accept an upfront fee in advance of considering whether it is appropriate for you to take the case and considering whether you will be able to undertake the work within a reasonable timescale.

• If the *client* can reasonably be expected to understand such an arrangement, you may agree that when the work has been done, you will pay the *client* any difference between that fixed fee and (if lower) the fee which has actually been earned based on the time spent, provided that it is clear that 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* if you can demonstrate that this was expressly agreed in writing, on clear terms understood by the *client*, and before payment of the fixed fee. You should also consider carefully whether such an arrangement is in the *client's* interest, taking into account the nature of the instructions, the *client* and whether the *client* fully understands the implications. Any abuse of an agreement to pay a fixed fee subject to reimbursement, the effect of which is that you receive more money than is reasonable for the case at the outset, will be considered to be holding *client money* and a breach of rC73. For this reason, you should take extreme care if contracting with a *client* in this way.

• In any case, rC22 requires you to confirm in writing the acceptance of any instructions and the terms or basis on which you are acting, including the basis of charging.

gC108

Acting in the following ways may demonstrate compliance with Rules rC73, rC74 and rC75:

gC109

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 rC73.

gC110

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:

.1 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;

.2 if the payment service is classified as a small payment institution, ensured that it has arrangements to safeguard *clients'* funds or adequate insurance arrangements;

.3 ensured that the payment service segregates *client money* from its own funds;

.4 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;

.5 informed your *client* that moneys held by the payment service provider are not covered by the Financial Services Compensation Scheme.

gC111

Unless you are reasonably satisfied that it is safe for your client to use the third party payment service (see rC74.3, gC109 and gC110 above), advising your *client* against using the third party payment service and not making use of it yourself.

gC112

The *Bar Standards Board* has not yet given notice under rule rC75.

Rules C76-C78 - Insurance Rules

rC76

You must:

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

.2 if you are a *BSB authorised person* or a *manager* of a *BSB entity* then in the event that the *Bar Standards Board*, by any notice it may from time to time issue under this Rule C76, 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.

rC77

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

.1 you are a *pupil* who is covered by your *pupil supervisor's* insurance; or

.2 you were called to the *Bar* under Rule Q25, 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.

rC78

If you are a member of *BMIF*, you must:

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

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

Guidance to Rules C76-C78 Guidance

gC113

Where you are working in a *BSB entity*, you will satisfy the requirements of Rule rC76.1 so long as the *BSB entity* has taken out

insurance, which covers your activities. A *BSB entity* will have to confirm each year that it has reviewed the adequacy of its insurance cover on the basis of a risk analysis and that they have complied with this rule.

gC114

Any notice issued under Rule rC76 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. Notices issued under Rule C76, which stipulate minimum terms of cover for *self-employed barristers* and *BSB entities*, are currently in force and available on the *Bar Standards Board's* website.

The *Bar Standards Board's* requirements in respect of professional indemnity insurance, including the minimum terms, are concerned with ensuring consumer protection, specifically that there is adequate cover for liabilities which *BSB regulated persons* may incur to their *clients* or other parties to whom they may owe duties when performing their *legal services*. This includes claims for contribution which third parties, such as instructing *solicitors*, may make on the basis that the *BSB regulated person* has such a liability to a mutual *client*. However, Rule C76.1 of the *Handbook* does not require *BSB regulated persons* to carry insurance for other types of liability, which do not relate to their liabilities towards consumers, such as a contractual liability to instructing *solicitors* in respect of losses incurred by the *solicitor* that are not based on any liability the *solicitor* has in turn incurred to the *client*. Nor are the minimum terms concerned with the latter type of liability and whether and on what terms to seek to insure against such exposure is a commercial judgment for *BSB regulated persons* to make. You should however ensure that you are aware of and comply with any general legal requirements for you to carry other types of insurance than professional indemnity cover.

BSB regulated persons considering excluding or limiting liability should consider carefully the ramifications of the Unfair Contract Terms Act 1977 and other legislation and case law. If a *BSB regulated person* is found by the court to have limited liability in a way which is in breach of the Unfair Contract Terms Act, that might amount to professional misconduct.

BSB regulated persons should regularly review the amount of their professional indemnity insurance cover, taking into account the type of work which they undertake and the likely liability for negligence. They should be aware that claims can arise many years after the work was undertaken and that they would be prudent to maintain adequate insurance cover for that time since cover operates on a "claims made" basis and as such it is the policy and the limits in force at the time a claim is made that are relevant, not the policy and limits in force when the work was undertaken. They should also bear in mind the need to arrange run-off cover if they cease practice.

gC115

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.

gC116

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 and Authorisation, and Licensing Rules set out at Section S.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.

gC117

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

.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

.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 rC76. 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*

Rules C79-C85 - Associations with others

Rules

rC79

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

rC80

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*.

rC81

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

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

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

rC82

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

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

.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

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

rC83

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*.

rC84

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.

rC85

A material commercial interest for the purposes of Rules rC78 to rC84 is an interest which an objective observer with knowledge of the salient facts would reasonably consider might potentially influence your judgment.

rC85A

You must not act as a supervisor of an immigration adviser for the purposes of section 84(2) of the Immigration and Asylum Act 1999 (as amended) (IAA 1999) where the Office of the Immigration Services Commissioner has refused or cancelled the adviser's registration, or where the adviser is:

1. disqualified in accordance with paragraph 4 of Schedule 6 to the IAA 1999; or

2. prohibited or suspended by the First-tier Tribunal (Immigration Services); or

3. permanently prohibited from practising by an *approved regulator*, or a designated professional body under the IAA 1999, pursuant to its powers as such, and removed from the relevant register; or

4. currently suspended from practising by an *approved regulator*, or a designated professional body under the IAA 1999, pursuant to its powers as such.

Guidance to Rules C79-C85 (and CD5) Guidance

gC118

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.

gC119

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.

gC120

The purpose of Rules rC79 to rC85 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 rC79-85.

gC121

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 C8, C9, C10, C12, C15, C19, C20, C28, C73, C75, C79, C82 and C86 (and, where relevant C80, C81, C83, C74 and C110).

gC122

References to "organisation" in Rules rC81 and C82 include *BSB entities* 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.

gC123

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 rC21.

gC124

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).

gC125

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.

gC126

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.

Rule C86 - Outsourcing Rules

rC86

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:

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

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

.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*;

.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, and;

.e processes any personal data in accordance with those arrangements, and for the avoidance of doubt, those arrangements are compliant with any relevant data protection laws.

Guidance to Rule C86 Guidance

gC127

Rule C86 applies to the outsourcing of clerking services.

gC128

Rule C86 does not apply where the *client* enters into a separate agreement with the third party for the services in question.

gC129

Rule C86 does not apply where you are instructing a *pupil* or a *devil* to undertake work on your behalf. Instead rC15 will apply in those circumstances.

gC130

Removed from 11 June 2018.

Rules C87-C88 - Administration and conduct of self-employed practice Rules

rC87

You must take reasonable steps to ensure that:

.1 your practice is efficiently and properly administered having regard to the nature of your practice; and

.2 proper records of your practice are kept.

When deciding how long records need to be kept, you will need to take into consideration various requirements, such as those of this *Handbook* (see, for example, Rules C108, C129 and C141), any relevant data protection law and HM Revenue and Customs. You may want to consider drawing up a Records Keeping policy to ensure that you have identified the specific compliance and other needs of your *practice*.

rC88

You must:

.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;

.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.

Rules C89-C90 - Administration of chambers Rules

rC89

Taking into account the provisions of Rule rC90, you must take reasonable steps to ensure that:

.1 your *chambers* is administered competently and efficiently;

.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*;

.3 *barristers* in your *chambers* do not employ any person who has been disqualified from being employed by an authorised person (i) by the *Bar Standards Board* and included on the *Bar Standards Board's* list of disqualified persons, or (ii) by another approved regulator or *licensing authority* pursuant to its powers as such, and such disqualification is continuing in force. This shall not apply where the *barrister* obtains the express written consent of the *Bar Standards Board* to the appointment of a person who has been disqualified before they are appointed;

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

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

.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;

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

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

.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 rC75 to rC77 above (other than any *pupil* who is covered under their *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*.

rC90

For the purposes of Rule rC89 the steps which it is reasonable for you to take will depend on all the circumstances, which include, but are not limited to:

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

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

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

Guidance to Rules C89-C90 Guidance

gC131

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 their 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 C89 does not require you to sever connection with a member of *chambers* solely because to your knowledge they are found to breach this *Handbook*, provided that they are not disbarred and comply 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.

gC132

The *Supervision Team* of the *Bar Standards Board* reviews the key controls that are in place in *chambers* and *BSB entities* to manage the risks in relation to key processes. These key processes are shown in guidance that is published on the Supervision section of the *Bar Standards Board's* website. You should retain relevant policies, procedures, monitoring reports and other records of your practice so that they are available to view if a Supervision visit is arranged.

gC133

Your duty under Rule rC89.4 to have proper arrangements in place for dealing with pupils includes ensuring:

.1 that all *pupillage* vacancies are advertised in the manner set out in the Bar Qualification Manual;

.2 that arrangements are made for the funding of *pupils* by *chambers* which comply with the Pupillage Funding Rules (rC113 to rC118); and

.3 the chambers meets the mandatory requirements set out in the *Authorisation Framework* and complies with conditions imposed upon its authorisation as an *Authorised Education and Training Organisation (AETO)*.

gC134

Your duty under Rule rC89.5 to have proper arrangements in place for ensuring the confidentiality of each *client's* affairs includes:

.1 putting in place and enforcing adequate procedures for the purpose of protecting confidential information;

.2 complying with data protection obligations imposed by law;

.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 .4 taking into account any further guidance on confidentiality which is available on the Bar Standards Board's website.

gC135

In order to ensure compliance with Rule rC89.6.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*.

gC136

For further guidance on what may constitute appropriate risk management procedures in accordance with Rule rC89.8 please refer to the further guidance published by the *Bar Standards Board* which can be accessed on the Supervision section of its website.

gC137

Rule rC90.3 means that you should consider, in particular, the obligation of each individual members of *chambers* to act in the best interests of their own *client* (CD2) and to preserve the confidentiality of their own *client's* affairs (CD6), in circumstances where other members of *chambers* are free (and, indeed, may be obliged by the cab rank rule (rC29) to act for *clients* with conflicting interests.

Rules C91-C95 - Administration of BSB entities

Rules

Duties of the BSB entity, authorised (non-BSB) individuals and managers of BSB entities

rC91

If you are a *BSB entity*, you must ensure that (or, if you are a *BSB regulated individual* working within such *BSB entity* you must use reasonable endeavours (taking into account the provisions of Rule rC95) to procure that the *BSB entity* ensures that):

.1 the *BSB entity* has at all times a person appointed by it to act as its *HOLP*, who shall be a *manager*;

.2 the *BSB entity* has at all times a person appointed by it to act as its *HOFA*; and

.3 subject to rC92, the *BSB entity* does not appoint any individual to act as a *HOLP* or a *HOFA*, or to be a *manager* or employee of that *BSB entity*, 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) (i) by the *Bar Standards Board* and included on the *Bar Standards Board's* list of disqualified persons, or (ii) by another *Approved Regulator* or *licensing authority* pursuant to its powers as such and such disqualification is continuing in force.

rC92

Rule rC91.3 shall not apply where the *BSB entity* obtains the express written consent of the *Bar Standards Board* to the appointment of a person who has been disqualified before they are appointed.

rC93

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

rC94

If you are a *BSB entity*, you must at all times have (or, if you are a *BSB regulated individual* working in such *BSB entity* you must use reasonable endeavours (taking into account the provisions of Rule rC95 to procure that the *BSB entity* shall have) suitable arrangements to ensure that:

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

.2 all employees:

.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 the *BSB entity* or any of the *BSB regulated individuals* employed by it; and

.e co-operate with the *Bar Standards Board* in the exercise of its regulatory functions, in particular in relation to any notice under rC64 or any request under rC70;

.3 the *BSB entity* is administered in a correct and efficient manner, is properly staffed and keeps proper records of its practice;

.4 *pupils* and *pupillages* are dealt with properly;

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

.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;

.7 every *BSB authorised individual* employed by, or working for, the *BSB entity* has a current *practising certificate* (and where a *barrister* is working as an *unregistered barrister*, 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

.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;

.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;

.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 their obligations under Rule rC96;

.11 appropriate risk management procedures are in place and are being complied with; and

.12 appropriate financial management procedures are in place and are being complied with.

rC95

For the purposes of Rule rC91 and rC94 the steps which it is reasonable for you to take will depend on all the circumstances, which include, but are not limited to:

.1 the arrangements in place in your *BSB entity* for the management of it; and

.2 any role which you play in those arrangements.

Gudiance to Rule C94 Guidance

gC138

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 C94 extends this obligation to *BSB entities* other than *licensed bodies*.

gC139

Your duty under Rule rC94.4 to have proper arrangements for dealing with pupils includes ensuring:

.1 that all *pupillage* vacancies are advertised in the manner manner set out in the Bar Qualification Manual;

.2 that arrangements are made for the funding of *pupils* by the *BSB entity* which comply with the Pupillage Funding Rules (rC113 to rC118); and

.3 the *BSB entity* meets the mandatory requirements set out in the *Authorisation Framework* and complies with conditions imposed upon its authorisation as an *Authorised Education and Training Organisation (AETO)*.

Rules C96-C97 - Duties of the HOLP and HOFA Rules

rC96

If you are a *HOLP*, in addition to complying with the more general duties placed on the *BSB entity* and on the *BSB regulated individuals* employed by it, you must:

.1 take all reasonable steps to ensure compliance with the terms of your *BSB entity's* authorisation;

.2 take all reasonable steps to ensure that the *BSB entity* and its employees and *managers* comply with the duties imposed by section 176 of the LSA;

.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;

.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*.

rC97

If you are a *HOFA*, in addition to complying with the more general duties placed on the *BSB entity* and its *BSB regulated individuals*, you must ensure compliance with Rules rC73 and rC74.

Rule C98 - New managers, HOLPs and HOFAs Rules

rC98

A *BSB entity* 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 S.D.

Part 2 - D. Rules Applying to Particular Groups of Regulated Persons Rules

Part 2 - D1. Self-employed barristers, chambers and BSB entities Rules

Outcomes C26-C29 Outcomes

oC26

Clients are provided with appropriate information about redress, know that they can make a *complaint* if dissatisfied, and know how to do so.

oC27

Complaints are dealt with promptly and the *client* is kept informed about the process.

oC28

Self-employed barristers, *chambers* and *BSB entities* run their practices without *discrimination*.

oC29

Pupils are treated fairly and paid in accordance with the Pupillage Funding Rules.

Rules C99-C109 - Complaints rules Rules

Provision of information

rC99

You must notify *clients* in writing when you are *instructed*, or, if that is if not practicable, at the next appropriate opportunity:

.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*;

.2 if you are doing referral work, that the lay *client* may complain directly to *chambers* or the *BSB entity* without going through *solicitors*.

rC100

If you are doing public access, or licensed access work using an *intermediary*, the *intermediary* must similarly be informed.

rC101

If you are doing referral work, you do not need to give a *professional client* the information set out in Rules rC99.1 and rC99.2, 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 rC21.

rC102

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 them giving them the information set out at Rules rC99.1 and rC99.2.

rC103

Each website of *self-employed barristers*, *chambers* and *BSB entities* must display:

.1 on the homepage, the text "regulated by the Bar Standards Board" (for sole practitioners) or "barristers regulated by the Bar Standards Board" (for *chambers*) or "authorised and regulated by the Bar Standards Board" (for *BSB entities*); and

.2 in a sufficiently accessible and prominent place:

.a information about their complaints procedure, any right to complain to the Legal Ombudsman, how to complain to the Legal Ombudsman and any time limits for making a complaint;

.b a link to the decision data on the Legal Ombudsman's website; and

.c a link to the Barristers' Register on the BSB's website.

.3 All e-mail and letterheads from *self-employed barristers* and *BSB entities*, their *managers* and employees must state "regulated by the Bar Standards Board" (for *self-employed barristers*) or "authorised and regulated by the Bar Standards Board" (for *BSB entities*).

.4 *Self-employed barristers*, *chambers* and *BSB entities* must have regard to guidance published from time to time by the *Bar Standards Board* in relation to redress transparency.

Response to complaints

rC104

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

.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 entity* (as appropriate);

.2 a copy of the *chambers'* complaints procedure or the *BSB entity's* Complaints Procedure (as appropriate);

.3 the date by which the complainant will next hear from *chambers* or the *BSB entity* (as appropriate).

rC105

When *chambers* or a *BSB entity* (as appropriate) 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 them.

Documents and record keeping

rC106

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

.1 the investigation and resolution of the *complaint*;

.2 internal review in order to improve *chambers'* or the *BSB entity's* (as appropriate) handling of complaints;

.3 complying with requests from the *Bar Standards Board* in the exercise of its monitoring and/or auditing functions.

rC107

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.

rC108

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*.

rC109

The person responsible for the administration of the procedure must report at least annually to either:

.1 the *HOLP*; or

.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.

Rules C110-C112 - Equality and diversity

Rules

rC110

You must take reasonable steps to ensure that in relation to your *chambers* or *BSB entity*:

.1 there is in force a written statement of policy on equality and diversity; and

.2 there is in force a written plan implementing that policy;

.3 the following requirements are complied with:

Equality and Diversity Officer

.a *chambers* or *BSB entity* has at least one *Equality and Diversity Officer*;

Training

.b removed.

.c save in exceptional circumstances, every member of all selection panels must be 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 entity*:

.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 rC110; and

.ii takes any appropriate remedial action identified in the light of that review;

.f subject to Rule rC110.3.h *chambers* or *BSB entity* 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 rC110.3.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 C110.3.g does not apply to the extent that the people referred to in Rule rC110.3.f.i and Rule rC110.3.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 entity* 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 entity* 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 must cover as a minimum:

.i the right of a member of *chambers* to take *parental leave*;

.ii the right of a member of *chambers* to return to *chambers* after a specified period, or number of separate periods, of *parental leave*, provided the total leave taken does not exceed a specified maximum duration (which must be at least one year);

.iii a provision that enables *parental leave* to be taken flexibly and allows the member of *chambers* to maintain their *practice* while on *parental leave*, including the ability to carry out fee earning work while on *parental leave* without giving up other *parental leave* rights;

.iv the extent to which a member of chambers is or is not required to contribute to chambers' rent and expenses during parental leave;

.v the method of calculation of any waiver, reduction or reimbursement of *chambers'* rent and expenses during *parental leave*;

.vi 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* a minimum of 6 months free of *chambers'* rent;

.vii the procedure for dealing with grievances under the policy;

.viii *chambers'* commitment to regularly review the effectiveness of the policy;

Flexible working

.l *chambers* or *BSB entity* 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 them to manage their family responsibilities or disability without giving up work;

Reasonable adjustments policy

.m *chambers* or *BSB entity* 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 entity* has a Diversity Data Officer;

.o *chambers* or *BSB entity* 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 rC110.3.q to .t below;

Collection and publication of diversity data

.q The Diversity Data Officer shall invite members of the *workforce* to provide *diversity data* in respect of themselves to the Diversity Data Officer using the model questionnaire in Section 7 of the BSB's Supporting Information on the BSB Handbook Equality Rules, which is available on the BSB's website;

.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 entity's* website every three years. If *chambers* or the *BSB entity* 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 removed;

.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 entity* 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*.

rC111

For the purposes of Rule rC110 above, the steps which it is reasonable for you to take will depend on all the circumstances, which include, but are not limited to:

.1 the arrangements in place in your *chambers* or *BSB entity* for the management of *chambers* or the *BSB entity*; and

.2 any role which you play in those arrangements.

rC112

For the purposes Rule rC110 above "allocation of unassigned work" includes, but is not limited to work allocated to:

.1 *pupils*;

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

.3 *barristers* returning from *parental leave*;

Guidance to Rules C110-C112 Guidance

gC140

Rule rC110 places a personal obligation on all *self-employed barristers*, however they practise, and on the *managers* of *BSB entities*, as well as on the entity itself, to take reasonable steps to ensure that they have appropriate policies which are enforced.

gC141

In relation to Rule rC110, 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 rC110, 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 entity*, you are expected to take reasonable steps to ensure that there are policies and that they are enforced.

gC142

For the purpose of Rule rC110 training means any course of study covering all the following areas:

a) Fair and effective selection & avoiding unconscious bias

b) Attraction and advertising

c) Application processes

d) Shortlisting skills

e) Interviewing skills

f) Assessment and making a selection decision

g) Monitoring and evaluation

gC143

Training should ideally be undertaken via classroom sessions. However, it is also permissible for training to be undertaken in the following ways: online sessions, private study of relevant materials such as the Bar Council's Fair Recruitment Guide and completion of CPD covering fair recruitment and selection processes.

gC144

The purpose of Rule rC110.3.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.

gC145

For the purpose of Rule rC110 "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 entity* 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.

gC146

For the purposes of Rule rC110, "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.

gC147

Rule rC110.3.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.

gC148

a) Rule rC110.3.k applies to all members of *chambers*, irrespective of whether their partner or spouse takes *parental leave*.

b) A flexible policy might include for example: keeping in touch (KIT) days; returns to practice in between periods of *parental leave*; or allowing a carer to practise part time.

c) Any periods of leave/return should be arranged between *chambers* and members taking *parental leave* in a way that is mutually convenient.

gC149

Rule rC110.3.k.vi sets out the minimum requirements which must be included in a *parental 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 they would have been in if any element of the rent were paid on a flat rate.

gC150

For the purposes of Rule rC110 above investigation means, considering the reasons for disparities in data such as:

.1 Under or overrepresentation of particular groups e.g. men, women, different ethnic groups or disabled people

.2 Absence of particular groups e.g. men, women, different ethnic groups or disabled people

3 Success rates of particular groups

.4 In the case of *chambers*, over or under allocation of unassigned work to particular groups

gC151

These rules are supplemented by the BSB's Supporting Information on the BSB Handbook Equality Rules ("the Supporting Information") which is available on the BSB's website. 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 entities*. If you are a *self-employed barrister*, a *BSB entity*, or a *manager* of a *BSB entity*, you should seek to comply with the Supporting Information as well as with the rules as set out above.

gC152

The Supporting Information is also relevant to all *pupil supervisors* and *AETOs*. *AETOs* will be expected to show how they comply with the Supporting Information as a condition of authorisation.

gC153

Although the Supporting Information does 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.

Rules C113-C118 - Pupillage funding

Rules

Funding

rC113

The members of a set of *chambers* or the *BSB entity* must pay to each non-practising *pupil* (as appropriate), by the end of each month of the non-practising period of their *pupillage* no less than:

.1 the *specified amount*; and

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

.3 travel for the purposes of their *pupillage* during that month; and

.4 attendance during that month at courses which they are required to attend as part of their *pupillage*.

rC114

The members of a set of *chambers*, or the *BSB entity*, must pay to each practising *pupil* by the end of each month of the practising period of their *pupillage* no less than:

.1 the *specified amount*; plus

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

.a travel for the purposes of their *pupillage* during that month; and

.b attendance during that month at courses which they are required to attend as part of their *pupillage*; less

c such amount, if any, as the *pupil* may receive during that month from their *practice* as a *barrister*; and less

.d such amounts, if any, as the *pupil* may have received during the preceding months of their practising *pupillage* from their *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 rC114.2.a and .b above.

rC115

The members of a set of *chambers*, or the *BSB entity*, 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 rC113 and rC114 above, whether before or after they cease to be a chambers pupil or an entity *pupil*, save in the case of misconduct on their part.

rC116

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

rC117

Removed.

rC118

For the purposes of these requirements:

.1 " *chambers pupil*" means, in respect of any set of *chambers*, a *pupil* doing the non-practising or practising period of *pupillage* with a *pupil supervisor*, or *pupil supervisors*, who is or are a member, or members, of that set of *chambers*;

.2 "entity *pupil*" means, in respect of a *BSB entity* a *pupil* doing the non-practising or practising period of *pupillage* with a *pupil supervisor* or *pupil supervisors* who are *managers* or employees of such *BSB entity*;

.3 "non-practising *pupil*" means a *chambers pupil* or an entity *pupil* doing the non-practising period of *pupillage*;

.4 "practising *pupil*" means a *chambers pupil* or an entity *pupil* doing the practising period of *pupillage*;

.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, period *pupillage*, as the case may be;

.6 any payment made to a *pupil* by a *barrister* pursuant to Rule rC115 above shall constitute an amount received by the *pupil* from their *practice* as a *barrister*; and

.7 the following travel by a *pupil* shall not constitute travel for the purposes of their *pupillage*:

.a travel between their home and *chambers* or, for an entity *pupil*, their place of work; and

.b travel for the purposes of their *practice* as a *barrister*.

Part 2 - D2. Barristers undertaking public access and licensed access work Rules

Outcomes C30-C32 Outcomes

oC30

Barristers undertaking public access or licensed access work have the necessary skills and experience required to do work on that basis.

oC31

Barristers undertaking public access or licensed access work maintain appropriate records in respect of such work.

oC32

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 C119-C131 - Public access rules Rules

rC119

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.

rC120

Before accepting any *public access instructions* from or on behalf of a *public access client*, you must:

.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* (acting by the *Bar Standards Board*) as a public access practitioner;

.2 Removed from 1 February 2018.

.3 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.

rC121

As a barrister with less than three *years' standing* who has completed the necessary training you must have a *barrister* who is a qualified person within Rule S22 and has registered with the *Bar Council* (acting by the *Bar Standards Board*) as a public access practitioner readily available to provide guidance to you.

rC122

You may not accept *instructions* from or on behalf of a public access *client* if 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*.

rC123

In any case where you are not prohibited from accepting *instructions*, you 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 *instructions* from a public access *client* you form 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* you must:

.1 inform the public access *client* of your view; and

.2 withdraw from the case in accordance with the provisions of Rules rC25 and rC26 and associated guidance unless the *client* instructs a *solicitor* or other *professional client* to act in the case.

rC124

You 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*.

rC125

Having accepted *public access instructions*, you must forthwith notify your public access *client* in writing, and in clear and readily understandable terms, of:

.1 the work which you have agreed to perform;

.2 the fact that in performing your work you will be subject to the requirements of Parts 2 and 3 of this *Handbook* and, in particular, Rules rC25 and rC26;

.3 unless authorised to *conduct litigation* by the *Bar Standards Board*, the fact that you cannot be expected to perform the functions of a *solicitor* or other *person* who is authorised to *conduct litigation* and in particular to fulfil obligations arising out of or related to the *conduct of litigation*;

.4 the fact that you are self-employed, are not employed by a *regulated entity* and (subject to Rule S26) do not undertake the management, administration or general conduct of a client's affairs;

.5 in any case where you have been instructed by an *intermediary*:

.a the fact that you are independent of and have no liability for the *intermediary*; and

.b the fact that the *intermediary* is the agent of the lay *client* and not your agent;

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

.7 the fees which you propose to charge for that work, or the basis on which your fee will be calculated;

.8 your contact arrangements; and

.9 the information about your complaints procedure required by D1.1 of this Part 2.

rC126

Save in exceptional circumstances, you will have complied with Rule rC125 above if you have written promptly to the public access *client* in the terms of the model letter provided on the *Bar Standards Board* website.

rC127

In any case where you have been instructed by an *intermediary*, you must give the notice required by Rule C125 above both:

.1 directly to the public access *client*; and

.2 to the *intermediary*.

rC128

Having accepted *public access instructions*, you must keep a case record which sets out:

.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;

.2 the date on which the *instructions* were accepted;

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

.4 when agreed, the fee.

rC129

Having accepted *public access instructions*, you must either yourself 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:

.1 copies of all *instructions* (including supplemental *instructions*);

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

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

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

rC130

Removed from 1 February 2018.

rC131

Save where otherwise agreed:

.1 you shall be entitled to copy all documents received from your lay *client*, and to retain such copies;

.2 you shall return all documents received from your lay *client* on demand, whether or not you have been paid for any work done for the lay *client*; and

.3 you shall not be required to deliver to your lay *client* any documents drafted by you in advance of receiving payment from the lay *client* for all work done for that *client*.

.4 Removed from 1 February 2018.

Rules C132-C141 - Licensed access rules

Rules

rC132

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 (which are available on the BSB's website) whether that *client* is acting for themselves or another.

rC133

These rules apply to every matter in which a *barrister* in self-employed *practice* is instructed by a *licensed access client* save that Rules rC134.2 and rC139 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 (which are available on the BSB's website).

rC134

You are only entitled to accept *instructions* from a *licensed access client* if at the time of giving instructions the *licensed access client*:

.1 is identified; and

.2 you ensure that the *licensed access client* holds a valid Licence issued by the *Bar Standards Board* (either by requiring the *licensed access client* to send you a copy of the Licence, or referring to the list of *licensed access clients* published on the *Bar Standards Board* website).

rC135

You must not accept any *instructions* from a *licensed access client*:

.1 unless you are able to provide the services required of you by that *licensed access client*;

.2 if you consider it in the interests of the lay *client* or the interests of justice that a *solicitor* or other *person* who is authorised to *conduct litigation* or some other appropriate *intermediary* (as the case may be) be instructed either together with you or in your place.

rC136

If you agree standard terms with a *licensed access client*, you must keep a copy of the agreement in writing with the *licensed access client* setting out the terms upon which you have agreed and the basis upon which you are to be paid.

rC137

Having accepted *instructions* from a *licensed access client*, you must promptly send the *licensed access client*:

.1 a statement in writing that the *instructions* have been accepted (as the case may be) on the standard terms previously agreed in writing with that *licensed access client*; or

.2 if you have accepted *instructions* otherwise than on such standard terms, a copy of the agreement in writing with the *licensed access client* setting out the terms upon which you have agreed to do the work and the basis upon which you are to be paid; and

.3 unless you have accepted *instructions* on standard terms which incorporate the following particulars must at the same time advise the *licensed access client* in writing of:

.a the effect of rC21 as it relevantly applies in the circumstances;

.b unless authorised by the *Bar Standards Board* to *conduct litigation*, the fact that you cannot be expected to perform the functions of a *solicitor* or other *person* who is authorised to *conduct litigation* and in particular to fulfil obligations arising out of or related to the conduct of litigation; and

.c the fact that circumstances may require the *client* to retain a *solicitor* or other *person* who is authorised to *conduct litigation* at short notice and possibly during the case.

rC138

If at any stage you, being instructed by a *licensed access client*, consider it in the interests of the lay *client* or the interests of justice that a *solicitor* or other *person* who is authorised to *conduct litigation* or some other appropriate *intermediary* (as the case may be) be instructed either together with you or in your place:

.1 you must forthwith advise the *licensed access client* in writing to instruct a *solicitor* or other *person* who is authorised to *conduct litigation* or other appropriate *intermediary* (as the case may be); and

.2 unless a *solicitor* or other *person* who is authorised to *conduct litigation* or other appropriate *intermediary* (as the case may be) is instructed as soon as reasonably practicable thereafter you must cease to act and must return any *instructions*.

rC139

If at any stage you, being instructed by a *licensed access client*, consider that there are substantial grounds for believing that the *licensed access client* has in some significant respect failed to comply with the terms of the Licence granted by the *Bar Standards Board* you must forthwith report the facts to the *Bar Standards Board*.

rC140

Having accepted *instructions* from a *licensed access client*, you must keep a case record which sets out:

.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;

.2 the date on which the *instructions* were accepted;

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

.4 when agreed, the fee.

rC141

Having accepted *instructions* from a *licensed access client*, you must either yourself retain or take reasonable steps to ensure that the *licensed access client* will retain for seven years after the date of the last item of work done:

.1 copies of *instructions* (including supplemental *instructions*);

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

.3 a list of all documents enclosed with any *instructions*; and

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

Part 2 - D3. Registered European lawyers Rules

Outcome C33 Outcomes

oC33

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

Rules C142-C143 Rules

rC142

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

rC143

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

.1 use your *home professional title*;

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

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

Part 2 - D4. Unregistered barristers Rules

Outcome C34 Outcomes

oC34

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*.

Rule C144 Rules

rC144

If you are an *unregistered barrister* and you supply *legal services* (other than as provided for in Rule rC145) to any inexperienced *client* then, before supplying such services:

.1 you must explain to the *client* that:

.a (unless you are supplying *legal services* pursuant to Rule S12) 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 *reports* 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; and

.f in respect of any legal advice you provide, there is a substantial risk that they will not be able to rely on legal professional privilege.

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

For the purposes of this Rule rC144, 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.

Gudiance to Rule C144 Guidance

gC154

For the purposes of determining whether Rule rC144 applies, the people who would be entitled to complain to the *Legal Ombudsman* if you were a *BSB authorised person* are:

.1 an individual; or

.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

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

.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

.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

.6 a personal representative or beneficiary of the estate of a person who, before they died, had not referred the complaint to the *Legal Ombudsman*.

Rule C145 Rules

rC145

rC144 does not apply to you if you supply *legal services*:

.1 as an employee or *manager* of a *regulated entity*;

.2 as an employee or *manager* of a body subject to regulation by a professional body or regulator;

.3 as provided for in Section S.B9 (*Legal Advice Centres*);

.4 pursuant to an authorisation that you have obtained from another *approved regulator*; or

.5 in accordance with Rules S13 and S14.

Guidance to Rule C145 Guidance

gC155

Guidance on the disclosures which unregistered barristers should consider making to *clients* covered by Rule rC145, and other *clients* who are not inexperienced *clients*, to ensure that they comply with Rule rC19 and do not mislead those *clients* is available on BSB website.

Part 2 - D5. Cross-border activities within the European Union and the European Economic Area Rules

Outcome C35 Outcomes

oC35

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

Rule C146 Rules

rC146

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 rC147 to rC158 below.

Guidance to Rule C146 Guidance

gC156

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 rC13 and rC14 and the associated guidance.

gC157

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 rC73 and rC74)).

Rules C147-C158 Rules

Incompatible occupations

rC147

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*.

rC148

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

rC149

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 rC150 below.

rC150

Rule rC149 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

rC151

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.

rC152

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

rC153

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.

rC154

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

rC155

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:

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

.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 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

rC156

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.

rC157

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.

rC158

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 rC156 or rC157 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.

Part 2 - D6. Price and service transparency rules for self-employed barristers, chambers and BSB entities Rules

Outcome C36 Outcomes

oC36

Clients are provided with appropriate information to help them make informed choices and understand the price and service they will receive.

Rules C159-C163 - Self-employed barristers, chambers and BSB entities Rules

Publication of information

rC159

Each website of *self-employed barristers*, *chambers* and *BSB entities* must, in a sufficiently accessible and prominent place:

.1 state that professional, licensed access and/or lay clients (as appropriate) may contact the *barrister*, *chambers* or *BSB entity* to obtain a quotation for *legal services* and provide contact details. Quotations must be provided if sufficient information has been provided by the *client*, and the *barrister*, *barristers* in *chambers* or *BSB entity* would be willing to provide the legal services. Quotations must be provided within a reasonable time period, and in clear and readily understandable terms;

.2 state their most commonly used pricing models for *legal services*, such as fixed fee or hourly rate. Where different models are typically used for different *legal services*, this must be explained;

.3 state the areas of law in which they most commonly provide *legal services*, and state and describe the *legal services* which they most

commonly provide, in a way which enables clients to sufficiently understand the expertise of the *barrister*, *chambers* or *BSB entity*; and

.4 provide information about the factors which might influence the timescales of their most commonly provided *legal services*.

rC160

All *self-employed barristers*, *chambers* and *BSB entities* must review their website content at least annually to ensure that it is accurate and complies with the transparency requirements referred to in Rules C103, C159 and where applicable, Rules C164 – C168.

rC161

Self-employed barristers, *chambers* and *BSB entities* must comply with the transparency requirements referred to in Rules C103, C159 and where applicable, Rules C164 – C168 by ensuring the required information is readily available in alternative format. This must be provided on request (for example, if they do not operate a website, or a *client* or prospective *client* does not have Internet access).

Provision of information to the Bar Standards Board

rC162

All *self-employed barristers*, *chambers* and *BSB entities* must notify the *Bar Standards Board* of their website address(es) offering *legal services*, and any changes to their website address(es), within 28 days of the creation or change of the same.

Bar Standards Board guidance

rC163

When offering their services to *clients* and prospective *clients*, all *self-employed barristers*, *chambers* and *BSB entities* must have regard to guidance published from time to time by the *Bar Standards Board* in relation to price and service transparency.

Rules C164-C169 - Self-employed barristers undertaking public access work and BSB entities supplying legal services directly to the public

Rules

Public Access Guidance for Lay Clients

rC164

Each website of *self-employed barristers* undertaking public access work and/or their chambers, and *BSB entities* supplying *legal services* directly to the public, must in a sufficiently accessible and prominent place display a link to the Public Access Guidance for Lay Clients on the BSB's website.

Price transparency policy statement

rC165

Self-employed barristers undertaking public access work and/or their *chambers*, and *BSB entities* supplying *legal services* directly to the public, must comply with the *Bar Standards Board's* price transparency policy statement insofar as it applies to them.

Publication of information

rC166

Self-employed barristers undertaking public access work and/or their *chambers*, and *BSB entities* supplying *legal services* directly to the public, are required by the *Bar Standards Board's* price transparency policy statement to provide price information in relation to certain *legal services* in certain circumstances. In relation to those *legal services* and in those circumstances, each website of *self-employed barristers* undertaking public access work and/or their *chambers*, and *BSB entities* supplying *legal services* directly to the public, must in a sufficiently accessible and prominent place:

.1 state their pricing model(s), such as fixed fee or hourly rate;

.2 state their indicative fees and the circumstances in which they may vary. For example, a fixed fee and the circumstances in which additional fees may be charged, or an hourly rate by seniority of *barrister*;

.3 state whether their fees include VAT (where applicable); and

.4 state likely additional costs, what they cover and either the cost or, if this can only be estimated, the typical range of costs.

rC167

In compliance with the requirements of Rule C166 above:

.1 a sole practitioner must provide price information in relation to them as an individual *barrister*;

.2 a *BSB entity* must provide price information in relation to the entity; and

.3 a *chambers* may provide price information either in relation to (1) individual *barristers*, or (2) *barristers* in *chambers* in the form of ranges or average fees.

rC168

Self-employed barristers undertaking public access work and/or their *chambers*, and *BSB entities* supplying *legal services* directly to the public, are required by the *Bar Standards Board's* price transparency policy statement to provide service information in relation to certain *legal services* in certain circumstances. In relation to those legal services and in those circumstances, each website of *self-employed barristers* undertaking public access work and/or their *chambers*, and *BSB entities* supplying *legal services* directly to the public, must in a sufficiently accessible and prominent place:

.1 state and describe the *legal services*, including a concise statement of the key stages, in a way which enables *clients* to sufficiently understand the service of the sole practitioner, *barristers* in chambers or *BSB entity*; and

.2 provide an indicative timescale for the key stages of the *legal services*.

rC169

Self-employed barristers undertaking public access work, and BSB entities supplying *legal services* directly to the public, may be asked to accept instructions to provide the *legal services* listed in the *Bar Standards Board's* price transparency policy statement at short notice. In these circumstances, you are not required to comply with Rules C166 – C168 above before accepting the *instructions*. However, you must do so as soon as reasonably practicable after accepting the *instructions*.