

THE BAR *of*  
NORTHERN  
IRELAND

# Code of Conduct

*As of 05th September 2022*

*V0.1 As of 09<sup>th</sup> September 2022*

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# CODE OF CONDUCT FOR THE BAR OF NORTHERN IRELAND

## STATEMENT OF PRINCIPLES

Barristers must at all times adhere to the highest professional standards and observe the following core principles in all aspects of their professional conduct and avoid personal conduct that might compromise or undermine these obligations.

**Independence** – Members of the Bar must be able to serve the interests of their clients and the overall administration of justice without fear or favour. They must at all times manifestly support the rule of law and the proper administration of justice. This therefore requires absolute independence and each barrister must be free from any influence (including commercial, political, religious, social or societal) that may arise from personal interest or external pressure. A barrister must at all times avoid compromising their independence in order to please others such as the client, the Court or third parties. Independence is essential in both non-contentious and contentious matters.

**Impartiality and Equality** - A barrister must give advice impartially while acting in the best interests of their client to ensure that their conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in that impartiality. A barrister should avoid conflicts of interest and in particular should not accept instructions that will limit their ordinary authority and discretion as a barrister, or which impose an obligation to act in a manner that is inconsistent with the impartiality principle and the Code. A barrister must treat all persons equally and be aware of, and respect diversity in civil society as well as differences arising from various sources such as race, colour, gender, religious belief, political opinion, ethnic or national origin, disability, age, marital status, sexual orientation, social or economic status. A barrister should not, by words or conduct, manifest any bias or prejudice towards any person or group on such grounds and should carry out their duties without any differentiation on such grounds.

**Integrity and Propriety** – A barrister must act with integrity and propriety at all times as this is essential to building the relationships of trust with their client, the Court and the public. The traditional values of honesty, openness, integrity and acting with propriety are also professional obligations for a barrister and ensure public confidence in the administration of justice and in the profession of barrister. A barrister should display their commitment to this principle in their interactions with clients, other barristers, officers of the court and members of the public.

**Competency, Diligence and A Commitment to Service Standards** – A barrister must take all reasonable steps to maintain and enhance the knowledge and skills necessary for the proper performance of their duties and to devote their professional activity to their work. A barrister must not engage in conduct incompatible with the diligent discharge of such duties. A barrister must at all times be conscious of and respectful of the fact that a client has placed their trust and reliance upon them and has engaged them to provide a skilled service. Therefore, the client in return should be entitled to receive proper standards of work, dutifully, competently and diligently undertaken and with a demonstrable commitment to acting at all times in their best interests.

**Confidentiality** – Confidentiality is a primary and fundamental right and duty of a barrister and is the foundation of the barrister/client relationship. It is essential to building and maintaining trust between the barrister and their client as well as other parties. The obligation of confidentiality is not time bound. Where a barrister ceases to practice the confidentiality of the information that has been provided to them in carrying out their professional duties must be maintained at all times. A barrister must not at any time disclose confidential information without the consent of the provider of that information except where that is necessary for the performance of their duties or required by law or by an order of the court. There may also be exceptional circumstances where a disclosure may be in the public interest. Where this arises the barrister may seek advice from the [Professional Conduct Committee](#) of the Bar Council.

## **1. COMMENCEMENT AND AMENDMENT OF THE CODE OF CONDUCT**

- 1.1 This Code of Conduct, which applies to all barristers whenever called to the Bar and whether or not they are practising, was first adopted by the Bar in a General Meeting on 8th November 1990, and replaced the Handbook issued by the Bar Council in December 1979.
- 1.2 This Code of Conduct will be kept under regular review, normally subject to formal review once every five years and will be amended as and when considered appropriate by the Bar Council, taking into consideration any recommendation/s of the Professional Conduct Committee, in order to reflect relevant statutory requirements and best practice in relation to professional conduct and the provision of professional services and the maintenance of the high standing of the profession of barrister in the context of modern legal practice.
- 1.3 This revised Code of Conduct came into force on the 5<sup>th</sup> September 2022.

## **2. DEFINITIONS**

- 2.1 The Code of Conduct defines various permitted categories of barrister. These are detailed in [Section 4](#). Any reference hereafter to the word “barrister” shall mean a practising barrister save as otherwise expressly stated.
- 2.2 “The Admission Rules” are the [Rules of the Honourable Society of the Inn of Court](#).
- 2.3 “The Bar Council” is the General Council of the Bar of Northern Ireland and its nominated committees.
- 2.4 “The Inn” is the body originally constituted by a special meeting of the Bench and Bar of Northern Ireland on the 11th January 1926 and subsequently designated “the Honourable Society of the Inn of Court of Northern Ireland”.
- 2.5 “The Chairman” is the Chairman for the time being of the Bar Council.
- 2.6 “Client” includes both professional and lay clients.
- 2.7 “Court” includes any court or tribunal or other person or body before whom a barrister may appear.
- 2.8 “The Executive Council” is the Executive Council of the Inn.

- 2.9 “Government Legal Service” means those barristers, advocates and solicitors qualified in any part of the United Kingdom who are employed or hold office as lawyers in any Government Department or in the Public Prosecution Service for Northern Ireland or the Serious Fraud Office.
- 2.10 “Lay client” is the person or organisation on whose behalf a barrister in independent practice is instructed.
- 2.11 “Legal services” includes the provision of oral or written legal advice, the drafting of legal documents, the representation of clients in any contentious or non-contentious matters in any court, tribunal, inquiry or hearing, but does not include:
- a) sitting as a judge or arbitrator or acting as a mediator;
  - b) lecturing in or teaching law or writing or editing law books articles or reports;
  - c) giving advice on legal matters free to a friend or relative;
  - d) any other matters as defined elsewhere within the Code of Conduct.
- 2.12 “Professional client” is the solicitor or member of a recognised professional body by whom a barrister in independent practice is retained or instructed.
- 2.13 “Public authority” is an authority which has public or statutory duties to perform and which performs the same for the benefit of the public and not for private profit.
- 2.14 A “recognised professional body” is a professional body approved as such by the Bar Council in accordance with the provisions of [Section 28](#) of this Code.
- 2.15 With regard to the construction of this Code:
- a) singular and plural: every word importing the singular shall, unless the contrary intention appears, be construed as if it also imported the plural and every word importing the plural shall, unless the contrary intention appears, be construed as if it also imported the singular;
  - b) a person: the word “person” shall, unless the contrary intention appears, be construed as importing a body corporate (whether a corporation aggregate or a corporation sole) and an unincorporated body of persons as well as an individual.

### **3. MEMBERSHIP OF THE BAR LIBRARY**

- 3.1 Every barrister in independent practice shall be a member of the Bar Library
- 3.2 The Bar Council may, in its discretion, grant an exemption from the requirement that a barrister shall be a member of the Bar Library.

- 3.3 Any barrister who applies for such an exemption must demonstrate, to the satisfaction of the Bar Council, that they:
- i. have the necessary experience to practice outside the Bar Library;
  - ii. have access to adequate library facilities, which are defined as facilities commensurate with those available to members of the Bar Library;
  - iii. have the ability to manage their practice efficiently;
  - iv. are in good standing with Her Majesty's Revenue and Customs;
  - v. hold a valid and subsisting practising certificate for the Bar of Northern Ireland, for the relevant period.
- 3.4 If the Bar Council grants such exemption, it may, in its discretion, impose such restrictions on the barrister's practice as it sees fit and it shall be a condition of the grant of such exemption that the barrister undertakes to abide by such restrictions as are imposed
- 3.5 Membership of the Bar Library is classified into various categories as defined and approved by the Bar Council.

## **4. CATEGORIES OF BARRISTER**

### **A. *Practising Barrister Status***

- 4.1 A practising barrister is a barrister who possesses the degree of barrister at law and who has been called to the Bar and who is supplying legal services and holds a valid practising certificate.
- 4.2 A barrister in independent practice is a practising barrister who provides legal services to a section of the public in return for payment of fees provided that:
- a) a barrister who is a Law Officer of the Crown shall be deemed to be a barrister in independent practice although they do not represent to the public generally that they are willing to render legal services to clients;
  - b) a barrister who is a Member of Parliament or a lecturer/teacher of law at an institution of higher or further education, or an author of legal textbooks, or articles may be a barrister in independent practice notwithstanding that their practice may not be their primary occupation.
- 4.3 An employed barrister is a practising barrister who has received approval from the Chief Executive in accordance with the requirements of this section of the Code who in return for the payment of a salary is employed wholly or primarily for the purpose of providing permitted legal services to an approved employer under a contract of employment. Unlike a barrister in independent practice an employed barrister does not supply legal services to the public or a section of the public.



The firm or company which employs the barrister must also not wholly or in part be a device whereby the barrister, with or without others, is intending directly or indirectly to supply legal services to the public or a section of the public. A barrister who is a Law Officer of the Crown shall be deemed to be a barrister in independent practice although they do not represent to the public generally that they are willing to render legal services to clients.

4.4 A practising barrister is at all times subject to the provisions of the Code of Conduct.

**B. Former Barrister Status**

4.5 A barrister who has indicated in writing to the Chief Executive their intention to cease practice or who (except in the case of a temporary cessation of practice for example due to sickness, maternity, interim suspension, time-bound disciplinary sanction or approved leave of absence) does not hold a current and valid Practising Certificate, will be assigned the status of “Former Barrister” and will thus be advised in writing that as a Former Barrister they remain members of the profession and are expected to conduct themselves in an appropriate manner.

4.6 A Former Barrister is subject to the Code at all times and is required to be open and co-operative with the Bar Council and its regulatory bodies.

4.7 A Former Barrister must not provide legal services as defined in [Section 2.11](#) of this Code and must not be an employee, partner, director, advisor, affiliate, agent or consultant to any entity that is involved in whole or in part in the provision of such legal services to, or operating from, this jurisdiction.

4.8 A Former Barrister has a continuing responsibility not to mislead anyone about their status and must therefore not hold themselves out as a barrister. When referring to their professional status they must always make clear that their status is confined only to that of “Former Barrister” and they are expressly prohibited at all times from describing their professional status in any other manner either in person or across any media platform.

4.9 The only means by which a barrister may cease practice and be assigned a status other than Former Barrister is if the barrister either:

- a) Assumes a judicial position in this or any other jurisdiction at which point they would be subject to the professional standards and restrictions associated with that judicial office; or
- b) Applies to be disbarred from the profession.

**C. *Application to Be Disbarred***

- 4.10 A barrister who chooses to apply to be disbarred from the profession may do so by providing a written request to that effect to the Chief Executive so that they might bring this to the attention of the Benchers of the Inn of Court.
- 4.11 A barrister who applies to be disbarred from the profession must not provide legal services as defined in [Section 2.11](#) of this Code to or from this jurisdiction. Should such legal services be performed, the barrister in question will be deemed to have remained a barrister in substance and will be held to be in breach of the Code. Legal services which fall outside of the scope as defined in [Section 2.11](#) are however permitted to be performed. This rule is not applicable to barristers who apply to be disbarred in order to practice as a solicitor, on the condition that they have their name placed on the Roll of Solicitors held by the [Law Society](#) and possess the necessary professional indemnity insurance.
- 4.12 A barrister who applies to be disbarred from the profession must not hold themselves out as a barrister. In a curriculum vitae they can state that they hold the degree of barrister at law and that they qualified as a barrister. They are however prevented from using the title 'barrister' or otherwise conveying the impression that they are practising as a barrister. Holding out includes:
- a) Describing oneself as a barrister, including as a retired or former barrister, in any printed material used in connection with the provision of legal services, in particular, in advertising or publicity, on a card or letterhead, on a website, on any social media platform, or on premises;
  - b) Describing oneself as a barrister to clients or prospective clients;
  - c) Describing oneself to clients or prospective clients as a non-practising barrister or barrister-at-law;
  - d) Indicating to opposing parties or their representatives, orally, or in correspondence, that one is a barrister;
  - e) Describing oneself as a barrister, or, when supplying services to the public, as "counsel", wearing robes, or sitting in a place reserved for counsel, in court;
  - f) Using other descriptions in connection with supplying, or offering to supply, legal services which imply that the individual is a barrister.
- 4.13 On applying to be disbarred the barrister shall complete and sign the declaration in [Appendix 4](#) acknowledging that they understand and will comply with the provisions of [Sections 2.11](#) and [4.12](#) above.

## **EMPLOYED BARRISTERS**

- 4.14 A barrister may supply legal services as an employed barrister provided that:
- a) the barrister is qualified to practice; and
  - b) the barrister has notified the Bar Council of the name, address, telephone number and the nature of the business of the employer and of any change in the same; and
  - c) the barrister has, unless exempted by the Executive Council, paid to the Executive Council at such time or times as it shall have become due the subscription currently payable by an employed barrister of the barrister's seniority as prescribed from time to time by the Executive Council; and
  - d) the barrister does not supply legal services to the public or a section of the public; and
  - e) the firm or company which employs the barrister is not wholly or in part a device whereby the barrister, with or without others, is intending directly or indirectly to supply legal services to the public or a section of the public.
  - f) the barrister has current certification.
- 4.15 Subject to [Section 4.16](#) and [4.17](#) an employed barrister may appear on behalf of the barrister's employer in any court in circumstances where barristers in independent practice do not have an exclusive right of audience in such court and shall not be required by any rule of professional conduct or etiquette to be instructed by a solicitor.
- 4.16 An employed barrister may only act in pursuance of [Section 4.15](#) if that barrister:
- a) has completed a period of first six months' pupillage and is serving the remainder of their pupillage; or
  - b) has completed twelve months' pupillage; or
  - c) became an employed barrister before the 1st January 1991 and has been an employed barrister for a period or periods amounting to not less than five years; or
  - d) has obtained the consent of the Bar Council.
- 4.17 An employed barrister may not supply legal services of any kind to a person including a fellow employee other than that barrister's employer except as follows:
- a) a barrister in the government legal service may act on behalf of those Ministers or Officers of the Crown or organisations or public officers or servants for whom the government legal service customarily acts;
  - b) a barrister employed by a trade association may give advice of a general nature to individual members of the association, and may act for the association in matters affecting the members of the association as a whole,

or a class of those members, but may not act on the instructions of any one or more members of the association, as distinct from the instructions of the association itself;

- c) a barrister employed in a Law Centre or in a Citizens' Advice Bureau;
- d) a barrister giving advice on legal matters free to a friend or relative or on a charitable basis.

## **5. GENERAL DUTIES OF THE INDIVIDUAL BARRISTER**

5.1 A barrister has an over-riding duty to the court to ensure the proper administration of justice.

5.2 It is a fundamental obligation of a barrister to ensure that every aspect of the lay client's interests is properly represented and protected without fear or favour.

5.3 A barrister must ensure that the privacy and dignity of the lay client are maintained at all times.

5.4 A barrister should envisage what the litigation experience is like for the lay client and assist the client by:

- a) explaining carefully the procedures and issues in the case in language that the client can understand, including how the client should conduct themselves as a witness, but avoiding any attempt to coach them;
- b) ascertaining and addressing anxieties about the litigation;
- c) inviting questions about the litigation and providing answers, where possible;
- d) explaining the strength and weaknesses in the client's case;
- e) advising the client as to the advantages and disadvantages of negotiations and settlement and the availability of alternative dispute resolution;
- f) ensuring that the client is never misled or bullied in order to obtain authority to settle its case;
- g) ensuring that waiting periods are explained;
- h) where a case is lost, explaining to the client what happened and advising as to an appeal.

5.5 In all their work in court for the professional or lay client and in all their dealings with the public and in their behaviour in a public setting the barrister must conduct themselves in a manner that is consistent with the [Statement of Principles](#), including but not limited to, acting with honour and integrity as befits the high standing of their profession.

5.6 A barrister must not act in any way in a professional or personal capacity so as to discredit or bring the profession of barrister into disrepute.

- 5.7 A barrister in independent practice shall remain independent of all intrinsic pressures and personal interests. In accordance with the [Statement of Principles](#) this means that a barrister must be able to serve the interest of their clients and the overall administration of justice without fear or favour. They must at all times manifestly support the rule of law and the proper administration of justice and must at all times avoid compromising their independence in order to please others such as the client, the Court or third parties. Independence is essential in both non-contentious and contentious matters.
- 5.8 A barrister must exercise their own professional judgment as to how to conduct a case. The barrister must not accept directions from anyone but should be in a position to explain the approach they have taken.
- 5.9 A barrister must also exercise their own professional judgment when drafting pleadings.
- 5.10 A barrister in independent practice is under a duty to accept a brief to appear in any court in which that barrister holds out for practice (having regard to experience and seniority) and to mark a proper and reasonable professional fee having regard to the length and difficulty of the case.
- 5.11 Where a barrister has accepted a brief they must not return it to the professional client or transfer it to another barrister simply because they have received a more lucrative assignment.
- 5.12 If, subsequent to accepting a brief, a barrister finds that it is not possible to attend the trial or hearing, the brief should be returned promptly to the professional client.
- 5.13 A barrister must inform the professional client immediately if there is an appreciable risk of them being unable to undertake a case in which a brief has been accepted. The barrister may pass the brief to another barrister, with the prior consent of the professional client which, for the avoidance of doubt, should where possible be in writing. The barrister must either, where agreed, pass the brief to another barrister or, if that is not agreed, return it to the professional client in sufficient time to allow the new barrister to prepare the case or to allow another barrister to be instructed by the professional client and to prepare the case.
- 5.14 Save in exceptional circumstances, if it is necessary for a barrister to return a brief because of conflicting commitments, the last brief accepted should be returned unless the professional client in the first case in which the barrister was retained consents to them doing otherwise.
- 5.15 A barrister who is instructed to appear for a person charged with a serious criminal offence (which will include all indictable offences which are tried on indictment or summarily) must give priority to this case and must not allow any other commitment

to interfere with the conduct of the defence or undertake any commitment which conflicts with their duty to represent this person.

- 5.16 A barrister should decline to act in any case which is beyond their competence and they must so inform their professional client forthwith.
- 5.17 Where a barrister accepts a brief they are obliged to attend the trial or hearing.
- 5.18 Except as is provided for in [Section 19.4](#) where more than one barrister is briefed in a civil or criminal trial or hearing each must attend the trial or hearing in its entirety. It is the duty of each barrister to conduct their practice in such a way as to avoid a foreseeable clash of commitments.
- 5.19 A barrister is not obliged to accept or retain any brief or to advise, act or appear in any case if the barrister reasonably forms a view that fair remuneration will not be paid within a reasonable time.
- 5.20 A barrister must at all times ensure that their practice is efficiently and properly administered and take all reasonably practicable steps to ensure that their professional engagements are properly fulfilled, and that adequate notice is given if they cannot be fulfilled.
- 5.21 Proper administration includes an obligation to keep and maintain proper accounts and to register for VAT on reaching the appropriate income level.
- 5.22 A barrister must not appear:
- a) in any matter in which they or may foreseeably become a party or acquire a pecuniary interest;
  - b) either for or against any local authority, firm or organisation of which they are a member or have directly or indirectly a significant pecuniary interest;
  - c) in any matter in which there is reason to believe they may be a witness.
- 5.23 If it becomes apparent to the barrister that they are likely to be a witness on a material question of fact, they should cease to act, providing their withdrawal from the case can be achieved without prejudice to the lay client's interests.
- 5.24 A barrister must ensure that all verbal, documentary and e-mail communications with their professional and lay clients are kept strictly confidential and that any such material is not heard or read by any unauthorised person.
- 5.25 A barrister in independent practice must ensure that their primary occupation is that of practice as a barrister and must not engage in any other occupation which is inconsistent with their practice at the Bar. In particular, they should not engage in any other employment without first obtaining a consent in writing from the Bar Council. Any application to undertake work outside the Bar should be made in accordance with the Guidance set out at [Appendix 8](#) of the Code.

- 5.26 A barrister must not treat any person (including, without prejudice to the generality of the foregoing, a lay client, professional client, pupil or fellow barrister) less favourably on the grounds of race, ethnic or national origin, sex, family status, sexual orientation, disability, age, religious belief or political opinion than they would treat any other person in circumstances which are the same or not materially different. In determining whether a barrister has been in breach of this duty regard shall be had to the Equality Code for the Bar at [Appendix 1](#).
- 5.27 A barrister must not rehearse, practise with or coach a witness in respect of their evidence in preparation for and conduct of a case, a barrister must observe the requirement that an expert report is, and should be seen to be, the independent product of the expert in question, uninfluenced by the pressures of the proceedings.
- 5.28 A barrister, as a member of the Honourable Society of the Inn of Court of Northern Ireland (“the Inn”), is subject to the governance of the Inn as prescribed in its Constitution and must comply with the Regulations and bye-laws made pursuant to same as may be amended from time to time. A barrister, as a member of the Bar of Northern Ireland, is also subject to the governance of the Bar Council as prescribed in its [Constitution](#) and must comply with any regulations, bye-laws, rules, policies and/or procedures made pursuant to same, and with this Code of Conduct (including the [Statement of Principles](#) and requirements contained in the [Appendices](#)) as may be amended from time to time.

## 6. CONFLICT OF INTEREST

- 6.1 A barrister should not accept instructions to act in a particular matter if:
- a) due to any existing or previous instructions the barrister is not able to fulfil their obligation to act in the best interests of the prospective lay client; or
  - b) there is a conflict of interest, or real risk of conflict of interest, between the barrister’s own personal interests and the interests of the prospective lay client in respect of the particular matter; or
  - c) there is a conflict of interest, or real risk of conflict of interest, between the prospective lay client and one or more of the barrister’s former or existing lay clients in respect of the particular matter; or
  - d) there is a real risk that information confidential to a former or existing lay client, or any other person to whom the barrister owes duties of confidence, may be relevant to the matter, such that if obliged to maintain confidentiality, the barrister could not act in the best interests of the prospective lay client, and the former or existing lay client or person to whom the barrister owes that duty does not give informed consent to disclosure of that confidential information.

- 6.2 A barrister with existing or previous instructions to act for a lay client in relation to a particular matter (including instructions to act for an accused person in criminal proceedings) may accept instructions to act for another lay client in connection with the same or a related matter providing that no conflict of interest or real risk of conflict of interest exists, that no real risk of breach of confidence exists, and that no real risk that the barrister's independence may be impaired exists. The barrister should accept instructions in such circumstances only with the consent of the original lay client.
- 6.3 A barrister may accept instructions to act for more than one lay client in relation to a particular matter (including instructions to act for more than one accused person in criminal proceedings) providing that no conflict of interest or real risk of conflict of interest exists, that no real risk of breach of confidence exists, and that no real risk that the barrister's independence may be impaired exists. The barrister should accept instructions in such circumstances only with the consent of each lay client.
- 6.4 Even where no real risk of conflict of interest, or breach of confidence, or of impairment of independence exists, a barrister who has accepted instructions to act for a lay client in any proceedings should not accept instructions to act for another lay client on appeal or in a further stage of the proceedings in the same case without obtaining the consent of the original lay client.
- 6.5 A barrister should not accept instructions to act in a particular matter if:
- a) the barrister is or may foreseeably become a party to the matter;
  - b) if the barrister has a material commercial interest in the matter; or
  - c) if the matter involves as a party an organisation of which the barrister is a member, or in which the barrister has, directly or indirectly, a material commercial interest; or
  - d) or if there is reason to believe the barrister may be a witness in the matter.
- 6.6 If, after a barrister has accepted instructions to act for more than one lay client, it becomes apparent that a conflict of interest exists, the barrister should return papers forthwith and should not continue to act for any of the lay clients.

## **7. PRACTISING CERTIFICATES AND BAR LIBRARY SUBSCRIPTIONS**

### **A. *Requirements for issue of a practising certificate***

- 7.1 A practising certificate shall only be issued when the barrister signs a declaration confirming that they have:
- i. obtained professional indemnity insurance cover at the appropriate level;



- ii. achieved the requisite number of Continuing Professional Development points as specified by the CPD Committee;
- iii. properly registered as a Data Controller for the purposes of the [Data Protection Act 2018](#);
- iv. not been suspended from practice;
- v. not been found unfit to practice in accordance with the Fitness to Practise Rules as set out in Regulation 13A of The Honourable Society of The Inn of Court of Northern Ireland Constitution and Bye-Laws;
- vi. clearly chosen the appropriate category of Bar Library membership that is associated with their practice (accepting personal responsibility to inform the Bar Library throughout the Practising Certificate year of any matter that would require a change to be made to their entitlement to that category of membership of the Bar Library);
- vii. paid all subscriptions and fines;
- viii. satisfied any other regulatory requirements within the Code of Conduct or as may be laid down by the Bar Council from time to time; and
- ix. in the event of the barrister being made bankrupt or entering into an individual voluntary arrangement with creditors, that they have complied with [Section 9.8 \(c\)](#), [9.9](#) and [Appendix 6](#) and that they have satisfied any requirements of the Professional Conduct Committee as to the suitability of the barrister to practice.

**B. *Application for a practising certificate***

- 7.2 A practising certificate is obtained by applying to the office of the Chief Executive of the Bar of NI (“the Chief Executive”) by means of the relevant online application form.
- 7.3 The Chief Executive shall assess the declarations made by the barrister and determine whether to grant a practising certificate.
- 7.4 If the Chief Executive determines that the declarations are in order and the barrister has satisfied any other requirements laid down by the Chief Executive a practising certificate shall be granted.
- 7.5 If the Chief Executive determines that the declarations are not in order or that other requirements have not been satisfied, a practising certificate will not be granted, and the barrister shall not be entitled to practice.

**C. *Renewal***

- 7.6 In order to maintain a period of continuous practice, a barrister is required to complete the *Annual Practising Certificate Application Form* including a signed

declaration confirming that they continue to meet all of the requirements listed in [Section 7.1](#) above.

**D. *Resumption of practice***

7.7 A barrister seeking to resume practice after a period of more than 12 months without having held a Practising Certificate must complete the *Resuming Practice Application, Declaration and Undertaking* in the form set out at [Appendix 5](#), which includes a signed declaration that they have met all of the requirements listed in [Section 7.1](#) above with any additional conditions that may be required.

**E. *Appeals***

7.8 If a Practising Certificate is not granted (whether on an initial application, application for renewal or application to resume practice), the barrister may appeal that decision. An appeal should be made by lodging with the Chief Executive the written reasons why a Practising Certificate should be granted. The Appeal will be considered by the Vice Chairman of the Bar Council together with two other barristers who shall determine the appeal on the papers, or in exceptional circumstances, after having heard the barrister.

7.9 The appeal shall be lodged with the Vice Chairman within 7 days of the decision of the Chief Executive.

7.10 The barrister may not practice pending the outcome of the appeal.

**F. *Subscriptions***

7.11 The following shall apply as regards the payment of subscriptions:

- a) A barrister must pay the appropriate subscription currently payable to the Bar Library within 30 days of the subscription falling due;
- b) The Chief Executive, acting on behalf of the Executive Council may, on the grounds of hardship or for some other reason as may seem fit, postpone the payment of the whole or any part of the subscription payable by a barrister;
- c) If a barrister fails to pay the subscription, or any part thereof, by the due date, the Chief Executive, acting on behalf of the Bar Council, may suspend the barrister from the Library, postpone the granting of a practising certificate or cancel an existing practising certificate;
- d) Without prejudice to [Section 7.11 c\)](#) above, a barrister who, without good cause, fails to pay the subscription or any part thereof by the due date, is guilty of professional misconduct.

**G. *Disciplinary offence***

7.12 It shall constitute professional misconduct for a barrister practising in independent practice at the Bar of Northern Ireland to provide legal services without a current practising certificate.

7.13 In an application for a practising certificate, or an application to resume practice, if any part of the Application, Declaration and Undertaking is found to be false in any material respect, or if there is a breach of the Declaration and Undertaking, such falsification or breach shall itself constitute professional misconduct.

**H. *Bankruptcy/ IVA: notification requirement***

7.14 Where a barrister has been made bankrupt or has entered into an individual voluntary arrangement with creditors, they must comply with [Section 9.8 \(c\)](#) in accordance with the Guidance at [Appendix 6](#), and must thereafter comply with the requirements of [Section 9.9](#).

7.15 The Bar Council may, on foot of advice from the Professional Conduct Committee or otherwise, impose a requirement upon a barrister to notify any instructing solicitor who has or is proposing to engage the barrister of the bankruptcy or the individual voluntary arrangement so that the solicitor can make an informed decision as to whether to instruct the barrister or, as appropriate, to continue to instruct the barrister.

**8. INSURANCE**

8.1 Every barrister in independent practice shall take out and maintain insurance in respect of all claims arising out of alleged negligence in respect of the provision of legal services as a barrister. This provision also applies to persons called to the Bar of Northern Ireland in accordance with Rule 20 of the [Rules of the Honourable Society](#) of the Inn of Court of Northern Ireland, and to barristers normally based in another jurisdiction when permitted, by any other means, to practice in Northern Ireland. Alternatively, such persons must satisfy the Bar Council that they are adequately covered by professional indemnity insurance.

8.2 Such insurance must be taken out with an insurer approved by the Bar Council for that person and on foot of a policy approved by the Bar Council. If a barrister in independent practice wishes to be insured other than in accordance with the foregoing, the Bar Council shall accept a certificate from their insurance brokers for the time being that the insurance so offered is at least equivalent to that approved by the Bar Council.

- 8.3 While the minimum level of cover to be provided by such insurance shall from time to time be fixed by the Bar Council, the barrister is obliged to maintain an adequate level of cover having regard to the nature of the work undertaken and the potential liability arising in the event of negligence.
- 8.4 A barrister must immediately inform the Bar Council if they have been refused insurance cover or such cover has been withdrawn.
- 8.5 The payment of the insurance premium may not be postponed, either in whole or in part, beyond the due date for payment thereof.
- 8.6 It shall constitute professional misconduct by a barrister engaged in independent practice to represent to the public generally as being willing to render legal services without insurance.

## 9. DISCIPLINE

- 9.1 If a barrister fails to comply with any of the requirements of this Code, including, a failure to observe the [Statement of Principles](#) and comply with any requirement contained in an Appendix to the Code they may be charged with:
- i. professional misconduct;
  - ii. breach of professional etiquette;
  - iii. providing an inadequate professional service including, but not limited to , the standards defined by the [Legal Complaints and Regulation Act](#) (Northern Ireland) 2016;
  - iv. conduct unbecoming of a barrister;
  - v. bringing the profession of barrister into disrepute;
  - vi. breach of the Bar Library [House Rules](#);
  - vii. breach of any of the duties placed upon a barrister by the Bar Council.
- 9.2 Professional Misconduct may also arise in the course of being admitted to the profession. In that regard the following instances shall constitute professional misconduct:
- a) the failure by a barrister in any material respect to disclose in any Memorial, Declaration and Undertaking required by the Admission Rules, such information as is required by that Memorial, Declaration and Undertaking; or
  - b) the making by a barrister of any declaration (whether in any Memorial, Declaration and Undertaking required by the Admission Rules or otherwise) that is false in any material respect; or
  - c) the breach by a barrister in any material respect of any undertaking given in any Memorial, Declaration and Undertaking required by the Admission Rules.

- 9.3 Professional misconduct includes any conduct that does not meet the professional standards expressed within the [Statement of Principles](#) and/or that does not comply with the requirements of the Code of Conduct and/or the relevant laws and regulations that apply to members of the Bar of Northern Ireland and the Inn of Court.
- 9.4 A barrister must respond promptly to any request from the Professional Conduct Committee for comment or information on a complaint or on any other matter that is subject to investigation by the Committee.
- 9.5 A barrister must comply promptly with any direction of the Professional Conduct Committee, Summary Panel, Disciplinary Committee or Disciplinary Appeals Committee.
- 9.6 A barrister must comply with the procedures established and maintained in accordance with the [Legal Complaints and Regulation Act \(Northern Ireland\) 2016](#) in relation to service complaints.<sup>1</sup>
- 9.7 A barrister must when required to do so attend before the Professional Conduct Committee, Summary Panel, Disciplinary Committee or Disciplinary Appeals Committee in answer to any charge made against the barrister or as a witness.
- 9.8 Where any of the following circumstances arise, a barrister must report the details promptly to [the Professional Conduct Committee](#):
- a) where the barrister has pleaded guilty to or has been convicted of a criminal offence for which the barrister was liable to be sentenced to a term of imprisonment, or which might otherwise bring the profession into disrepute; or
  - b) where there has been a finding against the barrister in the barrister's professional conduct, competence or reputation in any civil proceedings; or
  - c) where the barrister has been adjudicated bankrupt or has entered into an individual voluntary arrangement.
- 9.9 Having reported the fact of bankruptcy or the fact of having entered into an individual voluntary arrangement with creditors, the barrister must comply with any requirements from the Professional Conduct Committee to provide documents or information concerning the conduct which led to the bankruptcy, or the entering into an individual voluntary arrangement with creditors. The barrister is under an ongoing duty to report any relevant change of circumstances, and comply with any further requirements from the Professional Conduct Committee during the period of the bankruptcy or individual voluntary arrangement.

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<sup>1</sup> implementation pending

- 9.10 It shall be professional misconduct for any barrister to fail to comply with any direction made by the Professional Conduct Committee, Summary Panel, Disciplinary Committee or Disciplinary Appeals Committee by way of penalty imposed on the barrister for any disciplinary offence of which the barrister is found guilty or to fail to comply with an order made for the payment by the barrister of the costs of or incidental to any proceedings before the Professional Conduct Committee, Summary Panel, Disciplinary Committee or Disciplinary Appeals Committee.
- 9.11 A barrister shall report evidence of misconduct by another barrister to the [Professional Conduct Committee](#). Failure to do so will be deemed to be professional misconduct on the part of the barrister in default.
- 9.12 Barristers are reminded of the Whistleblowing Policy for Use by Members of the Bar which provides a mechanism for members to raise concerns about matters of suspected wrongdoing or malpractice which involve a very serious and wider public or professional interest. A copy of the Whistleblowing Policy is at [Appendix 3](#).

## **10. CONDUCT IN COURT**

A barrister must not misstate the law knowingly nor conceal from the court any authority known or believed to be relevant.

- 10.1 A barrister must not misstate any fact or state as a fact any matter which there are no reasonable grounds for believing can be proved nor should they cross-examine any witness upon a basis which they do not reasonably believe to be true.
- 10.2 In an ex-parte matter a barrister must exercise the utmost good faith and must not withhold from the court any matter of fact or law which may be relevant to the issues.
- 10.3 A barrister must ensure they are familiar with all [Practice Directions](#) that may be issued from time to time.
- 10.4 A barrister must in all appearances before a court act with due courtesy.
- 10.5 A barrister must in every case endeavour to avoid unnecessary expense, they should keep costs to a minimum and reduce, where possible, the time taken to hear a case.
- 10.6 A barrister must not state their personal opinion of the facts or law.
- 10.7 A barrister must exercise personal judgment as to the substance and purpose of questions asked and statements made.

A barrister is personally responsible for the conduct and presentation of a case in court and must guard against being made the channel for questions or statements

made by them which are only intended to insult or annoy either the witness or some other person or which bear no relevance to the issues in the case.

- 10.8 In all cases a barrister must ensure that the court is informed of all relevant decisions and legislative provisions of which the barrister is aware whether the effect thereof is favourable or unfavourable towards the conclusion for which the barrister argues.
- 10.9 Prior to judge's summing-up both the prosecution and the defence barristers at the invitation of the judge must bring to the attention of the judge all authorities which are relevant to the legal issues which are likely to arise in the summing-up.
- 10.10 After the judge's summing-up a defence barrister must inform the judge of any issues of fact or law which the barrister considers to have been misstated and which impinge on the lay client's right to a fair trial.
- 10.11 A barrister must bring any procedural irregularity to the attention of the court during the trial and must not intentionally reserve any such matters to be raised on appeal.
- 10.12 A barrister may only suggest that a witness is guilty of fraud, misconduct or a crime if any such allegation goes to a matter in issue which is material to their client's case. Where the only issue is the credibility of the witness, the barrister must be satisfied that there are reasonable grounds for the allegation.
- 10.13 If, at any time before judgment is delivered in a case, a barrister is informed by a lay client that that client has committed perjury or has otherwise been guilty of fraud upon the court, a barrister must not so inform the court without that client's consent. If the client refuses to give consent, the barrister must withdraw from the case.
- 10.14 In civil cases where it becomes necessary or appropriate for a barrister to seek to discuss a case or any aspect thereof with the trial judge in private or is invited by the trial judge to take part in such discussion, this discussion shall only take place in the presence of the opposing barrister or their instructing solicitor or the personal litigant.
- 10.15 In criminal cases the barrister may only discuss a case or any aspect of it with the trial judge in private in the circumstances and subject to the conditions set out in the judgment of the Northern Ireland Court of Appeal in Attorney General's Reference (Number 1 of 2005) in *R –v- Rooney and others (2005) NICA 44*.
- 10.16 In any civil case where a barrister has had private discussions with the judge in relation to any aspect of the case the general principle set out in [Section 10.15](#) applies although the judge may be more ready than in any criminal case to permit disclosure of the discussion to the lay client where, for example, the judge has suggested that the case is one in which the possibility of settlement might usefully be investigated.

- 10.17 A barrister must not impugn a witness in their address to the jury or in any closing submissions to the trial judge unless the witness has been given an opportunity to answer the allegations in cross-examination.
- 10.18 A barrister must not obtain or seek to obtain a document or knowledge of the contents of a document belonging to another party otherwise than by means of the normal and proper channels for obtaining such documents or such knowledge.
- 10.19 If a barrister comes into possession of a document belonging to another party by some means other than the normal and proper channels (e.g. in consequence of a mistake or inadvertence by another person), the document must be returned at once unread to the person entitled to possession of it.
- 10.20 If, having come into possession of a document or a copy of such document, as referred to in [Section 10.19](#), the barrister reads it before realising the nature of the document, and if they are professionally embarrassed by having such knowledge, then, provided there is no prejudice to the lay client the barrister must return the papers to the professional client and explain why this step has been taken.
- 10.21 Where before or during a trial a barrister for one party receives, as part of or in the course of instructions, a document which appears to be a document belonging to another party or to be a copy of a document so belonging and to be privileged from discovery or otherwise to be one which ought not to be in the possession of the professional or lay client then before the barrister makes any use of such document:
- i. The barrister must make appropriate enquiries of the professional client in order to ascertain the circumstances in which the document was obtained by the professional or lay client as the case may be; and
  - ii. Unless satisfied that the document has been properly obtained the barrister must inform their opponent of the intention to use the document and the circumstances (as far as known) in which the document has been obtained. In the event of objection to the use of such a document it is for the court to determine what use, if any, may be made thereof.
- 10.22 If, during the course of a case, a barrister becomes aware of the existence of a document which ought to have been referred to in a list of documents, the barrister must advise the professional client to amend the list to refer to this document. If the professional client refuses to make the said amendment, the barrister must withdraw from the case and, should this arise during the conduct of a trial, the court should be informed of the reason giving rise to the withdrawal.
- 10.23 A barrister must not confer with a witness called by that barrister while such witness is under examination or cross-examination without the prior leave of the other parties and the court.



- 10.24 In a case in which more than one barrister is engaged it is for Senior Counsel or, where appropriate, the leading Junior Counsel to decide which of the barristers will make the closing address but Senior Counsel or the leading Junior Counsel must ensure that the barrister making the closing address has been present during a substantial part of the case and has heard the submissions which require a reply.
- 10.25 If a King's Counsel of the Bar of England and Wales or the Faculty of Advocates or a Senior Counsel of the Bar of the Republic of Ireland appears with the required approval in a court in Northern Ireland, the following rules shall apply:
- i. if the King's Counsel or the Senior Counsel appears with a Junior of the Bar of Northern Ireland Bar, precedence shall be agreed between them and in default of agreement the King's Counsel or the Senior Counsel shall be the leader if he has been called to the Bar before the Junior;
  - ii. if the King's Counsel or the Senior Counsel appears with a King's Counsel of the Bar of Northern Ireland, the latter shall be the leader regardless of precedence in call.
- 10.26 Where a member of the Bar of Northern Ireland is instructed to appear with a lawyer who has the required approval to appear in a court in Northern Ireland, other than a member of the Bar of England and Wales or of the Faculty of Advocates or of the Bar of the Republic of Ireland, the member of the Bar of Northern Ireland shall be deemed to be the leader.
- 10.27 A barrister who is instructed to draft a statement, affidavit or other pleading is under a responsibility to the court as well as to the lay client and, accordingly, must not:
- i. include any allegation or statement of fact or any other representation that is unsupported by the client;
  - ii. include any allegation or statement of fact or any other representation that is unsupported by instructions;
  - iii. make any allegation that is intended to insult or annoy or which bears no relevance to the issues in the case;
  - iv. make any allegation of fraud unless expressly instructed to plead fraud and there exists material which establishes a prima facie case of fraud.
- 10.28 When mentioning settlements and making applications in the King's Bench Division of the High Court barristers should have regard to the document entitled 'Etiquette in the King's Bench Division' which is contained at [Appendix 11](#).

## **11. RELATIONS BETWEEN BARRISTERS**

- 11.1 A barrister must at all times act with due courtesy to colleagues and other persons.
- 11.2 It is the duty of barristers to maintain good relations with each other in order that the interests of their clients may be best advanced and subject to that, that the interests of their profession may be observed. Personal relationships must in no circumstances interfere either with the interests of their clients or the profession.
- 11.3 Matters of dispute between barristers should not be made public. Members are encouraged, but not required, normally to raise any matter of complaint against a colleague to that colleague in the first instance.

If no adequate explanation or satisfaction is forthcoming and the complainant wishes that formal procedures be instituted, the complaint should be referred, in the prescribed form, without delay to [the Professional Conduct Committee](#).

- 11.4 A barrister may seek informal guidance, confidentially, concerning the behaviour of another colleague. The barrister may seek such guidance from their Master, their mentor, a member of the Bar Equality & Diversity Committee, or an individual member of the Professional Conduct Committee. If informal guidance is sought from a member of the Professional Conduct Committee, and the issue proceeds before the Professional Conduct Committee as a formal complaint, that member shall recuse themselves from any discussions or decisions concerning the complaint.
- 11.5 If a barrister has a complaint against a colleague regarding bullying and/or harassment, the barrister should consider dealing with the matter under the informal procedure set out in the Bar of Northern Ireland Bullying and Harassment policy at [Appendix 2](#). Where informal methods of resolution have either failed, or are not appropriate, or where serious bullying and/or harassment has occurred, the barrister may complain formally in writing to [the Professional Conduct Committee](#).
- 11.6 A barrister may not take over a case from another barrister (the original barrister) unless:
- a) there are reasonable grounds for the professional client discharging the original barrister; and
  - b) they have personally notified the original barrister (unless there is no reasonable opportunity to do so) that they have been instructed in place of them and gives the original barrister an opportunity to take appropriate steps to recover outstanding fees properly marked.

- 11.7 A barrister should not without the consent of the lay client hand over papers to another barrister for drafting or research unless such other barrister is also instructed in the case or is the barrister's pupil.
- 11.8 A barrister must not enter into a partnership with another barrister, professional client or any other entity or individual and must not provide legal services within Northern Ireland in any capacity, or as part of any entity, or arrangement other than their capacity as a member of the Bar of Northern Ireland.
- 11.9 A barrister must not enter into a fee sharing arrangement with another barrister, professional client or any other entity or individual.
- 11.10 In contentious matters a barrister may not conduct negotiations with any person other than a barrister save where a solicitor alone has been appointed to represent the opposing party or as set out in [Section 11.11](#). In this connection, attention is also drawn to [Section 14.5](#) of this Code.
- 11.11 A barrister may conduct negotiations with an insurance company's representative in circumstances where the insurance company has not retained any legal representation for the purpose of those negotiations. If their client is present, a barrister may only conduct such negotiations if attended by their instructing solicitor or a member of their instructing solicitor's staff. In conducting such negotiations attention is drawn to [Section 30.9](#) and to the "Guidelines for Negotiations with Insurance Company Representatives" contained in [Appendix 12](#).

## **12. PERSONS FROM WHOM INSTRUCTIONS MAY BE ACCEPTED**

- 12.1 A barrister in independent practice, whether or not acting for a fee, may only act in a professional capacity upon instructions from:
- a) Any lawyer, whether or not from Northern Ireland, who is currently registered with the appropriate governing body in their host state and is not subject to any regulatory restriction in terms of their practice. The lawyer in question should be required to provide evidence that they satisfy the criteria. In receiving such instructions a barrister must still observe [Section 14.6](#) and also [Appendix 9](#) of this Code of Conduct;
  - b) any government legal service or a member of the staff of a government legal service;
  - c) a member of a recognised professional body as provided by [Section 28](#) of this Code;
  - d) an employed barrister including a barrister employed in a Law Centre or Citizens' Advice Bureau;

- e) a person who has been appointed as an Ombudsman and whose office as Ombudsman has been recognised by the Bar Council for the purpose of advising on any point of law, practice or procedure arising in the course of the performance of their duties.

### **13. ACCEPTANCE OF INSTRUCTIONS**

- 13.1 Unless in an emergency or exceptional circumstance exist a barrister should refuse to accept instructions which are not comprehensive or properly presented.

The barrister should draw the inadequacy of the instructions to the attention of the professional client.

- 13.2 A barrister does not accept instructions merely because they have been delivered with or without a fee. Upon receipt of instructions from a professional client the barrister should promptly inform this client whether they accept these instructions or declines them. If the barrister accepts the instructions, they should give an estimate of the period of time required in which to do the work and if it becomes apparent that the work cannot be done within the period estimated, they must inform the professional client forthwith.

- 13.3 A barrister is not under an obligation to accept instructions or a brief merely on the ground that they had previously advised or drafted pleadings for another person or appeared on behalf of another person in connection with the same cause or matter.

- 13.4 A barrister must not accept instructions or a brief or a request from or on behalf of a client which seek to limit the ordinary authority or discretion of a barrister in the conduct of court proceedings or which impose an obligation to act in a manner inconsistent with the provisions of this Code.

- 13.5 Where a barrister has advised or acted for a client in relation to any proceedings they must, before accepting a brief in any other proceedings arising out of the same transaction or circumstances, ensure that there is no actual or apparent conflict of interest.

- 13.6 A barrister holding the position of a Government Minister, Parliamentary Secretary or equivalent may not accept instructions on behalf of or a brief for a client in any case in which any Ministry, Government Department or equivalent or any service administered under the same may be concerned.

- 13.7 If, after a barrister has accepted instructions or a brief on behalf of more than one lay client, there appears to be a conflict of interest, they should not continue to act for any of them.

- 13.8 Even if there is no conflict of interest, a barrister who has accepted instructions or

held a brief for a lay client in any proceedings should not appear on an appeal or further stage of the proceedings for another lay client in the same case without obtaining the prior consent of the original lay client.

## **14. RELATIONS BETWEEN BARRISTERS AND PROFESSIONAL CLIENTS**

- 14.1 A barrister must not permit a professional client to limit the barrister's discretion as to how the best interests of the client can be served.
- 14.2 A barrister must avoid compromising their professional relationship with the professional client by over-familiarity.
- 14.3 A barrister may attend at the office of a professional client on occasions when it is necessary, by reason of the circumstances of the case, in order to consult with witnesses, peruse documents or inspect equipment relevant to the case or when necessary to conduct proceedings remotely. When attending at the office the barrister must ensure that their independence is not compromised and must at all times act in accordance with the [Statement of Principles](#) and the provisions of this Code.
- 14.4 A barrister may attend at the premises of the lay client providing:
- a) it is necessary to inspect property or equipment for the purpose of giving advice or presenting a case in court; or
  - b) it is necessary for the purpose of taking evidence on commission; or
  - c) the lay client is severely incapacitated.
- 14.5 It is a serious breach of professional etiquette for a barrister to hold any communication either with a solicitor or the lay client on the opposite side with a view to negotiating a settlement or otherwise, except in the following exceptional circumstances, and bearing in mind that a barrister should be very careful when holding discussions directly with an opposing party:
- a) A barrister may hold discussions with the opposing solicitor if the prior consent of the opposing barrister has been given or no barrister has been instructed by the opposing solicitor;
  - b) A barrister may hold discussions with the opposing party if prior consent has been given by the barrister or, where none has been instructed, by the solicitor for the opposing party or by an opposing party who is a litigant acting in person.
- 14.6 Apart from work in the Magistrate's Courts and work in other courts which only involves dealing with uncontentious matters, a barrister should not consult with a

lay client or any witness or represent that client in court in the absence of the professional client or a member of the professional client's staff.

If the professional client or a member of staff is absent, the barrister should decline to represent the lay client and the absence of the professional client or the member of staff should be brought to the attention of the court. Where, in exceptional circumstances, in the absence of the professional client or a member of staff the barrister consults with the lay client or represents the lay client in court, the barrister shall forthwith furnish a written memorandum of instruction received during the consultation or the outcome of the hearing to the professional client. Attention is drawn to the "Guidance on Attendance by Solicitors on Counsel" contained in [Appendix 9](#).

## **15. WITHDRAWAL FROM A CASE AND RETURN OF BRIEF OR INSTRUCTIONS**

15.1 If a barrister is instructed in a civil case which clashes with instructions which have been previously accepted to defend a person charged with a serious criminal offence (which will include all indictable offences whether tried on indictment or summarily), the barrister should normally return the brief in the civil case.

15.2 A barrister may withdraw from a case if the barrister is satisfied that:

- a) The barrister's instructions have been withdrawn; or
- b) The barrister's professional conduct is being seriously impugned, such as to undermine the barrister to the extent that proper professional representation of the lay client is no longer possible; or
- c) The barrister has been instructed and required to act otherwise than in conformity with any of the provisions of this Code, or the [Statement of Principles](#); or
- d) There has been inappropriate behaviour by the lay client to the extent that proper professional representation of the lay client is no longer possible; or
- e) The barrister reasonably forms the view that fair remuneration will not be paid within a reasonable time; or
- f) The circumstances set out in [Sections 10.13, 10.22, 18.2, 19.10, 19.20, 19.21](#) of the Code are engaged; or
- g) There is, despite the best efforts of the barrister to resolve the situation, an unavoidable schedule clash, in which case, the barrister may withdraw from the case in accordance with the provisions of [Sections 5.16, 5.17 and 5.18](#) of the Code; or
- h) Due to volume of work the barrister has insufficient capacity to devote the necessary time and attention to their instructions and it would be responsible to advise the professional client at the earliest opportunity to

allow the professional client to instruct alternative Counsel in time to allow that Counsel to properly prepare the case.

- 15.3 Where [Section 15.2 \(a\)](#) applies, the barrister should ask for, and where possible obtain written confirmation from the instructing solicitor that instructions have been withdrawn.
- 15.4 Where the barrister withdraws from a case in any circumstance provided by [Section 15.2 \(b\) to \(h\)](#), the barrister should take all appropriate and reasonably practicable measures to mitigate against any apparent disadvantage to the client's interests.
- 15.5 Where a barrister withdraws from a case, the barrister should take care to maintain an appropriate record of the reasons giving rise to the withdrawal from the case.
- 15.6 If a barrister has retained papers for an undue length of time and is required by a professional client to return them, whether or not the work has been done, they must return them forthwith.

## **16. SOLICITING FOR WORK**

- 16.1 When dealing with a professional or lay client a barrister must always act in accordance with the Code and the [Statement of Principles](#), and ensure they maintain their integrity and independence at all times.
- 16.2 A barrister must not entertain professional or lay clients, whether on a regular or occasional basis, so as to solicit or maintain their business.
- 16.3 A barrister shall not give a commission or a gift to any person who introduces or provides professional work or accept a gift of such value or in such circumstances as may lead to a reasonable inference that their independence may be compromised.
- 16.4 A barrister must not lend money to a professional client for the purpose of financing that client's practice or for any other professional purpose and should not accept money by way of a loan or otherwise from a professional client save as a fee in accordance with the provisions of this Code.
- 16.5 A barrister must not attempt to persuade a lay client to engage a particular professional client for the purpose of obtaining that lay client's work or any other work.
- 16.6 A barrister must not attempt to persuade a lay client to transfer their instructions to another professional client with the intention of representing this lay client.

## **17. RELATIONS BETWEEN BARRISTERS AND LAY CLIENT**

- 17.1 If a barrister believes that evidence exists that the professional client has failed to perform their professional duties properly, they should inform the lay client accordingly.
- 17.2 A barrister must avoid compromising their professional relationship with the lay client by over-familiarity or by direct communication with that lay client outside a consultation or a hearing.
- 17.3 A barrister must not, without the consent of the lay client, reveal the contents of a brief or instructions to any person with the exception of their pupil beyond what is necessary for the proper discharge of their duties.
- 17.4 A barrister is under a professional and statutory obligation to maintain the security and integrity of the papers in their possession. At the conclusion of the case a barrister shall return the papers to the professional client unless that client agrees to their disposal as confidential waste.
- 17.5 A barrister must not communicate information furnished by or on behalf of the lay client to a third party and must not use such information to the lay client's detriment or to the barrister's own or another client's advantage. This requirement continues even after the relationship between the barrister and the lay client has ceased and after the death of the lay client.
- 17.6 A barrister must not divulge, without the consent of the lay client, confidential information entrusted to them unless:
- a) they are compelled to divulge the same by an Order of the Court; or
  - b) the circumstances give rise to a public or statutory duty of disclosure; or
  - c) the protection of the barrister's professional interests requires it, or
  - d) it is necessary when answering accusations made against the barrister by the lay client.
- 17.7 If a lay client asks a barrister to act on their behalf, the barrister should advise the lay client to instruct a solicitor. If it is an urgent matter, the barrister may contact the solicitor that the lay client proposes to instruct.
- 17.8 A barrister whose lay client behaves in an offensive manner to them they should note [Section 15.2](#) of the Code of Conduct regarding the circumstances and manner in which a barrister may withdraw from such a case.
- 17.9 A barrister must not discuss a case with any member of a jury panel.



- 17.10 A barrister, having received instructions to do so by their professional client, and being attended by the professional client or a member of their staff, may take instructions from a lay client to draft a statement, affidavit or other pleading, or may settle such documents, and in so doing the barrister shall at all times ensure that they maintain their independence and act in accordance with the [Statement of Principles](#).

## **18. LEGAL AID**

- 18.1 Where a lay client is legally-aided, a barrister has the following obligations to the Legal Services Agency:
- a) Where a barrister provides an opinion for submission to the Legal Services Agency it must comprise a full and accurate assessment of the strengths and weaknesses of the lay client's case.
  - b) A barrister must not in any circumstances be a party to an abuse of the provision of Legal Aid.
  - c) Where a barrister who represents a plaintiff or defendant concludes that the lay client's claim has no reasonable prospect of success he must inform the Legal Services Agency as soon as possible.
  - d) Where a barrister who represents a plaintiff or defendant decides that their lay client requires their case to be conducted or continued unreasonably the barrister must inform the Legal Services Agency as soon as possible.
- 18.2 If a barrister in any case in which the lay client is legally-aided believes that Legal Aid has been granted on the basis of false or inaccurate information, they must advise both the professional client and the lay client accordingly and, if no action is taken to remedy the situation, must withdraw from the case.
- 18.3 A barrister must not demand, request or receive a fee from or on behalf of a person who has been granted civil/criminal Legal Aid.
- 18.4 Without prejudice to the provisions of [Section 21.11](#), in any criminal case in which a [Certificate for Two Counsel](#) has been granted but the advocates instructed by the lay client's solicitor on foot of that certificate to represent them do not in fact consist of both King's Counsel and Junior Counsel, any counsel who is instructed has a duty to personally ensure and satisfy themselves, before commencing to act upon their instructions, that the lay client has been given clear and unequivocal advice that they are entitled to be represented by both King's Counsel and Junior Counsel and has thereupon made an informed decision not to be so represented. If not so satisfied Counsel so instructed must decline to act.

A representation to the Counsel by any other person other than the lay client themselves that the lay client has been so advised and has made such a decision shall not be deemed to be sufficient proof of that matter for the purposes of this Rule.

- 18.5 Counsel so instructed has the further duty of ensuring both upon receipt of their instructions and thereafter on a continuing basis while their instructions continue that any other legal professional who is instructed to appear with them is competent to satisfy and does in fact satisfy and continues to satisfy the requirements for which the [Certificate for Two Counsel](#) has been granted.
- 18.6 Before commencing to act upon their instructions, Counsel so instructed shall complete a written Certificate (in the form set out at [Appendix 7](#) to the Code) that they are satisfied of the matters at [Sections 18.4](#) and [18.5](#), and copies thereof shall forthwith be provided to the lay client, the instructing solicitor, the other instructed legal professional and a copy lodged with the Court and the Bar Council office for the purposes of auditing compliance with this rule. If at any time after commencing to act and during the continuance of their instructions Counsel so instructed considers that they are no longer satisfied of any of the above matters it shall be their duty to immediately and in writing so inform the lay client, the instructing solicitor, the other instructed legal professional and the Court.
- 18.7 Failure by Counsel so instructed to take all reasonable steps to satisfy and continue to satisfy themselves as to each of the matters specified above and to forthwith give any requisite written certificate or notice shall constitute a breach of this Code.
- 18.8 A barrister must ensure that any claim submitted to the Legal Services Agency for payment in respect of legally aided work is accurate and properly reflects the work that they have carried out under the relevant Legal Aid certificate. Counsel should never make a claim for remuneration from the Legal Services Agency unless they have satisfied themselves that the claim is reasonable, fair, accurate and due.

## **19. DUTIES OF BARRISTERS INSTRUCTED FOR THE DEFENCE IN CRIMINAL CASES**

- 19.1 A barrister who is instructed to represent an accused person will remain under a duty to do so irrespective of any belief or opinion formed as to the guilt or innocence of that person.
- 19.2 A barrister who is instructed to represent an accused person must ensure that their right to a fair trial is protected.
- 19.3 A barrister must not attend an identification parade.

- 19.4 Barristers who are instructed to represent an accused person must be present throughout the trial unless they have the express consent of the professional client and of the accused person to their absence.
- 19.5 If, at the conclusion of the opening speech by the prosecuting barrister, the barrister who represents an accused person believes that there is no serious possibility that any of the evidence to be adduced will have any relevance to the charge which has to be met may, with the consent of the professional client and the accused person and having informed the trial judge, absent themselves from the trial.
- 19.6 A barrister may appear for more than one accused person in a criminal trial providing they are satisfied that there is no conflict of interest.
- 19.7 If a barrister is representing more than one accused person and there is a lack of unanimity among them, they should be alert to the possible need for separate representation and should try to hold a separate consultation with each accused person so that each person can be seen to have his undivided attention. This does not mean that a joint consultation with all the accused persons cannot be held. In many cases such a consultation may be desirable.
- 19.8 In any case where a barrister provides written advice to an accused person they should ensure that the accused person has sufficient opportunity to consider it.
- 19.9 If at the time of the trial there is a major difference of opinion between a barrister and their professional client as to the conduct of the defence, the barrister should ask the professional client personally to be present immediately before the trial and during the trial until such time as the difference is no longer material.
- 19.10 If during the course of a trial or prior to sentence being passed the accused person voluntarily absconds and their solicitor withdraws from the case, the barrister must also withdraw. If, for any reason, the solicitor does not withdraw, the barrister retains an absolute discretion as to whether to continue to act having regard to the accused person's right to a fair trial. If the barrister continues to act, the case should be conducted as if the accused person was still present in court but had decided not to give evidence. In such circumstances, the barrister is free to use any material contained in the brief and may cross-examine witnesses called for the prosecution or call witnesses for the defence.
- 19.11 Every accused person has the right to decide whether to give evidence in defence of the charge. A barrister must properly and adequately advise them, but it is the accused person who must make the decision.
- 19.12 A barrister who is instructed to represent an accused person is not under a duty to correct any misstatement of fact made by the prosecution. If a court has been informed by the prosecution that the accused person has no previous convictions,

the barrister is not under a duty to disclose facts to the contrary which are known to them or correct any information given by the prosecution if such disclosure or correction would be to the accused person's detriment. The barrister should ensure that they do not lend themselves to any assertion that the accused person has no convictions or no more than a limited number of convictions or ask a prosecution witness whether the accused person has any previous convictions in the hope that a negative answer will be given.

- 19.13 If a barrister has been instructed that the accused person is not guilty of the offence charged but has decided not to give evidence, the barrister should present their defence as instructed and, if so instructed, make positive suggestions to witnesses.
- 19.14 Where an accused person confesses to their barrister that they committed the offence with which he or she is charged, the barrister should have regard to the guidance as set out in [Appendix 10](#) of this Code.
- 19.15 A barrister should advise an accused person about the strengths and weaknesses of the prosecution case. This may include advising an accused person to plead guilty.
- 19.16 Where a barrister advises an accused person to plead guilty they must also explain that such advice should only be accepted where the accused person agrees that the prosecution case is true or substantially true and that such agreement is implied in the plea of guilty. The barrister must ensure that any such plea is entered voluntarily by the accused person.
- 19.17 A barrister who is instructed to represent an accused person must not in a plea of mitigation make any allegation which is merely scandalous or calculated to vilify or insult any person. A barrister should, if possible, avoid the naming in open court of third parties whose character would thereby be impugned and where necessary, names, addresses or other such details should be written down and handed into court.
- 19.18 A barrister who is instructed to represent an accused person who has pleaded guilty is not entitled in mitigation of sentence to allege that any other named person was involved with the accused in the transaction or events out of which the charge arises unless it appears in the trial papers or is otherwise established in evidence before the court.
- 19.19 A barrister who is instructed to represent an accused person should after conviction and/or sentence meet that person and advise, if necessary in writing, whether there are grounds for an appeal. This advice should be given in the presence of the professional client or their representative.
- 19.20 A barrister who is instructed on behalf of the accused person who has been convicted and sentenced must appear for that person in any appeal against conviction or

sentence if instructed to do so unless they have advised the accused person that there is no prospect of success on appeal and has advised against the appeal. If the accused person appeals despite the advice given by the barrister, the barrister may withdraw from the case.

- 19.21 A barrister should not withdraw from a criminal case and leave the accused person unrepresented because of the conduct of or anything said by the trial judge unless the accused person has expressly instructed the barrister to withdraw or unless the barrister considers that withdrawal is in the best interests of the accused person.
- 19.22 Where an accused person who is charged with a criminal offence denies committing the offence but, nevertheless, insists on pleading guilty, their barrister should continue to represent them but only after the barrister has advised as to the consequences and that any submission in mitigation will be on the basis that the accused person is guilty.
- 19.23 No discussion between a barrister and the trial judge should take place unless the opposing barrister is present or that barrister has expressly declined an invitation to attend and is willing to allow the discussion to take place in their absence.
- 19.24 The barrister who is instructed on behalf of the accused person and the prosecuting barrister should have regard to the guidance contained in the decision of the Court of [Appeal in Attorney General's reference \(Number 1 of 2005\) in R – v- Rooney](#) and others (2005) NICA 44 when seeking an indication of sentence from the trial judge.
- 19.25 A barrister must not in any part of a trial attribute to another person the crime with which the accused person is charged unless there are facts or circumstances which reasonably suggest the possibility that the crime may have been committed by that person.

## **20. DUTIES OF THE PROSECUTING BARRISTER IN CRIMINAL CASES**

- 20.1 The prosecuting barrister should not seek to achieve a conviction by all means but rather should present the facts to the court fairly and impartially and assist the court on all relevant matters of law.
- 20.2 If the prosecuting barrister becomes aware of information which they believe may assist in the defence of the persons charged, they should ensure that it is disclosed to the defending barrister.
- 20.3 Where the prosecuting barrister has in their possession a statement from a prosecution witness which differs materially from their evidence in court or from any other statement, they should ensure that the said statement is disclosed to the defending barrister.

- 20.4 Where the prosecuting barrister has in their possession relevant statements from persons who they do not intend to call as witnesses, they should decide whether, in accordance with law and practice, these statements should be disclosed to the defence.
- 20.5 Upon receipt of instructions the prosecuting barrister should read them and give appropriate directions expeditiously.
- 20.6 The prosecuting barrister shall only inform the victim of a crime or their family about significant changes in the prosecution case (including acceptance by the prosecution of a plea of guilty to a lesser charge) upon receipt of instructions from the appropriate prosecution service.
- 20.7 If there is only one prosecuting barrister, they should be present throughout the trial unless they have obtained the leave of the trial judge. If two barristers appear for the prosecution, both should be present for all or substantially all of the case.
- 20.8 At the conclusion of the trial judge's summing-up, the prosecuting barrister shall draw the judge's attention to matters of law or fact which the barrister considers ought to be corrected.
- 20.9 In relation to sentencing the prosecuting barrister:
- a) should not attempt by advocacy to influence the trial judge. If, however, a defendant is unrepresented, the prosecuting barrister shall inform the trial judge about any matter which the barrister considers is relevant to mitigation;
  - b) should assist or correct the trial judge in relation to all statutory provisions and authorities which are relevant to the convictions and any guidelines laid down by the Court of Appeal;
  - c) should inform the trial judge about all relevant compensation, forfeiture and restitution matters which arise on foot of the conviction;
  - d) should inform the defendant's barrister about assertions of material facts made in mitigation, and which they believe are untrue. If the defendant's barrister persists with any such assertions, the prosecuting barrister should invite the trial judge to resolve the issue and, where appropriate, call evidence.
- 20.10 The prosecuting barrister should read and follow the current [Code for Prosecutors](#) issued by the [Public Prosecution Service](#).

## **21. SENIOR COUNSEL**

- 21.1 King's Counsel is otherwise known as Senior Counsel.

- 21.2 Senior Counsel may accept instructions to appear in a case without a Junior.
- 21.3 Senior Counsel should decline to appear in a case without a Junior if they believe they would be unable to conduct it properly, or the interests of the lay client require that a Junior should also be instructed.
- 21.4 Senior Counsel who have been invited to accept instructions without a Junior in any case in which a Junior has already been instructed should normally consult that Junior before deciding whether to accept the invitation. If Senior Counsel decides to accept the invitation, they should, in any event, notify the Junior of their decision.
- 21.5 In any contentious proceedings or matters Senior Counsel should not settle or draft such documents as are normally settled or drafted by a Junior unless no Junior has been instructed.
- 21.6 In non-contentious proceedings or matters Senior Counsel may settle or draft documents without a Junior but may decline to do so if they believe that the interests of the lay client would be best served by having a Junior carry out this work.
- 21.7 If any question arises under [Sections 21.3, 21.5 or 21.6](#) as to whether or not Senior Counsel may decline instructions unless a Junior is also instructed, the question should be referred for determination by [the Professional Conduct Committee](#) whose determination shall be binding upon the barrister or barristers concerned.
- 21.8 Junior Counsel should decide, having regard to the amount of money involved and/or the complexity of the case, whether it is in the best interests of the lay client that Senior Counsel should be instructed and at what stage they should be instructed and should inform their professional client accordingly.
- 21.9 Senior Counsel may accept instructions to appear without a Junior at the taking of evidence abroad.
- 21.10 In criminal cases in which a Legal Aid certificate for two Counsel has been granted, one of the two advocates in the case should be a Senior Counsel. Except as provided for in [Section 18.4](#), the second advocate should be a Junior Counsel. Where, exceptionally, a Senior Counsel is unavailable, it is permissible for a Junior to lead. This Junior should be experienced and be of not less than “15 years standing”. Before commencing to act upon their instructions as the lead Counsel in such a case, Junior Counsel so instructed shall satisfy themselves that all reasonable steps have been taken to instruct Senior Counsel and that Senior Counsel is not available to deal with the case and that the lay client has been informed of all relevant matters and is agreeable to experienced Junior Counsel acting as lead Counsel in the case.

If so satisfied, Junior Counsel shall complete a written Certificate to this effect (in the form set out at [Appendix 7](#) to the Code) and copies of the Certificate shall be provided to the lay client, the instructing solicitor, the other instructed legal

professional advocate instructed in the case and a copy lodged with the Court. Failure by Junior Counsel so instructed to take all reasonable steps to satisfy themselves as to each of the matters specified above and to forthwith give any requisite written certificate or notice shall constitute a breach of this code.

Counsel so instructed shall lodge a copy of completed Certificates with the Court and the Bar Council Office for the purposes of auditing compliance with this rule. A Junior who is called within the Bar during the hearing of any civil proceedings should continue to act at the original fee appropriate for a Junior.

- 21.11 A Junior who is called within the Bar during the hearing of any criminal proceedings should continue in the case, including any subsequent appeal, at the original fee for a Junior.
- 21.12 Senior Counsel may appear in court outside the United Kingdom with or without a Junior.

## **22. RETAINERS**

- 22.1 Where a barrister is instructed to draft a writ or defence or other documents initiating or responding to the proceedings or any pleading or affidavit or to provide advice or to appear in any interlocutory application, they shall be retained to represent that lay client throughout the proceedings and in any negotiations unless the barrister has been given express notice to the contrary by the professional client whereupon they are not precluded from representing any other party in the proceedings unless a conflict of interest arises. For the purposes of this section of the Code “proceedings” includes any action, suit, review, reconsideration or appeal before a court or tribunal but an appeal to another court or tribunal or any bankruptcy matter or criminal case which arises from the proceedings shall be deemed to be separate proceedings.
- 22.2 A retainer is the retainer of the lay client. A retainer can only be delivered by a professional client.
- 22.3 A barrister who is so retained is entitled to a brief on any occasion on which a barrister is usually briefed in such proceedings except that a Senior Counsel shall not be entitled to a brief on any occasion on which it is usual to instruct a Junior only.
- 22.4 A barrister must not have a retainer to do or enter into any agreement to do all the work, whether advisory or contentious, emanating from a professional client’s office.
- 22.5 A barrister may accept a retainer from a professional client to do all the work of a particular lay client or clients. In such circumstances the barrister must require payment of a separate fee in respect of each discrete piece of work done.



- 22.6 Unless reasonable grounds exist for withdrawing a retainer from a barrister another barrister shall not accept instructions in respect of the work included in the retainer.
- 22.7 A special retainer should not be given or accepted until after the commencement of the proceedings to which it relates.
- 22.8 A barrister who has accepted a special retainer is entitled to a brief in any case in which the barrister is briefed in proceedings to which the special retainer applies, save that a special retainer does not entitle Senior Counsel to a brief on any occasion on which it is usual to instruct a Junior only.
- 22.9 When a barrister has held a brief for a lay client in any proceedings they shall not accept a special retainer or a brief upon an appeal from any decision in such proceedings for another lay client without giving the original lay client the opportunity of retaining them.

## **23. SENIORITY**

- 23.1 Save in the case of the Attorney General and the Solicitor General, who take precedence over all other members of the Bar in the Court of Judicature of Northern Ireland, Senior Counsel seniority is determined by the date of call within the Bar. When two or more Senior Counsel are called within the Bar on the same occasion, seniority is determined by the date of their call to the Bar.
- 23.2 The order of precedence for Junior Counsel takes account not only of the date of call to the Bar but also the order of call. A barrister who is absent from practice for a period of more than 12 months will be required to apply to resume practice in accordance with [Section 7.7](#) of this Code. This does not however affect their order of precedence. A barrister who is disbarred and later seeks to return to practice will be required to undertake a new call to the Bar. In these circumstances the most recent call date shall be used to determine their order of precedence.
- 23.3 Seniority at the Bar has no relevance to the order in which cases are either heard or listed for hearing in the courts.

## **24. DRESS OF BARRISTERS**

- 24.1 Robes must be worn by every barrister in independent practice where indicated by this Code of Conduct unless otherwise directed by a prevailing Practice Direction issued by the relevant court in which the barrister is appearing.

- 24.2 Robes must be worn by every barrister in independent practice in the High Court and in the Court of Appeal other than during the long vacation when robes are not worn except:
- a) in criminal trials and matters; or
  - b) on the trial of an action including a contested matrimonial cause; or
  - c) on a bail motion.
- 24.3 Robes must be worn at all times by barristers in independent practice in the Supreme Court, the Crown Court, the County Court, the Masters' Court and at a Court Martial but robes are not worn in most tribunals including the Lands Tribunal or in the Magistrates' Courts.
- 24.4 If in doubt as to the correct dress, a member should consult the Clerk of the Court or Tribunal, or the Chairman, or a member of the Professional Conduct Committee.
- 24.5 In addition to a wig and gown a barrister in independent practice attending a court at which robing is obligatory should wear, in the case of a male Junior Counsel, a dark suit, white shirt, collar, neck band and black shoes and, in the case of a female Junior Counsel, a dark suit or similar apparel, white blouse, collar, neck band and black shoes. The wig should be straight and not worn at an angle.
- 24.6 A barrister has a discretion as to the type of clothing worn outside the courtroom save that the profession expects that while acting as a barrister or in the precincts of the Royal Courts of Justice and in the Old Bar Library, New Bar Library and the Inn of Court during working hours the barrister will dress in business attire. In general, business attire means smart dark office wear.
- 24.7 The barrister must ensure that they are familiar with all applicable [Practice Directions](#) and other guidance relating to court dress including in relation to court proceedings conducted remotely.

## **25. PUPILLAGE**

- 25.1 Save where the Benchers otherwise expressly provide every person intending to practise at the Bar must enter into pupillage with a barrister in independent practice of not less than seven years' standing for a period of twelve months.
- 25.2 A person who has entered into pupillage should not accept instructions as a barrister or conduct any case until a period of six months' pupillage has been completed to the satisfaction of the Education Committee, save that a pupil who has completed to the satisfaction of the Education Committee not less than three months' pupillage, may conduct on behalf of or at the request of their Pupil Master a case or part of a case before a Master of the Court of Judicature of Northern Ireland.

- 25.3 During pupillage and at all times thereafter the pupil must preserve the confidentiality of the affairs of all clients. Attention is drawn to [Sections 17.3, 17.5, 17.6](#) and Rule 14 of the [Rules of The Honourable Society of the Inn of Court](#).
- 25.4 The general obligations and functions of a Pupil Master are as follows:
- a) to ensure that the pupil is well grounded in the rules of conduct and etiquette of the Bar;
  - b) to require the pupil to read papers and draft pleadings and other documents, including preparing opinions and require the pupil to accompany the Pupil Master to court on sufficient occasions so that the pupil has the opportunity to do all such work and gain all such experience as is appropriate for a person commencing practice in all types of work done by the Pupil Master;
  - c) to require the pupil to attend sufficient consultations to enable the pupil to gain experience on how to conduct a consultation;
  - d) in the second six months of the pupillage to take direct interest in the work the pupil does alone and, in particular, in relation to court appearances by the pupil and to give assistance before the pupil goes into court and to give the opportunity for discussion afterwards;
  - e) in the second six months of the pupillage to take reasonable steps to ensure that the pupil does not carry out extensive extraneous work to the detriment of their pupillage;
  - f) if it is proper to do so and at the proper time, to provide the certificate of satisfactory completion of the pupillage;
  - g) Attention is drawn to the Bar of Northern Ireland Pupillage Guidelines in [Appendix 13](#).

## **26. LIBRARY FACILITIES**

- 26.1 The Member Services Committee of the Bar Council (also referred to as the Library Committee) has the responsibility for setting and administering the House Rules, relating to general conduct within and the use of the facilities, resources and premises owned and operated by the Bar Council.
- 26.2 The Member Services Committee will have the responsibility to agree and revise, from time to time, these House Rules. The current version of these House Rules can be found at [Appendix 15](#).
- 26.3 The House Rules in their entirety apply to all Full Members of the Bar Library. The rules also apply to Employed and Non-Practising Members in so far as the rules relate to their particular use of the Bar Library buildings.
- 26.4 Any complaint raised in relation to the House Rules or alleged derogation or non-compliance of the House Rules will be referred to the Member Services Committee.

The Member Services Committee will be responsible for progressing the issues raised which may include referral to the Professional Conduct Committee should the circumstances merit.

- 26.5 The Member Services Committee also has the responsibility for The Circulation Rules which govern the loan periods, issue and return, reservation and fine procedures relating to hard copy library materials within the Library. See [Appendix 14](#).

## **27. COURT AND COURT ETIQUETTE**

- 27.1 There is no objection to a member of the Bar of England and Wales or the Faculty of Advocates of Scotland appearing either in an arbitration or in a Court Martial held in Northern Ireland or to members of the Northern Ireland Bar appearing in such proceedings.
- 27.2 Whilst not prohibited, it is undesirable that a barrister should appear for or before a near relative in any case tried without a jury where there is only one judge and there is no appeal on a question of fact from the decision.
- 27.3 Junior Counsel when appearing in court should, where possible, sit in the seats assigned to them but should, wherever seated, stand at the Bar to address the court.
- 27.4 It is regarded as good professional practice for all barristers appearing in all courts to ensure that before the case in which they are to appear is called the Registrar or Clerk is aware of their names and also of the party or parties they represent.

## **28. DIRECT PROFESSIONAL ACCESS RULES**

- 28.1 Subject to the rules in this [Section 28](#), a barrister in independent practice may accept instructions from a member of a “recognised professional body” without the intervention of a solicitor in any matter of a kind which falls generally within the professional expertise of the members of the recognised professional body.
- 28.2 A professional body shall only be recognised for the purposes of these rules when it has been approved as a “recognised professional body” by the Bar Council.
- 28.3 In deciding whether to grant such recognition the Bar Council must have regard to whether the body satisfies each of the following:-
- a) Its members provide skilled and specialist professional services;
  - b) Its affairs and the conduct of its members are regulated by a written constitution which among other matters:

- i. provides for admission to membership of persons who have satisfied, by examination, specified high standards of general and professional education; and
  - ii. makes unethical or dishonourable conduct by a member a disciplinary offence; and
  - iii. and has an effective enforcement procedure for breach of its disciplinary rules
- c) Its members are likely to have a significant requirement to retain the service of a barrister for the benefit of their clients or employers;
- d) Those of its members intending to instruct a barrister directly under these rules will be subject to a mandatory obligation to have adequate professional negligence indemnity insurance.

28.4 A barrister under these rules shall be entitled to accept direct instructions only from a member of a “recognised professional body” which must be identified at the time of giving instruction. Such a member may be a director, partner, member, or employee of a company, firm or other body giving instructions in that capacity.

28.5 A barrister is not under an obligation to accept instructions direct from a member of a recognised professional body.

28.6 A barrister shall not accept any instructions under these rules unless the Bar Council and its Professional Negligence Indemnity Insurer has been informed that the barrister intends to accept “*direct professional access*” instructions and has satisfied the Bar Council that there has been compliance with the relevant professional indemnity insurance obligations and the appropriate insurance premium has been paid.

28.7 A barrister may not accept instructions under these rules:

- a) to receive or handle clients’ money;
- b) to do substantial administrative work not normally performed by a barrister in independent practice in Northern Ireland;
- c) to do inter-partes work (e.g., the conduct of correspondence with an opposing party) of a kind not normally performed by a barrister in independent practice in Northern Ireland;
- d) to appear in the Judicial Committee of the House of Lords, the Privy Council, the Supreme Court, the Crown Court, or a County Court;
- e) in a case in which at any stage the barrister considers it to be in the interests of the lay client that a solicitor should be instructed.

28.8 In this section the word “*instructions*” shall include a “*brief*”

28.9 Save as in these rules otherwise provided, the other provisions of this Code of Conduct shall apply to instructions received and accepted under these rules.

28.10 In these rules a Council or other body established by Act of Parliament and required by that Act to maintain a register of persons entitled to practice as members of the profession to which the Act relates, shall be deemed to be a recognised professional body and any person so registered shall be deemed to be a member of that recognised professional body.

## **29. ADVERTISING**

29.1 There shall be established an Advertising Standards Committee of the Bar Council. Membership of this Committee shall be renewed every 2 years. Members nominated to the Committee will see that it achieves the purpose of regulating advertising under this section and consider complaints received from any individual or body relating to the content of any advertising or promotional material published or distributed by a barrister in independent practice in Northern Ireland.

29.2 Subject to [Section 29.3](#), a barrister in independent practice may engage in any form of advertising or promotion in connection with that barrister's or registered lawyer's practice which conforms to the British Code of Advertising Practice (and, in the case of extra-jurisdictional work, conforms to any further requirements binding on that barrister under the rules of any national or local Bar). Such advertising or promotion may include:

- a) photographs or other illustrations of the barrister;
- b) statements about the nature and extent of the barrister's or services;
- c) with that client's express written consent, the name of any professional or lay client.

29.3 Advertising or promotion must not:

- a) be inaccurate or likely to mislead;
- b) be likely to diminish public confidence in the legal profession or the administration of justice or otherwise bring the legal profession into disrepute;
- c) make comparisons with or criticisms of any other barrister(s) or member of any other profession;
- d) include statements about the quality of the barrister's or, the size or success of their practice or their success rate;
- e) indicate or imply any willingness to accept a brief or instructions or any intention to restrict the persons from whom a brief or instructions may be accepted otherwise than in accordance with this Code;

f) be so frequent or obtrusive as to cause annoyance to those to whom it is directed.

29.4 For the avoidance of doubt, a barrister shall be allowed to publish or distribute any advertising or promotional material without the prior approval of the Advertising Standards Committee. However, the barrister, prior to publication or distribution, may furnish any advertising or promotional material to the Advertising Committee for an opinion on whether the advertising or promotional material is compliant with the Advertising Code.

Any such opinion expressed by the Advertising Committee shall not be binding upon the barrister who may publish or distribute the advertising or promotional material regardless of the opinion expressed by the Committee but the publication or distribution of the advertising or promotional material without regard for the opinion expressed by the Committee shall be a matter which can be taken into account in any disciplinary proceedings subsequently commenced against the barrister arising out of a breach of the Code.

29.5 Following the publication or distribution of any new or materially altered advertising or promotional material, the barrister may notify the Advertising Committee of the publication or distribution and may provide Committee with copy of same or a link to same if the same consists of online advertising or promotion. Such notification is not mandatory but is encouraged in order to demonstrate a willingness to promote the maintenance of high standards in the legal profession and to ensure the maintenance of public confidence in the legal profession.

29.6 Upon receipt of any such notification and material from a barrister or registered lawyer, the Advertising Committee will be entitled to scrutinise the advertising or promotional material in order to ascertain whether it complies with the Code and shall do so if the Committee receives any complaint about advertising or promotional material, irrespective of whether or not voluntary post publication notification has occurred.

29.7 If, having scrutinised the advertising or promotional material provided and/or having considered any complaint made in respect of any advertising or promotional material published or distributed by a barrister or registered lawyer, the Advertising Committee is of the opinion that a breach of Code has occurred, it shall forthwith notify the barrister in writing to this effect and shall set out the reasons for its opinion.

29.8 Following the receipt of any such opinion, the barrister shall have to the right to make written and/or oral representations to the Committee.

- 29.9 If, following consideration of the representations of the barrister or registered lawyer in question, the Committee is satisfied that there has been a breach of the Code, the Committee shall notify the barrister in writing to this effect and shall set out the reasons for its decision. Copies of the said notification shall also be provided to the Bar Council and to any person or body who made a complaint to the Committee about the said advertising or promotional material. The Committee will have the power to require the barrister to withdraw entirely and/or amend the advertising or promotional material that is found to be in breach of the Code. The Committee may also refer the matter to [the Professional Conduct Committee](#) so that the manner may be investigated by means of a disciplinary investigation.
- 29.10 If the barrister in question is dissatisfied with the decision of the Advertising Committee, they have a right to appeal to the Bar Council who shall consider the matter afresh including any additional written and/or oral submissions the barrister wishes to make and shall come to a determination on whether a breach of the Code has occurred.
- 29.11 A Notice of Appeal must be lodged with the Bar Council within 7 days of the barrister receiving the determination of the Advertising Committee. The lodging of a Notice of Appeal shall have the effect of placing in abeyance any referral of the matter by the Advertising Committee to the Professional Conduct Committee until the outcome of the appeal is determined.
- 29.12 If, on appeal, the Bar Council is satisfied that a breach of the Code has occurred, it will have the power to require the barrister to withdraw and/or amend the advertising or promotional material in any material respect. The Bar Council may also refer the matter to [the Professional Conduct Committee](#), so that the matter may be investigated. If the Bar Council, on appeal, does not consider that there has been a breach of the Advertising Code, or that even though there has been a breach of the Code, the breach is not such as to warrant a referral to the Professional Conduct Committee, it shall make this determination and any earlier decision of the Advertising Committee to refer the matter to the Professional Conduct Committee shall no longer have any effect.
- 29.13 Unless a Notice of Appeal is lodged within the stipulated time limit, failure to comply with any direction of the Advertising Committee in relation to the withdrawal and/or amendment of any advertising or promotional material will constitute a disciplinary offence.
- 29.14 Failure to comply with any direction given the Bar Council on appeal in relation to the withdrawal and/or amendment of any advertising or promotional material will constitute a disciplinary offence.



- 29.15 For the avoidance of doubt the powers of the Professional Conduct Committee upon a referral from the Advertising Committee or the Bar Council under this section, shall include the power:
- a) to require the barrister found to be in breach of the Code to publish at their own expense a retraction or correction of similar prominence and frequency to the original offending advertising or promotional material; and
  - b) to impose a financial penalty as deemed appropriate by the Professional Conduct Committee.
- 29.16 In the event that any liability to any third party is incurred by the Bar Council arising out of any advertising or promotional material published by a barrister in independent practice in Northern Ireland.

### **30. FEES AND REMUNERATION**

- 30.1 A barrister is entitled to take into account, when marking or nominating any fee, all features of the instructions which bear upon the commitment which is thereby undertaken including:
- a) the complexity of the issues or subject matter;
  - b) the length and venue of any trial or hearing;
  - c) the amount or value of any claim or subject matter in issue;
  - d) the time within which the work is required to be undertaken and
  - e) any other special feature of the case.
- 30.2 It is improper for a barrister to mark an excessive fee. A substantial reduction on taxation of the fee marked may be deemed to be prima facie evidence of professional misconduct.
- 30.3 No provision of this Code or any previous Code would prevent a barrister from charging a fee for any work undertaken by them on any basis or by any method they consider appropriate or from competing with other barristers in respect of the level of fee provided that such basis or method:-
- a) is permitted by law; and
  - b) does not involve the payment of a wage or salary; and
  - c) does not compromise their independence.
- 30.4 It is improper for a barrister to charge a brief fee in respect of a proceeding if the barrister has not been present for any substantial part of the hearing unless notice has been given to the professional client not later than the day before the hearing that the barrister would or might not be able to be present for any substantial part

of the hearing and notwithstanding such notification the professional client expressly agrees to the barrister retaining the brief.

- 30.5 Refreshers are essentially fees for work done in court and it is improper for a barrister to mark a refresher fee unless present in court for a substantial part of the hearing on the relevant day.
- 30.6 Where a barrister has been paid fees in advance and has died before the work for which payment has been made is completed the Bar Council will arrange for another barrister to complete the work without further fee instead of any part of the said fee being refunded.
- 30.7 It is improper for a barrister to accept any fee less than that marked on the brief and a barrister who is a Member of Parliament or a member of a Local Authority may not do professional work for a constituent without charging a proper fee.
- 30.8 It is improper for a barrister to accept a fee directly from a lay client.
- 30.9 On a Civil Bill brief any fee for the barrister in excess of the relevant scale fee must be arranged in advance and agreed by the lay client.
- 30.10 If a brief, not being one where the barrister's fee is fixed by Rules of Court, is not marked with a fee when delivered to the barrister, it is left to the discretion of the barrister to mark the appropriate fee.
- 30.11 It is a proper and established practice for a barrister to charge a suitable negotiation fee for negotiations conducted and resulting in a settlement of the case at a time when trial briefs have not been delivered.

## **31. FEES COLLECTION SERVICE**

- 31.1 A barrister whose request to a solicitor for payment of outstanding fees has not been met should refer the matter to the secretary of the Bar Council.
- 31.2 The secretary will then encourage the barrister, if they have not already done so, to engage the Fees Collection Service available within the Bar Library to write to the solicitor giving the name of the barrister who has sought payment and to ask for payment or a comment in relation to the outstanding amount.
- 31.3 The Fees Collection Service will, through the actions above, try and ascertain the cause of non-payment. If the cause is related to a dispute over the sum being billed then a suggestion can be made to have the level of fees referred to the Bar Council's Fees Complaints Committee with the parties being bound to accept their determination.

31.4 If no reply is received, or the amount remains outstanding after the efforts of the Fees Collection Service the secretary will send a copy of all correspondence associated with the barrister's written request for payment to the Professional Conduct section of [the Law Society](#) of Northern Ireland and make the following points on behalf of the Bar Council :

- a) That the Bar Council understand that solicitors are personally liable as a matter of professional conduct for the payment of Counsels' proper fees. (If the matter is legally aided, then Counsel will initially seek verification from the LSA as to the status of any payment before commencing action);
- b) That the above rule applies whether or not the solicitors have been placed in funds by their client unless there has been some alternative agreement between the solicitor and Counsel as to the manner in which Counsel's fees will be paid;
- c) That the solicitor (or the client) has the right to challenge the amount of Counsel's fees but any challenge must be made promptly;
- d) That the Bar Council intend to advise the barrister that the non-payment of Counsel's fees is a matter which should be referred to the Solicitors Disciplinary Tribunal as a complaint of '*professional misconduct or of other conduct tending to bring the solicitors' profession into disrepute*' (Article 44(1)(e)(1) of [the Solicitors \(Northern Ireland\) Order 1976](#) (as amended);
- e) That the Bar Council is aware that one of the powers of the Tribunal is to order 'such restitution or satisfaction to any aggrieved party as it thinks fit' (Article 51 (1) of the 1976 Order);
- f) That the Bar Council would like to avoid a reference to the Tribunal if at all possible and would like [the Law Society](#) to advise by reply if there are alternative options to resolve the matter. If, however no such resolution is possible then the barrister will be advised that the matter can be referred in one of two ways - namely a complaint to the Law Society's Professional Conduct Committee or a direct complaint by Counsel to the Tribunal.

31.5 The Bar Council will be appraised of the situation and consideration will be given to any further action that might be pursued in relation to either the individual solicitor or [the Law Society](#). Such action may include providing a warning or instruction to fellow barristers regarding the receipt of any instructions from this solicitor and steps that should be taken to reduce the risk of non-payment from them.

## **32. PUBLISHING AND BROADCASTING**

32.1 A barrister shall not, whether online or otherwise, write for publication, broadcast by radio or television, publish in a newspaper, book, or film, or otherwise cause or

permit to be published any particulars of any case or matter on which that barrister is currently engaged whilst that case or matter is ongoing.

- 32.2 In this context and also with particular reference to publication or broadcasting on practices of the Bar, the Court system or the administration of justice, Barristers are reminded of the professional standards as expressed within the [Statement of Principles](#) and the requirements of the Code of Conduct.
- 32.3 Only the Chairman of the Bar Council or a person authorised by the Chairman may write or speak on behalf of the Bar.

### **33. RULES FOR PRACTICE OUTSIDE NORTHERN IRELAND**

- 33.1 A barrister may act on instructions from a lawyer (as defined in [Section 12.1\(a\)](#)) from outside of Northern Ireland without the intervention of a solicitor entitled to practice in Northern Ireland but once having accepted instructions the barrister should comply fully with all other aspects of this Code, including [Section 13](#), concerning the Acceptance of Instructions. A barrister is also permitted to refuse to accept instructions for such work for any reason.
- 33.2 In respect of such work, the barrister should ensure that the lawyer has made adequate arrangements for the discharge of such administrative and other functions as are normally discharged in relation to such work by a solicitor and, where required, that the lawyer shall procure the services of a solicitor entitled to practice in Northern Ireland to act in relation to the proceedings.
- 33.3 Nothing in these rules shall permit a barrister to undertake work outside Northern Ireland which, if performed inside Northern Ireland, would involve an infringement of any other provision of this Code of Conduct. In respect of such work, nothing in this section shall enable a barrister in independent practice to:
- a) receive or handle lay clients' money; or
  - b) accept the status of an employee or of a commercial agent or of a business agent.
- 33.4 A member of the Bar of Northern Ireland appearing in court as a barrister outside the jurisdiction of the courts of Northern Ireland shall observe the Rules of Professional Conduct of the host Bar, without prejudice to the barrister's obligations as a member of the Bar of Northern Ireland.
- 33.5 A member of the Bar of Northern Ireland providing legal services as a barrister outside Northern Ireland shall remain subject to this Code of Conduct, and shall also observe, so far as is appropriate, the Code of Conduct of the place where the legal services are being provided.

- 33.6 Any failure to comply with the rules of the host Bar, may constitute a breach of this Code of Conduct.
- 33.7 Nothing in these rules shall permit a barrister to undertake work outside Northern Ireland which, if performed inside Northern Ireland, would involve an infringement of any other provision of this Code of Conduct.

#### **34. APPLICATION OF THIS CODE TO EMPLOYED BARRISTERS, FORMER BARRISTERS, AND THOSE PREVIOUSLY REFERRED TO AS NON-PRACTISING BARRISTERS**

- 34.1 In its application to employed barristers this Code shall apply mutatis mutandis as it applies to barristers in independent practice but with the substitution:
- a) of references to the relevant employer for references to the professional client or the lay client;
  - b) of references to the directions received in whatever form from the relevant employer for references to a brief or instructions.
- 34.2 The provisions of the Constitution and Bye-laws of the Inn of Court of Northern Ireland relating to Disciplinary and Professional Conduct Committees apply to all barristers including employed, Former barristers or non-practising barristers.
- 34.3 With effect from the commencement date of this Code of Conduct anyone previously referred to as non-practising barrister is now to be automatically re-categorised as a Former Barrister and is subject to the requirements placed upon this category of barrister as outlined in [Sections 4.2](#) and [4.3](#). Any such barrister may not, without the permission of the Bar Council, act in any capacity whereby directly or indirectly legal services are supplied to the public or to a section of the public save insofar as is permitted by the rules in force in the country where being resident the barrister so acts.
- 34.4 Any question as to the applicability of this Code of Conduct to employed, former or non- practising barristers should be referred, in the first instance, to the [Professional Conduct Committee](#) of the Bar Council.
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## **EQUALITY CODE FOR THE BAR**

### **1. BAR COUNCIL EQUAL OPPORTUNITY POLICY STATEMENT**

The Bar Council will promote equality of opportunity in supporting members of the Bar and those seeking pupillage. The aim is to create an environment in which people treat each other with mutual respect, irrespective of age, disability, marital or civil partnership status, political opinion, race, religious belief (to include similar philosophical belief), sex, pregnancy and maternity, gender reassignment or sexual orientation. The Bar Council will monitor the effectiveness of its policy and the achievement of its objectives.

### **2. CODE OF CONDUCT**

2.1 [Section 5.26](#) of the Code of Conduct of the Bar of Northern Ireland states that:

*“A barrister must not treat any person (including, without prejudice to the generality of the foregoing, a lay client, professional client, pupil or fellow barrister) less favourably on the grounds of race, ethnic or national origin, sex, family status, sexual orientation, disability, age, religious belief or political opinion than he or she would treat any other person in circumstances which are the same or not materially different. In determining whether a barrister has been in breach of this duty regard shall be had to the Equality Code for the Bar at Appendix 1”.*

2.2 Failure to comply with [Section 5.26](#) of the Code may render the barrister liable to being charged with breach of professional etiquette or professional misconduct which may be referred for investigation by the Professional Conduct Committee. In addition to internal disciplinary sanctions, a barrister who unlawfully discriminates against any person may face proceedings as a respondent in a Tribunal claim or a defendant in a county court claim.

2.4 This rule affects all those with whom barristers come into contact in in the course of their work, including the staff of the Bar Library.

### **STATUTORY OBLIGATIONS**

#### **3.1 SEX**

Article 30(1) of the [Sex Discrimination \(NI\) Order 1976](#) prohibits discrimination and harassment on grounds of sex in the provision of goods, facilities or services which are

available to the public or a section of the public – this includes refusal of a service or the provision of a lower standard of service.

Article 30 includes the following provisions:

*“(1) It is unlawful for any person concerned with the provision (for payment or not) of goods, facilities or services to the public or a section of the public to discriminate against a woman who seeks to obtain or use those goods, facilities or services –*

*a) by refusing or deliberately omitting to provide her with any of them; or*

*b) by refusing or deliberately omitting to provide her with goods, facilities or services of the like quality, in the like manner and on the like terms as are normal in his case in relation to male members of the public or (where she belongs to a section of the public) to male members of that section”.*

(2) Examples of the facilities and services mentioned in paragraph (1) include:

*“(g) the services of any profession or trade, or any local or other public authority”.*

*“(2A) It is unlawful in connection with the provision of goods, facilities or services to the public or a section of the public (except in so far as they relate to an excluded matter) for any person to subject to harassment -*

*(a) A woman who seeks to obtain or use those goods, facilities or services;*

*or*

*(b) A woman to whom he provides those goods, facilities or services.”*

3.3 Article 4(1) of the 1976 Order provides that the provisions of Parts III and IV relating to sex discrimination against women, are to be read as applying equally to the treatment of men with the requisite modifications (subject to the proviso referred to in paragraph 9.4 of this Policy in relation to the special treatment afforded to women in connection with pregnancy or childbirth).

3.4 By virtue of the [Sex Discrimination \(Gender Reassignment\) Regulations \(Northern Ireland\) 1999](#), Articles 4A and B of the 1976 Order were amended to extend the Order to cover direct and indirect discrimination on the ground of gender reassignment in certain situations and corresponding amendments were made to Article 30 of the Order in respect of goods, facilities or services relating to vocational training.

3.5 Article 40 of the [Sex Discrimination \(NI\) Order 1976](#) provides that:

*"It is unlawful for a person*

*(a) Who has authority over another person; or*

*(b) In accordance with those wishes that other person is accustomed to act to instruct him to do any which is unlawful by virtue of Part III or IV, or procure or attempt to procure the doing by him of any such act.”*

## **4 RACE**

4.1 Similar provisions operate in relation to racial discrimination under the [Race Relations \(NI\) Order 1997](#) which prohibits discrimination on racial grounds (colour, race, nationality, ethnic or national origins) including membership of the Irish Travelling Community.

4.2 In addition, Article 26 of the 1997 Order provides:

*“(1) It is unlawful for a barrister, in relation to taking any person as his pupil, to discriminate against a person:*

- a) In the arrangements which he makes for the purpose of determining whom he will take as his pupil;*
- b) In respect of any terms on which he offers to take any person as his pupil; or*
- c) By refusing or deliberately omitting, to take a person as his pupil.*

*(2) It is unlawful for a barrister, in relation to a person who is a pupil, to discriminate against him:*

- (a) In respect of any terms applicable to him as a pupil;*
  - (b) In the opportunities for training, or gaining experience, which are afforded to him; or*
  - (c) In the benefits, facilities or services which are afforded or denied to him; or*
  - (d) By terminating the relationship or by subjecting him to any pressure to terminate the relationship or other detriment.*
- (3) It is unlawful for any person, in relation to the giving, withholding or acceptance of instructions to a barrister, to discriminate against any person or to subject any person to harassment.*

*(3A) It is unlawful for a barrister to subject to harassment a person who is, or has applied to be, his pupil.*

*(4) In this Article “pupil” has the meaning commonly associated with its use in the context of a person training as a barrister.”*

## **5 RELIGIOUS BELIEF/POLITICAL OPINION**



5.1 An equivalent statutory provision exists in Art 28 of the [Fair Employment & Treatment \(NI\) Order 1998](#) which relates to the provision of Goods, Facilities and Services. Article 32 relates to the prohibition of discriminatory conduct in the treatment of pupils and of those seeking pupillage.

## 6 DISABILITY

6.1 [The Disability Discrimination Act 1995](#) also makes it unlawful for a barrister to discriminate against pupils or those seeking pupillage who are disabled. A specific duty to make “reasonable adjustments” is set out in section 7B.

6.2 Section 7B (Barristers: duty to make adjustments) provides as follows:

*“(1) Where:*

- a) A provision, criterion or practice applied by or on behalf of a barrister; or*
- b) Any physical feature of premises occupied by, and under the control of, a barrister,*

*places the disabled person concerned at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the barrister to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to prevent the provision, criterion or practice, or feature, having that effect.*

*(2) In this section, “the disabled person concerned” means:*

- (a) In the case of a provision, criterion or practice for determining whom he will take as his pupil, any disabled person who has applied, or has notified the barrister that he may apply, to be taken as a pupil;*
- (b) In any other case, a disabled person who is:*
  - (i) an applicant to be taken as the barrister’s pupil; or*
  - (ii) a pupil.*

*(3) Nothing in this section imposes any duty on a barrister in relation to a disabled person if he does not know, and could not reasonably be expected to know:*

- (a) In the case of an applicant or potential applicant, that the disabled person concerned is, or may be, applying to be taken as his pupil; or*
- (b) In any case, that that person has a disability and is likely to be affected in the way mentioned in subsection (1).”*

## 7 AGE

7.1 Regulation 17 of the [Employment Equality \(Age\) Regulations \(NI\) 2006](#) prohibits discrimination on grounds of age by barristers in respect of pupils or those seeking pupillage in similar terms to the foregoing.

7.2 There is no similar prohibition on the provision of goods, facilities and services on grounds of age.

## **8 SEXUAL ORIENTATION**

8.1 Sexual orientation discrimination is discrimination against people because they either have, or are perceived to have, a particular sexual orientation. It is unlawful to discriminate against people because they are homosexual (gay, lesbian), bisexual or heterosexual (straight). The law also covers individuals who are treated less favourably than others based on incorrect assumptions about their sexual orientation and individuals who are treated less favourably because they are associated with people of a particular sexual orientation.

8.2 Regulation 15 of the [Employment Equality \(Sexual Orientation\) Regulations \(NI\) 2003](#) prohibits discrimination by barristers in respect of pupils or those seeking pupillage in similar terms to the foregoing.

8.3 [The Equality Act \(Sexual Orientation\) Regulations \(NI\) 2006](#) outlaw discrimination and harassment on grounds of sexual orientation in the provision of goods, facilities or services which are available to the public or a section of the public – this includes refusal of a service or the provision of a lower standard of service.

## **9 DEFINITIONS**

9.1 Discriminatory treatment within the Code of Conduct may be direct or indirect and includes harassment, victimisation, and failure to make reasonable adjustments for disabled persons.

9.2 Direct discrimination occurs where one person is treated less favourably than another was or would be treated in the same or similar circumstances because of a particular characteristic identified in the anti-discrimination legislation. The treatment may be intentional, unconscious, unintended or deliberate but may nevertheless be unlawful if it results in detrimental treatment. Some examples of situations in which it may arise include:

- Stereotyping where assumptions are made about different groups of barristers based on stereotypes about their capabilities, characteristics personalities and motivation rather than on the individual performance of the barrister;
- Allocation of work where the distribution of work is influenced by assumptions about the type of work that should be undertaken by a particular group there is likely to be discrimination. Barristers should seek to ensure that in so far as

they have the right to distribute work, or influence its distribution, they do so without reference to such assumptions;

- “Over protection” – where there is an attempt to protect groups from certain areas of work perceived to be unsuitable or potentially unpleasant because the effect is to reduce the range of opportunities available to those groups;
- Discrimination on grounds of family status – where assumptions are made that because a person, almost always a woman, is married or has children is somehow less able to cope with the demands of work. In particular, discrimination on the grounds of pregnancy/maternity has been identified as one of the most common problems facing women;
- Acceptance of Pupils – barristers who are approached to accept pupils should consider the request without reference to or consideration of the age, race, ethnic or national origin, sex, family status, sexual orientation, disability, religious belief or political opinion of the person seeking pupillage.

9.3 Indirect discrimination occurs where an apparently neutral provision, criterion or practice:

9.3.1 Disadvantages a particular group; and

9.3.2 Disadvantages the complainant;

9.3.3 Where the provision, criterion or practice is not a proportionate means of achieving a legitimate aim.

An example of a potentially indirect discriminatory practice could be holding compulsory advocacy training sessions at time which a particular group of members may find it difficult to attend when the sessions could be held at another time which would not make it difficult for any group to attend.

9.4 Note that Article 4(2) provides that in the application of Articles 3 and 3(A) of the Order (which define direct and indirect discrimination) no account shall be taken of the special treatment afforded to women in connection with pregnancy or childbirth.

9.5 In relation to the duty to make reasonable adjustments, discrimination occurs under the [Disability Discrimination Act 1995](#) when a barrister fails to comply with a duty imposed on them to make “reasonable adjustments” in relation to a disabled person who is a pupil or seeking pupillage. The duty to make reasonable adjustments arises where a provision, criterion or practice applied by or on behalf of the barrister, or any physical feature of premises under the control of the barrister places a disabled person at a substantial disadvantage compared with people who are not disabled. A barrister has to take such steps as it is reasonable for them to have to take in all the

circumstances to prevent that disadvantage – in other words the barrister has to make “a reasonable adjustment”. Failure to make a reasonable adjustment cannot be justified. The barrister only has a duty to make an adjustment if they know, or could reasonably be expected to know, that pupil/applicant for pupillage has a disability and is likely to be placed at a substantial disadvantage. The barrister must, however, do all they can reasonably be expected to do to find out whether this is the case.

## **10 HARASSMENT AND VICTIMISATION**

10.1 Discriminatory acts may also include harassment and victimisation.

10.2 Harassment

This is unwelcome behaviour which may reasonably be considered to have the effect on the complainant of violating the complainant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive working environment. It is a form of direct discrimination on any of the protected characteristics, of age, disability, marital or civil partnership status, political opinion, race, religious belief, sex (including gender reassignment) or sexual orientation. A person may be harassed because of their association with a person with a protected characteristic. The fact that one person may be able to ignore or deal comfortably with a certain action does not mean that this same behaviour may not be unacceptable harassment if directed at another

10.3 Examples of harassment include:

- Physical conduct ranging from touching to serious assault;
- Verbal and written harassment through jokes, racist, sexist or sectarian remarks, homophobic comments, comments about a person’s disability, offensive language, gossip and slander, sectarian songs, mobile phone ring tones, threats, letters, emails;
- Visual displays of posters, computer screen savers, download images, graffiti, obscene gestures, flags, bunting or emblems, or any other offensive material;
- Isolation or non-cooperation at work, exclusion from social activities;
- Coercion, including pressure for sexual favours, pressure to participate in political or religious groups;
- Pestering, spying following or other intrusive behaviour.

## **11 VICTIMISATION**

This occurs where a person is treated less favourably because he or she has brought proceedings under the anti-discrimination legislation given evidence or information relating to proceedings or has alleged that unlawful discrimination has occurred (or is suspected of intending to do any of the above). This protection extends not just to any

person who raises such an issue but also to any person who gives information or otherwise does anything in relation to the issue which is raised.

## **12 COMPLAINTS**

12.1 There are formal procedures for handling complaints of discrimination, harassment and victimisation which are in breach of the Equality Code.

12.2 Under the Code of Conduct of the Bar discrimination may render a barrister liable to being charged with breach of professional etiquette or professional misconduct and render a barrister liable to disciplinary proceedings. The Professional Conduct committee of the Bar investigates all cases arising from complaints of professional misconduct, the provision of professional service or behaviour. (The Professional Conduct committee is established as a committee of the Bar Council by Regulation 27 of the [Constitution](#) and its proceedings are governed by the Bar Council Bye-Laws on Proceedings of the Professional Conduct Committee).

12.3 An investigation by the Professional Conduct Committee, which is chaired by the Vice Chairman of the Bar Council in private, may result in:

12.3.1 A determination that a prima facie case exists and professional misconduct has been proved and that the offender be admonished. The Committee will consider whether the complaint shall be dealt with by the Committee, referred to a Summary Panel or a Disciplinary Panel.

12.3.2 A determination that the complaint requires informal treatment and the offender be given appropriate advice.

12.3.3 A determination that the possibility of conciliation is explored.

12.3.4 A determination that no action be taken.

12.4 Where the Committee or the Summary Panel determine that a disciplinary offence has been proved it may exercise one of the following powers:

12.5 A Disciplinary Committee is nominated by the Executive Council of the Inn of Court and it also sits in private and is usually chaired by a High Court Judge. (Disciplinary Committees are established by Regulation 13 of the Executive Council).

12.6 A Disciplinary Committee which finds a barrister guilty of an offence has the powers specified in Bye-Law 22(k) which include the power to impose a fine or suspension or expulsion from membership of the Bar Library and may recommend to the Benchers that the barrister be disbarred or suspended from practice.

*Last reviewed 30<sup>th</sup> June 2022*

**BAR COUNCIL'S POLICY ON BULLYING AND HARASSMENT**

**1. Introduction**

- 1.1 This policy is intended to set out standards of behaviour of members of the Bar towards each other and of members of the Bar and Bar Library staff towards each other.
- 1.2 The Bar Council is committed to ensuring that all its members and staff are treated with dignity and respect and treat others in the same way. We believe that all members and staff have the right to work in an environment which is free from any form of bullying and/or harassment:
  - 1.2.1 in relation to Bar Library members: in the course of their practice as barristers and also at events and functions external to the Bar Library including but not limited to Bar related conferences, training events, formal dinners and social events organised by the Bar Library or any of its member groups or associations;
  - 1.2.2 in relation to Bar Library staff: in the course of their duties, in Bar Library premises and outside Bar Library premises in a work-related context external to the Bar Library including but not limited to business development events, training or work-organised social events; and
  - 1.2.3 in relation to both members and Bar Library staff: via social media, by means of electronic communications and telecommunications.
- 1.3 It is the Bar Council's policy that the bullying and/or harassment of any of its members or staff is unacceptable behaviour. Anyone engaged in such behaviour will be liable to disciplinary action.

**2. Scope of Policy**

- 2.1 This policy applies to all members of the Bar Library and staff working for us at any of our premises, including casual and agency staff and contractors.
- 2.2 All members and staff are required to read this policy and to ensure that they understand what types of behaviour are unacceptable.
- 2.3 Members should read this policy together with the Code of Conduct for the Bar, including the Equality and Diversity Code for the Bar, which makes provision for harassment and victimisation which may also constitute unlawful discrimination.

2.4 Staff should note that this policy runs in parallel with the Harassment and Bullying Policy contained in the Staff Handbook. This policy does not form part of any contract of employment of any member of staff of the Bar Council.

### **3. Scope of Complaints Procedure**

3.1 This policy also provides for a procedure for the following categories of complaint:

3.1.1 complaints by a member of the Bar against another member of the Bar;

3.1.2 complaints by a member of the Bar against a member of Bar Library staff;

3.1.3 complaints by a staff member against a member of the Bar.

3.2 The complaints procedure does not cover the following categories of complaint:

3.2.1 complaints by one staff member against another.<sup>2</sup>

3.2.2 external complaints by other parties against members of the Bar and/or Bar Library staff.<sup>3</sup>

### **4. Bullying**

4.1 Bullying may be described as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means intended to undermine, humiliate, denigrate or injure the recipient. Bullying may be physical, verbal or non-verbal conduct and may take place through the medium of social media.

4.2 In the Bar Library, unacceptable behaviour may include (this is not an exhaustive list):

4.2.1 spreading malicious rumours, or insulting someone (particularly because of age, disability, gender identity, pregnancy and maternity, race, religious belief or political opinion, sex, or sexual orientation);

4.2.2 copying communications e.g. emails that are critical about someone to others who do not need to know;

4.2.3 ridiculing or demeaning someone, picking on them or setting them up to fail;

4.2.4 deliberately excluding a person from communications or meetings without good reason;

4.2.5 unfair treatment;

4.2.6 unreasonable work related demands;

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<sup>2</sup> If a staff member feels that they have been subject to harassment and/or bullying by another staff member, they may present a complaint under the complaints procedure provided for in the Harassment and Bullying Policy contained in the Staff Handbook.

<sup>3</sup> External complaints received shall be directed either to [the Professional Conduct Committee](#) of the Bar Council where the complaint is against a member of the Bar, or to the Chief Executive of the Bar Council, where the complaint is against a member of Bar Council staff.

- 4.2.7 overbearing or intimidating supervision or other misuse of power or position;
  - 4.2.8 making threats or comments about job security without foundation;
  - 4.2.9 deliberately undermining a competent worker by overloading and constant criticism; and
  - 4.2.10 preventing individuals progressing by intentionally blocking promotion or training opportunities.
- 4.3 Legitimate, reasonable and constructive criticism of a staff member's performance or behaviour, or reasonable instructions given to a staff member in the course of their employment will not, on their own, amount to bullying.

## **5 Harassment**

- 5.1 Harassment may take a number of forms (including bullying), may occur on a variety of different grounds and can be directed at one person or a number of people. Harassment need not be directed at the complainant and can occur if the complainant witnesses another person being harassed.
- 5.2 Harassment involves subjecting an individual to conduct which is unwanted and where the conduct has the purpose or effect of:
- 5.2.1 violating the victim's dignity; or
  - 5.2.2 creating an environment that is intimidating, hostile, degrading, humiliating or offensive to the victim.
- 5.3 Harassment also occurs where the perpetrator engages in unwanted conduct of a sexual nature and that conduct has the purpose or the effect referred to above. An individual of any gender may be the victim of sexual harassment.
- 5.4 A person will also commit harassment if they (or anyone else) engage in unwanted conduct (of a sexual nature or otherwise) that has the purpose or the effect referred to above and the victim either rejects or submits to it and, because of that rejection or submission, that person treats the victim less favourably.
- 5.5 Conduct usually becomes harassment if it continues even though it has been made clear that it is regarded by the recipient as offensive or unwanted. However, a single incident may amount to harassment if it is sufficiently serious.
- 5.6 The unwanted nature of the conduct distinguishes harassment from friendly behaviour that is welcome and mutual. Members and staff must always consider whether their words or conduct may be considered offensive.
- 5.7 Harassment can occur whether or not it is intended to be offensive, as it is the effect on the victim which is important, not whether or not the perpetrator intended to harass them. Harassment or bullying is unacceptable even if it is unintentional.



5.8 Harassment may relate to:

5.8.1 age;

5.8.2 disability (past or present);

5.8.3 sex;

5.8.4 sexual orientation;

5.8.5 gender identity;

5.8.6 race, colour, nationality, ethnic or national origins;

5.8.7 religious belief;

5.8.8 political opinion;

5.8.9 trade union membership (or non-membership);

5.8.10 part-time or fixed-term status;

5.8.11 power, or hierarchy;

5.8.12 willingness to challenge harassment (leading to victimisation).

5.9 Whilst not an exhaustive list, forms of harassment may include:

5.9.1 physical contact;

5.9.2 'jokes' and 'banter';

5.9.3 offensive language, shouting or behaving in an intimidating manner;

5.9.4 gossip;

5.9.5 slander;

5.9.6 offensive, insensitive or sectarian songs or messages (including email);

5.9.7 trolling on social media;

5.9.8 displaying posters or pictures, graffiti, emblems, flags;

5.9.9 obscene or offensive gestures;

5.9.10 offensive email and screen savers, etc;

5.9.11 isolation or non-cooperation and exclusion;

5.9.12 coercion for sexual favours or sexually suggestive remarks;

5.9.13 pressure to participate in political/religious groups;

5.9.14 intrusion by pestering, spying and stalking;

5.9.15 continued requests for social activities after it has been made clear that such suggestions are not welcome; and

- 5.9.16 verbal, non-verbal or physical conduct of a sexual nature.
- 5.10 Harassment is unlawful in many cases and individuals may be held personally liable for their actions. In some cases their behaviour may also amount to a criminal offence under the [Protection from Harassment \(Northern Ireland\) Order 1997](#).

## **6. General**

- 6.1 Responsibility for the implementation of this Policy rests with the Chief Executive of the Bar Council.
- 6.2 Members who have any queries in relation to this Policy should refer those to the Chief Executive.
- 6.3 This Policy, including the Bar Council Bullying and Harassment Complaints Procedure, will be reviewed on an annual basis and will be amended if and as necessary from time to time in order to reflect prevailing legal requirements and best practice.

### **Bar Council Bullying and Harassment Complaints Procedure**

#### **1. Informal procedure**

- 1.1 If an incident happens which you think may be bullying or harassment, you may prefer initially to attempt to resolve the problem informally, if you feel able to do so. In some cases it may be possible and sufficient to explain clearly to the person engaging in the unwanted conduct that the behaviour in question is not welcome, that it offends you or makes you uncomfortable. You may make it clear that you want the behaviour to stop.
- 1.2 Members of the Bar are reminded of [Section 11.4](#) of the Bar Code of Conduct which provides that if a member seeks informal guidance concerning the behaviour of another colleague the barrister may seek such guidance from their Master, their mentor, a member of the Bar Equality and Diversity Committee, or an individual member of the Professional Conduct Committee (PCC). If informal guidance is sought from a member of the PCC and the issue proceeds before the PCC as a formal complaint, that member shall recuse themselves from any discussions or decisions concerning the complaint.
- 1.3 If the conduct continues or if it is not appropriate to resolve the problem informally or you do not feel able to raise it informally, it may be raised through the following formal procedure.

## **2. Formal procedure**

- 2.1 Where informal methods fail or are not appropriate, or serious bullying and/or harassment occurs, you are advised to complain formally in writing to the Chair of the PCC.<sup>4</sup> Your written complaint should set out full details of the conduct in question, including the name of the alleged perpetrator, the nature of the alleged bullying or harassment, the date(s) and time(s) at which it occurred, the names of any witnesses and any action that has been taken to attempt to stop it occurring.<sup>5</sup>

## **3. Investigation Process**

- 3.1 A thorough, independent, impartial and objective investigation into your complaint will be carried out as quickly as possible. The investigation will be carried out by a panel of two people designated by the Chair of the PCC, and known as the Internal Investigation Panel. The Internal Investigation Panel will comprise two barristers of no less than ten years' standing or where the Chair considers it appropriate, one barrister of no less than ten years' standing and a lay person. The members of the investigation panel will not be current members of the PCC and will not be connected with the allegation in any way. In exceptional circumstances an external consultant may be engaged to carry out or assist with the investigation.
- 3.2 Without prejudice to the conduct or outcome of the investigation, the investigation panel will, in consultation with the Chair of the PCC, consider if there is any course of action which may be appropriate to take in order to protect you (and anyone else involved) during and pending the outcome of the investigation, bearing in mind the rights of any other party involved.
- 3.3 You will be interviewed for the purpose of the investigation. The investigation will also involve interviews with the person against whom you are making the complaint, referred to in this procedure and any other relevant witnesses. The alleged perpetrator will be given full details of the nature of the complaint and will be given the opportunity to respond in writing. The investigation may also need to examine relevant documents, including emails and other evidence.
- 3.4 Where you or the person who the complaint is against are interviewed as part of an investigation you/they will have the right to be accompanied at that interview by a colleague from within the Bar Library.

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<sup>4</sup> If the complaint is against the Chair of the PCC, it should be referred to the Chair of the Bar Council. In that event and/or if the Chair of the PCC is conflicted for any other reason, their role shall be carried out and any step required to be taken by them pursuant to this procedure shall be carried out by the Chair of the Bar Council (or, if the Chair of the Bar Council is conflicted, by such other person as may be nominated by the Bar Council) and this procedure should be read and applied accordingly.

<sup>5</sup> A prescribed complaint form can be obtained from the [Secretary to the PCC](#).

- 3.5 You will be required to cooperate fully with any requests for information and/or documentation in order to enable your complaint to be fully and properly investigated. Barrister members are reminded of their obligations under [Section 9.4](#) of the Bar Council's Code of Conduct.
- 3.6 Strict confidentiality will be maintained throughout the investigation into the allegation. Where it is necessary to interview witnesses, the importance of confidentiality will be emphasised to them.
- 3.7 The purpose of the investigation will be to gather the available evidence in relation to the complaint. When the investigation has been completed, the investigation panel will prepare a written report summarising the matters investigated, the scope and the methodology of the investigation, and the evidence gathered. The investigation panel will not make any findings nor reach any conclusions as to whether the complaint is well-founded.

#### **4. Determination of complaints against barristers**

- 4.1 This section applies to all complaints made against barristers under this procedure, whether from fellow barristers or from members of Bar Library staff.
- 4.2 The written report of the investigation panel will be referred to the Chair of the Professional Conduct Committee who will assign a panel comprising three PCC members, known as the Internal Complaint Review Panel, to review and consider the complaint. The role of the Internal Complaint Review panel will be to decide whether the complaint is supported by the evidence; and if so whether the investigation discloses a prima facie case of misconduct against the alleged perpetrator.
- 4.3 Where the Internal Complaint Review Panel considers that the complaint is supported by the evidence and that a prima facie case of misconduct is disclosed the PCC shall consider and progress as it considers appropriate a disciplinary case against the accused barrister, whether to be dealt with by the PCC itself (if the barrister agrees) or referred to a Summary Panel or Disciplinary Committee. The Chair of the PCC shall inform you and the accused barrister accordingly. The accused barrister shall be given the opportunity to make written representations to the PCC before it decides how to progress the disciplinary case.
- 4.4 Where the Internal Complaint Review Panel considers that the complaint is not supported by the evidence the Chair of the PCC shall inform you and the accused barrister accordingly. If you are dissatisfied with this decision you may appeal the decision. Any such appeal must be made in writing to the Chair of the PCC within five working days of your receipt of the decision of the Internal Complaint Review Panel, stating the ground/s of appeal.

- 4.5 An appeal against a decision of the Internal Complaint Review Panel will not involve a re-investigation of the complaint but must be based on one or both of the following grounds:
- (a) that the decision was wrongly made as a result of an error on the part of the Internal Complaint Review Panel; and/or
  - (b) that new evidence has become available since the date of the Internal Complaint Review Panel decision, provided that its existence could not have been reasonably known of or foreseen prior to that date.
- 4.6 Where a request for an appeal has been received, the Chair shall assign three members of the PCC (other than the members of the Internal Complaint Review Panel), known as the Internal Complaint Appeal Panel, to consider and determine the appeal and you will be invited to a hearing before the Internal Complaint Appeal Panel.
- 4.7 If the Internal Complaint Appeal Panel agrees that the complaint is not supported by the evidence the Chair shall inform you and the accused barrister accordingly. You will have no further right of appeal and the complaints procedure will be concluded at that stage.
- 4.8 If the Internal Complaint Appeal Panel agrees that the complaint is supported by the evidence, and that a prima facie case of misconduct is disclosed, the matter shall proceed in accordance with [clause 4.3](#) of this procedure.
- 5. Determination of complaints against Bar Library staff**
- 5.1 This section applies to any complaint by a member of the Bar against a member of Bar Council staff made under this procedure.
- 5.2 The report of the Internal Complaint Review Panel will be referred to the Chief Executive to review and consider whether the complaint is supported by the evidence and if so whether the investigation discloses a prima facie case of misconduct against the accused staff member.
- 5.3 Where the Chief Executive considers that the complaint is supported by the evidence and that a prima facie case of misconduct is disclosed the Chief Executive shall consider and progress as they consider appropriate a disciplinary case against the accused staff member pursuant to the Disciplinary Procedure contained in the Staff Handbook, and shall inform you and the accused staff member accordingly.
- 5.4 Where the Chief Executive considers that the complaint is not supported by the evidence the Chief Executive shall inform you and the accused staff member accordingly. If you are dissatisfied with this decision you may appeal the decision.

Any such appeal must be made in writing to the Chair of the PCC within five working days of your receipt of the decision of the Chief Executive, stating the ground/s of appeal.

- 5.5 An appeal against a decision of the Internal Complaint Review Panel will not involve a re-investigation of the complaint but must be based on one or both of the following grounds:
- (a) that the decision was wrongly made as a result of an error on the part of the Internal Complaint Review Panel; and/or
  - (b) that new evidence has become available since the date of the Internal Complaint Review Panel decision, provided that its existence could not have been reasonably known of or foreseen prior to that date.
- 5.6 Where a request for an appeal has been received, the Chair shall assign two members of the PCC (other than the members of the Internal Complaint Review Panel, known as the Internal Complaint Appeal Panel), to consider and determine the appeal and you will be invited to a hearing before the Internal Complaint Appeal Panel.
- 5.7 If the Internal Complaint Appeal Panel agrees that the complaint is not supported by the evidence the Chair shall inform you and the accused staff member accordingly. You will have no further right of appeal and the complaints procedure will be concluded at that stage.
- 5.8 If the Internal Complaint Appeal Panel agrees that the complaint is supported by the evidence, and that a prima facie case of misconduct is disclosed, the matter shall proceed in accordance with [clause 5.3](#) of this procedure.

## **6. Complaints against the Chief Executive**

- 6.1 In the event of a complaint against the Chief Executive, references in this procedure to the Chief Executive should read to the Chair of Bar Council who may take or may delegate any step to be taken pursuant to this procedure.

## **7. Mediation**

- 7.1 The Bar Council recognises that in certain situations, mediation can be a helpful and effective means of resolving issues. It is open to the parties to a complaint to engage in mediation as a suitable means of resolving a complaint if they mutually consider this to be in their shared best interest. Mediation should be arranged by the parties themselves and at their own expense.

- 7.2 If the parties agree to mediate the investigation may be deferred for an agreed period of time to allow the mediation process to take place, the parties must each keep the panel informed as to the progress of the mediation process if and as requested and must inform the panel when the mediation process has concluded.
- 7.3 If the mediation process results in a resolution of the complaint you must inform the investigation panel at the earliest opportunity.
- 7.4 If the mediation process does not result in the resolution of the complaint or if it appears to the investigation panel following consultation with the Chair of the PCC at any stage that mediation is no longer a suitable means of resolving the complaint the panel shall recommence the investigation process and inform the parties accordingly.
- 7.5 The PCC may, notwithstanding that the parties to a complaint agree to mediate in relation to and/or resolve a complaint, continue to investigate a complaint where the nature of the complaint involves an alleged serious breach of this policy and/or where an investigation discloses a prima facie case of misconduct.

## **8. Vexatious or Malicious complaints**

- 8.1 The Bar Council takes the operation of this policy very seriously. However, malicious complaints of bullying and/or harassment can have a serious and detrimental effect upon a colleague and generally. Any unwarranted allegation of bullying and/or harassment made in bad faith by a member of the Bar may constitute a breach of the Bar Council's Code of Conduct and will be referred to the [Professional Conduct Committee](#) or by a staff member may constitute a breach of the Bar Council's Disciplinary Rules and may lead to disciplinary action.

## **WHISTLEBLOWING POLICY**

### **INTRODUCTION**

During the course of working as a barrister concerns may occasionally arise. Usually these are easily resolved or can be raised through one of the internal processes available for doing so (see further details below). However, when the concern feels serious because it is about significant risk of harm or damage being caused to the public, the profession as a whole or individuals within the profession or because it may relate to a possible fraud or criminal act it can be difficult to know what to do.

When faced with such a situation it is possible that you may be worried about raising such a concern via the existing internal processes, perhaps considering that it might be best to keep it to yourself, feeling that it's none of your business or possibly only a suspicion. You may feel that raising the matter would be disloyal to colleagues or damaging to the profession. You may be concerned about how you would be perceived if you were to raise such a concern and the impact it might have on your working environment. It is also possible that you may already have attempted to raise the matter but did not feel it made any difference or that you had raised the issue in the wrong way and are not sure what to do next.

The Bar Council are committed to ensuring that the Bar Library operates to the highest possible standards at all times. We have therefore requested that a Whistleblowing Policy be created and overseen in a wholly independent manner to reassure you that it is safe and acceptable to speak up on such matters of concern and to enable you, via an entirely independent and external route, to raise any issues you may have about any form of malpractice or wrongdoing at an early stage and in the right way. When faced with these circumstances we would encourage you to raise any such matter when it is still a concern so that we can potentially address it promptly and avoid it becoming a more sustained or more serious issue.

This policy applies to all barristers within the Bar Library

If having read this policy you have a whistleblowing concern, please let us know following the guidance provided below.

### **OUR ASSURANCES TO YOU**

#### ***Ownership & implementation of this Policy***

Although the Bar Council are keen that its members have access to a Whistleblowing Policy and support its existence, the Bar Council have no active role whatsoever in implementing



this policy and will not be granted access to any information that falls under the application of this policy.

Instead the responsibility for owning and overseeing the correct application of the Policy and for safeguarding any activity that falls within its scope is the responsibility of the wholly independent “Designated Person” described below.

The Bar Council will periodically update the policy based on any recommendations arising from the Designated Person and have given various commitments – referenced in the Policy document below- to support the application of this Policy.

How This Policy relates to other Procedures

The Code of Conduct ([Section 9.11](#)) requires that a barrister shall report evidence of misconduct by another barrister to [the Professional Conduct Committee](#) (PCC). This provision remains in place and barristers should ensure that they make every effort to comply with this provision.

The Bar Council has given due consideration and taken external advice about how to handle anonymous complaints. As a result, the PCC complaints procedure will make it explicit that anonymous complaints will not be investigated.

If however a barrister has good grounds to instead seek to raise a concern through an alternative external and independent channel, this Whistleblowing Policy will apply. Guidance on what would constitute a valid Whistleblowing concern is provided below.

## **Qualifying Disclosure**

Whistleblowing can be more broadly defined as simply ‘raising a concern’. It is different from making a complaint or raising a grievance. Whistleblowers can often act out of a feeling of fairness or ethics rather than a personal complaint.

As the Public Concern at Work Best Practice Guide subscriber states, it is important to note that:

“... the person blowing the whistle is usually not directly, personally affected by the danger or illegality. Consequentially, the whistleblower rarely has a personal interest in the outcome of any investigation into their concern – they are simply trying to alert others. For this reason, the whistleblower should not be expected to prove the malpractice. They are a messenger raising a concern so that others can address it”.

As a guide it is expected that the type of issues that would merit being validly raised under the Whistleblowing Policy would be matters where there is a very serious and wider public or professional interest at stake as distinct from private, individual complaints or matters of misconduct which we would continue to expect to fall within the scope of the PCC process.

Whilst it is not an exhaustive list therefore, by way of guidance only, the Whistleblowing Policy would be appropriate in circumstances where it involves malpractice, abuse and wrongdoing. This may include:

- any unlawful act, whether criminal (e.g., theft) or a breach of the civil law (e.g. slander of libel);
- misadministration (e.g. unjustified delay, incompetence, negligent advice);
- failure to safeguard personal and/or sensitive information and/or the subsequent misuse of such information;
- health and safety risks, including risks to the public as well as other barristers (e.g. faulty equipment);
- abuse of children and vulnerable adults (e.g. through physical, sexual, psychological or financial abuse, exploitation or neglect);
- damage to the environment (e.g. pollution)
- the unauthorised use of public funds (e.g. expenditure for improper purpose);
- fraud and corruption (e.g. to solicit or receive any gift/reward as a bribe);
- • abuse of power (e.g. bullying/harassment);
- other unethical conduct; and
- deliberate concealment of information tending to show any of the above.

## **Your safety**

The Bar Council are committed to supporting the designated Person in applying this policy correctly. Provided you are raising a genuine concern, having firstly considered the other options available under existing procedures, it does not matter if you are mistaken. Of course this assurance does not extend to someone who maliciously raises a matter they know is untrue.

If you raise a genuine concern under this policy, you will not be at risk of suffering any form of reprisal as a result. The Bar Council have given an assurance that should it become clear that there is harassment or victimisation of anyone raising a genuine concern, this will be considered to be a disciplinary matter.

## **Your confidence**

With these assurances, it is hoped that you will raise your concern openly. However, it is recognised that there may be circumstances when you would prefer to maintain confidentiality if possible.

If this is the case, please say so at the outset. If you ask for your identity to not be disclosed, this will be respected and will not be disclosed without your consent unless required by law. You should understand that there may be times when the ability to resolve a concern may not be possible without revealing your identity, for example where your personal evidence is essential. In such cases, a discussion will take place with you about whether and how the matter can best proceed.

## **Anonymity**

Consistent with the approach adopted by the Bar Council in relation to complaints made to the PCC, if you do not tell the Designated Person that oversees the application of this Policy who you are (and therefore you are raising a concern anonymously) it will not be possible for them to look into the matter.

The Assurances given in the Policy about your safety and the process by which concerns can be raised are intended to give you confidence that there is no need to seek anonymity when raising any concern.

If however you are still unsure about raising a concern you can get independent advice from Public Concern at Work (see contact details under Independent Advice).

## **HOW TO RAISE A CONCERN UNDER THIS POLICY**

Please remember that for an investigation into a matter to proceed to its ultimate conclusion evidence will be required. However, you are encouraged to raise the matter under this policy when it is still a concern so that it can potentially be addressed promptly and in order to avoid it becoming a more sustained or more serious issue. In doing so you are asked to explain as fully as you can the information or circumstances that gave rise to your concern.

When you raise the concern it will be helpful to know how you think the matter might best be resolved. If you have any personal interest in the matter, you are asked to tell us at the outset.

Any matter raised under the Policy will be handled fairly and properly.

If at any stage you experience reprisal, harassment or victimisation for raising a genuine concern please contact the Chief Executive of the Bar Council.

## ***Step one***

If you have a concern about misconduct or malpractice you should always give consideration in the first instance to addressing this matter to the PCC in accordance with [Section 9.11](#). Guidance has been provided above about what might differentiate a PCC matter from a Whistleblowing matter. Details on how to raise matters with the PCC are attached hereto.

## ***Step two***

If, having considered your options, the matter falls within the scope of this Policy or if you feel unable to raise the matter with the PCC for a justifiable reason, this Policy allows you to raise the matter with the nominated external and independent person (“Designated Person”) named below who will independently and confidentially receive and handle your concern.

Designated Person: The Right Honourable Sir Malachy Higgins

This person has been given special responsibility and training in dealing with whistleblowing concerns. They do not report to the Bar Council or PCC but instead act independently of both for the sole purpose of administering this Whistleblowing Policy.

Concerns should be raised in writing as follows:

1. Enclose the written concern inside an envelope marked as follows:

### **STRICTLY PRIVATE & CONFIDENTIAL:**

For Attention Of: The Right Honourable Sir Malachy Higgins

2. Please then place the envelope above in turn in to a second envelope addressed as follows:

***The Right Honourable Sir Malachy Higgins***

***Royal Courts of Justice,***

***Chichester Street,***

***Belfast BT1 3JF***

If you want to raise the matter confidentially, please say so at the outset so that appropriate arrangements can be made.

### **HOW THE MATTER WILL BE HANDLED**

Once you have raised a concern:

- You will receive an acknowledgment of receipt of your concern within ten working days.
- It will be assessed by the Designated Person and consideration given to whatever action may be appropriate. This may involve an informal review, an internal inquiry or a more formal investigation.
- You will receive written correspondence summarising your concern and setting out how we propose to handle it and provide a timetable for feedback.

- This will make clear who will be handling the matter, how you can contact them, and what further assistance may be needed from you.
- If upon receipt of the above information you have any concerns that your concern has been misunderstood or there is any information missing please submit this in writing to the contact details that will be provided to you.

If the Designated Person decides that there are no grounds for proceeding further, the person making the disclosure will be informed of this decision and the reasons for this.

If the Designated Person considers that the concern falls within the scope of another procedure, such as those covered by the Code of Conduct procedure, they will advise the individual of this and ask you to refer it to the PCC for appropriate action.

In considering the matters disclosed within the reported concern the Designated Person may need to meet you to discuss the matter in further detail. If this is the case the Designated Person will advise you of a suitable date and time for such a meeting.

Meetings will be held in a location outside the Bar Library and away from fellow barristers.

### ***Investigation***

After having assessed the nature of the concern the Designated Person may decide that an investigation is necessary. The Designated Person may call upon assistance to do so provided that any such assistance does not involve a member of the Bar; Bar Library staff or any other person who may have an interest in the matter. If any such support is to be involved the Designated Person will make this known in advance.

The investigation may involve the reporting barrister and others giving a written statement. The individual's statement will be taken into account, and they will be asked to comment on any additional evidence obtained, as appropriate.

Any individual wishing to make a disclosure verbally or to give further details as the matter is investigated may be accompanied by another person of their choice.

When an allegation is made against a named individual they will be informed of the allegation and supporting evidence. The point at which this occurs will depend on the specific nature of the case. They will be given an opportunity to respond either in writing or verbally and, if interviewed about the matter, will be given an opportunity to be accompanied by a person of their choice.

When the matter has been investigated the Designated Person will determine what action, if any, should be taken in the circumstances. This may include the initiation of formal procedures within the Bar or reference to an appropriate external agency depending upon the circumstances of the case.

The outcome will be reported, as appropriate, depending upon the nature of the disclosure, to the Chairman, Vice-Chair and Chairman of the PCC.

If no action is to be taken, the reason for this will be explained to the individual who has made the disclosure

## **RECORDS**

Records of concerns raised under this Policy will be maintained by the office of the Designated Person for a minimum of five years. All such records will be maintained in a confidential and secure environment.

A written record should be kept of each stage of the procedure

## **INDEPENDENT ADVICE**

If you are unsure whether to use this policy or you want confidential advice at any stage, you may contact the independent charity Public Concern at Work on 020 7404 6609 or by email at [helpline@pcaw.org.uk](mailto:helpline@pcaw.org.uk). Their lawyers can talk you through your options and help you raise a concern about malpractice at work.

## **MONITORING / OVERSIGHT**

The Bar Council, Professional Conduct Committee and Chief Executive will play no role in the practical implementation of this Policy. They are however responsible for ensuring that an effective Whistleblowing Policy is available to the members of the Bar and thus, in this regard alone, they will receive feedback at least annually from the Designated Person on any aspects of the Policy that require review and will take action as required to improve the Policy based on this feedback.

**DECLARATION FOLLOWING AGREEMENT TO BE DISBARRED**



**For the attention of the Chief Executive of the Bar Council :**

- I, \_\_\_\_\_,
- a. confirm that having made an application to be disbarred in accordance with Section 4.10 of the Code of Conduct
  - b. understand that I am required to continuously comply with the provisions of Sections 4.11 and 4.12 of the Code
  - c. understand that my application to be disbarred will only be granted upon satisfactory completion of this undertaking
  - d. confirm that in making this declaration I have read and understood all other relevant matters contained within the Code of Conduct.

Signed : \_\_\_\_\_

BLOCK CAPITALS: \_\_\_\_\_

Date : \_\_\_\_\_

**RESUMING PRACTICE APPLICATION DECLARATION AND  
UNDERTAKING**

To the Chief Executive of the General Council of the Bar of Northern Ireland (“the Bar Council”)

Photograph

I, (full names<sup>6</sup>) \_\_\_\_\_

\_\_\_\_\_

of (home address) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Email \_\_\_\_\_

Tel: \_\_\_\_\_

Gender:<sup>7</sup>    Male     Female

Date of birth<sup>8</sup> \_\_\_\_\_

Present occupation \_\_\_\_\_

\_\_\_\_\_

<sup>6</sup> Give your name as shown on your passport

<sup>7</sup> This information is collected for monitoring purposes only

<sup>8</sup> This information is collected for monitoring purposes only



For the purpose of resuming practice at the Bar of Northern Ireland do hereby **apply, declare and undertake** as follows:

**Practice history and application to resume practice**

1. I was admitted as a student into the Honourable Society of the Inn of Court of Northern Ireland in the \_\_\_\_\_ Term 19/20\_\_\_\_\_.
  
2. I was called to the Bar of Northern Ireland in the \_\_\_\_\_ Term 19/20
  
3. I was called to the Inner Bar (if applicable) \_\_\_\_\_ in \_\_\_\_\_ Term.
  
4. I have not practised since my Call to the Bar of Northern Ireland/since I ceased practice on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_ and since then I have (insert below details as per footnote 4) <sup>9</sup>

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<sup>9</sup> It is essential that you provide full and detailed answers here. Use a separate sheet if necessary. Inadequate detail may lead to a delay in assessing and determining your application if it is necessary to obtain relevant information from you, in order to do so or may lead to a refusal of your application. Your answers should include details of the following;

- (i) Precisely how long you were in practice for.
- (ii) The areas of practice that you engaged in prior to ceasing practice.
- (iii) The precise period of time during which you had not been in practice.
- (iv) The precise reasons for your absence from practice.

What you have been doing in the intervening period, including detail about what, if any, legal work you have been engaged in, providing a schedule of that work, if relevant.

5. I wish to resume practice at the Bar of Northern Ireland on the \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_ 20\_\_\_\_\_ because (insert below details as per footnote 5) <sup>10</sup>

6. I informed the Chief Executive of the Bar Council (“the Chief Executive”) of my intention to resume practice at the Bar by way of letter dated \_\_\_ day of \_\_\_\_\_ 20\_\_\_\_  
—.

**7. Declaration**

8. (a) I understand and appreciate that I owe a duty of candour when completing all sections of this application.
- (i) I confirm that the information provided in my First Schedule Memorial pursuant to Rule 1 of the [Admission Rules](#)<sup>11</sup> for the purpose of my application to be admitted as a student of the Inn remains unchanged;
- (ii) I have never been convicted of any criminal offence <sup>12</sup>;

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<sup>10</sup> It is essential that you provide full and detailed answers here. Use a separate sheet if necessary. Inadequate detail may lead to a delay in assessing and determining your application if it is necessary to obtain relevant information from you in order to do so, or may lead to a refusal of your application. Here you should make it clear precisely why you seek to resume practice, and you should include details as to whether you seek to resume practice for a specific case, or cases, or seek a full return to practice. If you seek to resume practice for a specific case or cases provide details of those, to include, where applicable, the precise or approximate dates for hearing. If you seek a full return to practice provide details of your proposed areas of practice.

<sup>11</sup> [Rules of the Honorable Society of the Inn of Court of Northern Ireland](#)

<sup>12</sup> For this purpose a “criminal offence” means any offence including an offence relating to the non-payment of tax or VAT, wherever and whenever committed, under the criminal law of any

- (iii) There are no proceedings pending <sup>13</sup> against me in the United Kingdom or elsewhere in respect of any criminal offence.
- (b) I have not:
  - (i) received a caution or been bound over,
  - (ii) been the subject of a court injunction, or  
been the subject of an injunction/order in relation to harassment or anti-social behaviour at any time either in the United Kingdom or elsewhere.
- (c) I am not currently aware of any circumstances which might lead to me being or becoming the subject of an investigation relating to a criminal charge either in the United Kingdom or elsewhere.
- (d) I have never been convicted of a disciplinary charge by an employer or by a professional or regulatory body nor are there any disciplinary proceedings pending against me in the United Kingdom or elsewhere in respect of any such charge. I have never been the subject of any disciplinary penalty including a reprimand, censure or warning, nor have I received any advice from a professional or regulatory body concerning any professional conduct, service or behaviour.
- (e) I have never been found guilty of an academic charge by a higher education institution <sup>14</sup>.

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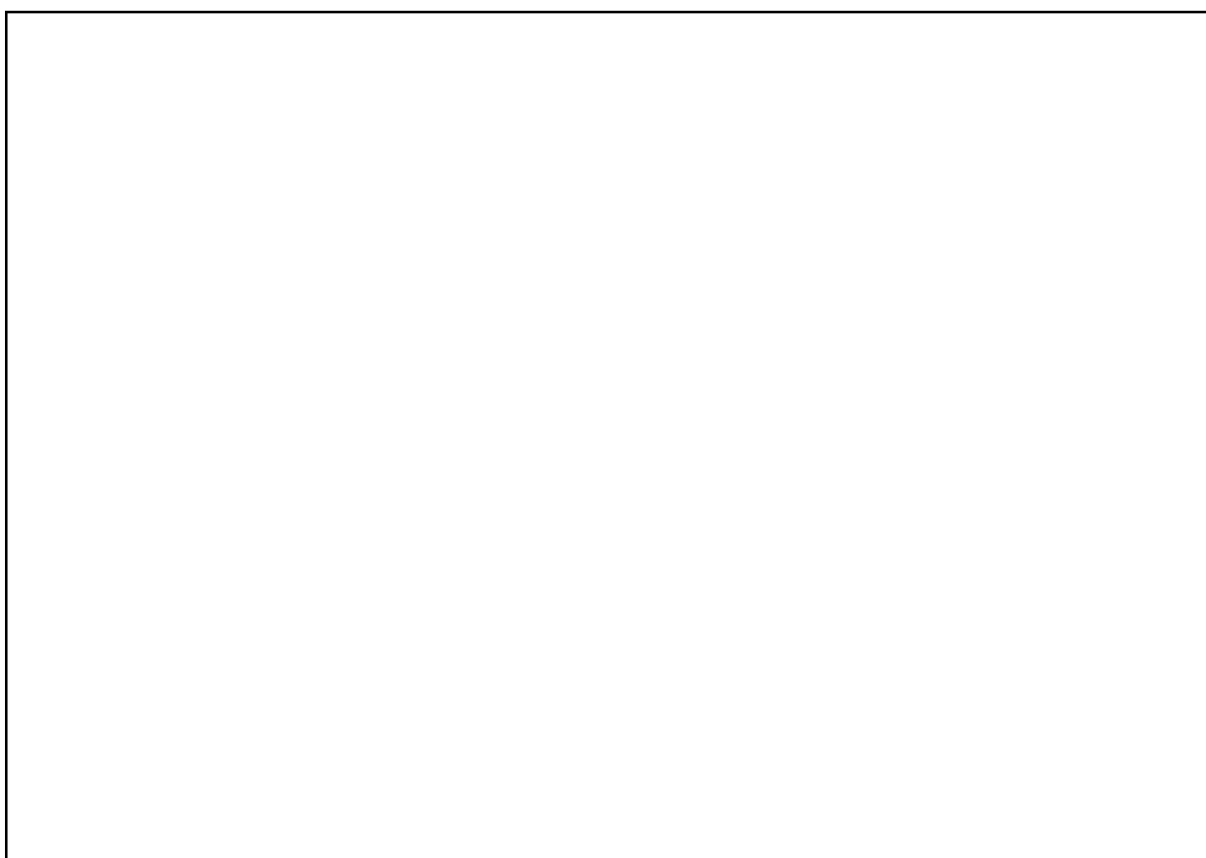
jurisdiction except (i) an offence for which liability is capable of being discharged by payment of a fixed penalty; and (ii) an offence which has as its main ingredient the unlawful parking of a vehicle. Any conviction which is spent is nevertheless required to be disclosed by virtue of the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979. Details of a criminal conviction should specify the sentence given.

<sup>13</sup> Proceedings are pending if (i) you are currently charged with, or (ii) you are on bail or in detention or custody (or have failed to surrender to custody) in connection with any criminal offence.

<sup>14</sup> If you were found guilty, but subsequently successfully appealed against that finding, there is no need to declare it.

(f) I have never had any bankruptcy order<sup>15</sup>, debt relief order<sup>16</sup>, director's disqualification order<sup>17</sup>, bankruptcy restrictions order<sup>18</sup> or debt relief restrictions order made against me nor have I entered into any individual voluntary arrangement with creditors.

(g) I have not previously been refused admission to or expelled from an Inn of Court in England and Wales, the Faculty of Advocates in Scotland or the King's Inns in the Ireland or from any other similar body in any country in the world. I do not suffer from serious incapacity due to mental disorder (within the meaning of the Mental



Health (Northern Ireland) Order 1986), nor addiction to alcohol or drugs, nor from

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<sup>15</sup> For this purpose a "bankruptcy order" includes a bankruptcy order made pursuant to the Insolvency (Northern Ireland) Order 1989 and any such similar order made in any jurisdiction in the world.

<sup>16</sup> For this purpose, a "debt relief order" includes a debt relief order made pursuant to the Insolvency (Northern Ireland) Order 1989 and any similar order made in any jurisdiction in the world.

<sup>17</sup> For this purpose, a "director's disqualification order" includes a disqualification order made by a court or disqualification undertaking accepted by the Secretary of State, pursuant to the Company Directors' Disqualification (Northern Ireland) Order 2002 and any similar order or undertaking made or given in any jurisdiction in the world.

<sup>18</sup> For this purpose, a "bankruptcy restrictions order" includes a bankruptcy restrictions order made by a court or a bankruptcy restrictions undertaking accepted pursuant to the Insolvency (Northern Ireland) Order 1989 and any similar order or undertaking made or given in any jurisdiction in the world.

any other condition which might impair my fitness to become a practising barrister

<sup>19</sup>.

**If any of the statements in paragraph 7(a)–(h) cannot truthfully be declared in full or in part please delete or amend the statements or relevant part of it as appropriate and provide an explanation for such deletion or amendment in the space below.**

9. Except as disclosed below, I am not aware of any other matter which might reasonably be thought to call into question my fitness to practise as a barrister<sup>20</sup>.

#### **Undertaking**

10. I accept that honesty and integrity are at the heart of a barrister's practice.
11. I understand that the Chief Executive of the Bar Council will assess the information in this Declaration and Undertaking before they determine whether to issue me with a practising certificate to resume practice.
12. I understand that the Chief Executive will make enquiries of the Professional Conduct Committee of the Bar Council in order to verify the declaration made by me in paragraph 7(g).

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<sup>19</sup> If you are a disabled person within the meaning of the [Mental Health \(Northern Ireland\) Order 1986](#) or the [Disability Discrimination Act 1995](#) and are unable to make this declaration then, on application to the Inn, consideration will be given as to whether reasonable adjustments can be made.

<sup>20</sup> This includes any incident or behaviour which, if known to the Bar Council, might cause your application to be assessed and determined more carefully. If in doubt, disclose the incident/behaviour.

13. If requested by the Chief Executive, I will apply, or assist them in applying, to Access NI for disclosure about me.
14. I undertake that if there is any change to the matters declared and/or disclosed in response to Sections 2 or 3 above between the date of signing and the issue of a practising certificate to me that I will promptly and completely inform the Chief Executive of the relevant information.
15. I will inform the Chief Executive of any change to my name, address, email or telephone contact details.

**Signature**

16. I have read and understood the terms of this Application, Declaration and Undertaking.
17. I understand that if this Application, Declaration or Undertaking is found to be false in any material respect or there is a breach of the Declaration or Undertaking, such falsification or breach shall itself constitute professional misconduct.<sup>21</sup>

Dated \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

Signature: \_\_\_\_\_

NAME: \_\_\_\_\_

**(BLOCK CAPITALS)**

**DATA PROTECTION ACT 2018**

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<sup>21</sup> The Chief Executive will assess and determine each application on its own merits. Each applicant owes a duty of candour when completing all sections of this application.

The General Council of the Bar of Northern Ireland takes your privacy seriously and will only use the Personal Data you provide in this form to process your application for a practising certificate.

Personal Data given on this form will only be processed by the Bar Council of Northern Ireland and Bar Library Services Limited.

Personal Data will be kept on file for while you are a Practising Barrister and a further defined period as dictated by organisational data retention policy.

*Last reviewed 30<sup>th</sup> June 2022*

**GUIDANCE ON BANKRUPTCY AND ENTERING INTO INDIVIDUAL VOLUNTARY ARRANGEMENTS WITH CREDITORS**

- a) At the earliest opportunity a barrister shall report the fact of bankruptcy or entering into an individual voluntary arrangement with creditors to the Secretary of the [Professional Conduct Committee](#), pursuant to [Section 9.9](#) of the Code.
- b) A barrister shall submit to the Secretary of the PCC their Statement of Affairs on becoming bankrupt, in the first instance, to allow the PCC to examine the conduct leading to the bankruptcy.
- c) The barrister is under an ongoing duty to report to the Secretary of the PCC any significant change in circumstances during the period of bankruptcy or the individual voluntary arrangement.
- d) The barrister shall provide such further documents or information to the Secretary of the PCC as may be requested during the period of bankruptcy or the individual voluntary arrangement.
- e) The Professional Conduct Committee shall assess the circumstances and conduct leading to the bankruptcy or the individual voluntary arrangement, on an individual basis, and shall determine whether the conduct and circumstances leading to the bankruptcy or the individual voluntary arrangement amount to professional misconduct, conduct unbecoming of a barrister or bring the profession into disrepute.
- f) A barrister who is required by the Bar Council to notify all instructing Solicitors who are proposing to engage themselves or who have engaged themselves of the bankruptcy or the individual voluntary arrangement must keep a written record of all relevant notifications to solicitors.



- g) The barrister is not required to notify all lay clients of the fact of bankruptcy or entering into an individual voluntary arrangement. However, the barrister shall exercise their discretion, in appropriate cases, whether to notify the lay client of such matters.
- h) The barrister shall notify their professional indemnity insurers of the fact of bankruptcy or entering into an individual voluntary arrangement.
- i) Where the barrister has been made bankrupt or has entered into an individual voluntary arrangement such a barrister has additional obligations under [Section 9.8 \(c\) of the code, before obtaining a practising certificate, to satisfy the requirements](#) of the Professional Conduct Committee as to their suitability to practice.
- j) There is no provision of the code of conduct to prevent barristers adjudicated bankrupt, or entering into an individual voluntary arrangement, from practising as a barrister. However, where the bankruptcy or the individual voluntary arrangement is not deemed to be incompatible with practice, members need to avoid any conflict of interest between the interests of the lay client and their own personal financial position, and ensure that every aspect of the lay client's interest is properly represented and protected without fear or favour in accordance with the Code of Conduct.

**IN THE CROWN COURT IN NORTHERN IRELAND**  
**TWO COUNSEL COMPLIANCE CERTIFICATE**  
**IN THE MATTER OF SECTION 18.4 and 21.10 OF THE BAR CODE OF CONDUCT**

To be completed in ALL cases where a Two counsel certificate has issued

AND a Junior Counsel is leading

OR where one of the representatives is NOT Counsel.

CASE NAME R -v- \_\_\_\_\_

ICOS No. \_\_\_\_\_ / \_\_\_\_\_

CROWN COURT AT \_\_\_\_\_

2 COUNSEL CERTIFICATE CC/ \_\_\_\_\_

I \_\_\_\_\_ (Print name) hereby certify that-

1. I am satisfied through my own enquiries that the lay client has been given clear and unequivocal advice that they are entitled to representation by BOTH a Senior and Junior Counsel and that the lay client has made an **informed** decision not to be so represented.
2. I am satisfied that the other legal representative instructed to appear on behalf of the lay client is competent to satisfy the requirements and does satisfy the requirements for which the two-counsel certificate was issued.

(Where acting as a leading Junior) I am satisfied that proper efforts have been made to instruct a Senior Counsel and that no Senior Counsel is available to properly represent the lay client under the terms of this certificate. I further confirm that I am acting as a leading Junior in compliance with my obligations under the code of conduct of the Bar of Northern Ireland.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

Signed \_\_\_\_\_

THIS FORM IS TO BE LODGED WITH:

1. Counsel's instructing solicitor.
2. The Lay Client.
3. The Court or the relevant Crown Court Judge prior to Arraignment.
4. Any other advocate instructed in the case.

Any failure by Counsel **properly** to satisfy themselves as to the above matters or to correctly certify same will be considered a breach of the Code of Conduct.

## **GUIDELINES ON ENGAGING IN ANY OTHER OCCUPATION BY MEMBERS OF THE BAR AND STUDENTS OF THE INN**

### **BACKGROUND**

1. Historically, relatively few barristers in independent practice ever sought to engage in any other occupation. However, in more recent times it has become apparent that some members of the Bar and Students of the Inn are facing significant financial pressures. These pressures are most acute at the very junior end of the Bar where many members carry the burden of considerable debt resulting from the imposition of university fees and the absence of student maintenance grants.

2. It is considered necessary and appropriate, in order to ensure that the Bar remains a profession that is accessible to persons from all social and economic backgrounds, for the Bar to assist in easing the financial pressures upon its younger members and students of the Inn by facilitating those who wish to engage in appropriate work outside their practice as a barrister or during their pupillage or when they are a student of the Inn.

3. Permission to engage in any other occupation while practising as a barrister or during pupillage or while studying as a student of the Inn is primarily intended to assist and facilitate members of the Bar in their attempts to establish a viable practice at the Bar or to assist students to complete their studies in preparation for Call to the Bar. The primary purpose of the rule is not to enable members of the Bar to supplement their incomes by part-time work. The Bar is and should remain a full time profession for those established at the Bar.

4. For these reasons, it is anticipated that the bulk of applications for permission to engage in any other occupation will be made by students of the Inn, by pupil barristers or by barristers in the first few years after their call. As explained in paragraph 14 (b), such permission will, if granted, usually be for a fixed period of time and, although that period may be extended by application for renewal, it is unlikely that more than 3 such renewals will be granted.

### **THE CODE OF CONDUCT OF THE BAR OF NORTHERN IRELAND**

5. The issue of work outside of one's practice as an independent barrister is addressed at [Section 5.25](#) in the Code of Conduct. [Sections 4.2](#) and [4.3](#) are also of relevance.

### **RULES OF ADMISSION OF THE INN OF COURT OF NORTHERN IRELAND**

7. The issue of engaging in any occupation other than that of a student of the Inn is addressed at Paragraph 7 of the [Rules of Admission](#). It provides as follows: -

“If before Call to the Bar a student wishes to engage in any occupation other than that of a student of the Inn he or she shall apply to the Inn through the Under Treasurer for permission to do so.”

### **PROCEDURE**

8. Under [Section 5.25](#) of the Code of Conduct any member of the Bar who wishes to engage in work outside of practice as an independent barrister must secure the prior written consent of the Bar Council or its nominated Committee. Applications made by Students of the Inn will be considered by the Benchers of the Inn of Court. For the avoidance of any doubt, neither Students of the Inn nor members of the Bar are required to secure such consent in respect of the occupations mentioned in [Section 4.2](#) of the Code of Conduct.

9. No Barrister or Student of the Inn should engage in work outside of practice as an independent Barrister or during pupillage or while studying as a Student of the Inn, save for the occupations specified in [Section 4.2](#) of the Code of Conduct, until the consent of the Bar Council or Benchers has been obtained.

10. Applications for consent must be submitted in the pro forma available through the Bar Council office.

11. Applications for consent shall be determined by a sub-committee of the Bar Council [‘the sub-committee’] elected by all the Bar Council.

12. If the sub-committee decides to refuse consent, the applicant shall have a right of appeal [exercisable within 7 days of receipt of notification of refusal of consent] to a full meeting of the Bar Council.

13. Both the sub-committee and the Bar Council shall have the right, when considering any application or appeal, to request further details from the applicant and/or to interview the applicant.

14. Any consent granted shall be: -

a. based upon the information provided in the applicant’s application and any further information provided by him or her upon request and / or at interview;

b. subject to whatever conditions the sub-committee and / or the Bar Council consider appropriate including, without prejudice to the generality of the foregoing, a condition regarding the length of time for which the applicant will be permitted to engage in work outside of his practice as an independent barrister. In general, any permission granted in the case of a Student of the Inn shall only be valid during the period prior to Call to the Bar. Similarly, any permission granted to a pupil Barrister shall only be valid during the course of pupillage and any permission granted to a member of the Bar following the completion of pupillage shall usually remain valid for a period of no more than 12 months, subject to an

application for renewal of the same. In respect of renewal applications, it is unlikely that more than 3 renewals will be granted to any applicant.

15. The applicant must inform the Bar Council if, at any time, there is any material change in circumstances such as to render the information provided in the application, upon request, or at interview, inaccurate or incomplete in some material respect.

16. The Bar Council reserve the right to amend these guidelines as and when they deem it necessary and appropriate to do so.

### **GUIDELINES FOR APPLICANTS**

17. The purpose of these guidelines is to assist those barristers who seek consent under [Section 5.1](#) of the Code of Conduct or Students of the Inn who seek consent under Paragraph 7 of the [Rules of Admission](#). They are intended as guidelines only, not as rigid rules, and it should be noted that the Bar Council at all times retain a discretion to exercise their judgment in any particular application as they see fit, in light of the particular facts of that application, the provisions of the Code of Conduct, the [Rules of Admission](#) and any other relevant factors.

18. The occupation in which the Barrister or Student of the Inn intends to engage must not be inconsistent with practice at the Bar or with the status of a Student of the Inn. It must not, for example, take precedence over any aspect of work as a Barrister or any aspect of studies as a Student of the Inn. Practice at the Bar or studying as a Student of the Inn must at all times remain the applicant's primary occupation. Any outside occupation which interferes with a Barrister's ability generally to be available for work as a Barrister during business hours is unlikely to be considered consistent with practice at the Bar. Similarly, any outside occupation which interferes with a student's ability generally to engage fully in the studies leading up to Call to the Bar is unlikely to be considered to be consistent with the status of a Student of the Inn.

19. The other occupation must not be one which:

- a) conflicts with the applicant's duties as a Barrister or the applicant's status as a Student of the Inn;
- b) confers upon the applicant any unfair advantage over the applicant's colleagues at the Bar;
- c) might, if pursued by the applicant, bring the profession of Barrister into disrepute; or
- d) might, if pursued by the applicant, because of the nature of the work engaged in and the location, context and conditions in which the work is performed, reasonably cause members of the public or members of the profession to perceive that the work was inconsistent with a Barrister's duty to display high standards of integrity and to independently and professionally advise and represent clients to a high standard and to the best of his or her ability.

20. Any Barrister seeking consent to pursue another occupation under [Section 5.25](#) should be aware that the disciplinary portion of the Code of Conduct applies to conduct outside the applicant's practice as a barrister and that, accordingly, the applicant must not, whilst pursuing any other permitted occupation, engage in activities which would render the applicant liable to disciplinary action under the Code of Conduct.

21. Without prejudice to the provisions of [Sections 18](#) and [19](#), there is no exhaustive list of other occupations in respect of which permission under [Section 5.25](#) of the Code of Conduct or Paragraph 7 of the [Rules of Admission](#) will always be withheld. However, the following are examples of the classes of other occupations which are highly unlikely to be permitted in the case of Barristers: -

- a. working for, or providing services to, solicitors;
- b. working for, or providing services to, insurers, insurance agents, or brokers;
- c. working for, or providing services to, patent or trademark attorneys;
- d. working for, or providing services to, the Police or the Prison Service;
- e. working for, or providing services to, the Public Prosecution Service;
- f. working for, or providing services to, the Northern Ireland Court Service;
- g. working on an employed or self-employed basis at or about any court or tribunal building, the Bar Library, or the Law Society Building;
- h. working on an employed or self-employed basis in any capacity, which is likely to lead to the barrister being a witness in proceedings before any court or tribunal in Northern Ireland;
- i. working for an employers' or trade association or for a trade union.

## **UPDATED GUIDANCE ON ATTENDANCE BY SOLICITORS ON COUNSEL**

1. The Professional Conduct Committee of the Bar continues to have concerns about solicitors not attending counsel. The following advice is issued for the guidance of all members.

2. The starting point is [Section 14.6](#) of the Code of Conduct which states:

*“Apart from work in the Magistrate’s Courts and work in other courts which only involves dealing with uncontentious matters, a barrister should not consult with a lay client or any witness or represent that client in court in the absence of the professional client or a member of the professional client’s staff. If the professional client or a member of staff is absent, the barrister should decline to represent the lay client and the absence of the professional client or the member of staff should be brought to the attention of the court. Where, in exceptional circumstances, in the absence of the professional client or a member of staff the barrister consults with the lay client or represents the lay client in court, the barrister shall forthwith furnish a written memorandum of instruction received during the consultation or the outcome of the hearing to the professional client. Attention is drawn to the “Guidance on Attendance by Solicitors on Counsel” contained in [Appendix 9](#).”*

3. As Members can see from the wording of this rule it is only in exceptional circumstances that a barrister should consult with a lay client or represent the lay client in Court when not attended by a Solicitor or a member of the Solicitor’s staff. It is the view of the Professional Conduct Committee that a barrister should never undertake a substantive hearing without being so attended.

4. Normally a barrister should not consult with a client, or represent a client in court, unless the instructing person or member of that person's staff is present. This is standard practice in other than the magistrates' courts, and a barrister should have no compunction in so advising a solicitor who ignores the practice.

5. The presence of the solicitor ensures that there is less room for dispute about what has actually happened during a consultation or in court. A significant part of the work of the Professional Conduct Committee continues to be taken up with investigating allegations made against barristers by clients when solicitors have not been present. The absence of the solicitor leaves barristers more vulnerable to allegations about their attitude, lack of preparation, poor presentation of the case etc.



6. It had been previously indicated by a Judge that he would not insist on a solicitor attending providing that counsel is attended by someone from the solicitor's firm. That is in accordance with the Rule which refers to the staff of the solicitor. However, even in that situation, a barrister should have no reservation in advising the solicitor that the person attending him or her should have some knowledge of the case so that the attendance of the person concerned is meaningful.

*Last reviewed 30<sup>th</sup> June 2022*

## **GUIDANCE APPLICABLE WHEN A CLIENT CONFESSES**

1. Where a person charged with a criminal offence confesses to the defence barrister the following points should be borne in mind:
  - a) That every punishable crime is a breach of common or statute law committed by a person of sound mind and understanding;
  - b) That the issue in a criminal trial is always whether the accused is guilty of the offence charged and not whether they are innocent;
  - c) That the burden of proof rests on the prosecution.
2. The mere fact that a person who is charged with a criminal offence has confessed to the barrister is not itself a bar to that barrister appearing or continuing to appear in their defence nor does such a confession release the barrister from their duty to represent the accused to the fullest possible extent.
3. A confession by an accused person to the barrister limits that barrister's presentation of the defence. They should not assert that which they know to be a lie. They must not connive at or substantiate a fraud.
4. While it would be proper to raise objections and concerns as to the competency of the court, due process, Human Rights issues, the form of the indictment, the admissibility of any evidence or the evidence admitted, it would be improper in such circumstances to suggest that some other person had committed the offence or to call evidence which the barrister knows to be false having regard to the confession, e.g., evidence in support of an alibi, which is intended to show that the accused could not have committed the act with which they are charged. The barrister must not (whether by calling the accused as a witness or otherwise) set up an affirmation case inconsistent with the confession made to them.
5. With regard to challenging the evidence presented by the prosecution either by cross-examination or in their speech to the court, the barrister is entitled to test the evidence given by each individual witness and to argue that the evidence taken as a whole is insufficient to amount to proof that the accused person is guilty of the offence but they must not go any further than this.

6. This guidance is based on the assumption that the accused has made a clear confession that they did commit the offence with which they are charged and does not profess to deal with the very difficult questions which may arise when a series of inconsistent statements are made to the barrister by the accused before or during the proceedings. Nor does it deal with the questions which may arise where statements are made by the accused which point almost irresistibly to the conclusion that the accused is guilty but does not amount to a clear confession. Statements of this kind hamper the defence but questions arising on them are not dealt with here. They can only be answered after careful consideration of the actual circumstances of the particular case.

## **ETIQUETTE IN THE KING'S BENCH DIVISION**

### **MENTIONING SETTLEMENTS AND MAKING APPLICATIONS**

1. The callover in the King's Bench Division almost invariably takes place at 10.15 a.m. Any Junior Counsel who is involved in a case must ensure that they confirm the time from the online list.
2. At this callover, and at any further callover that may be required, it is essential that each party to the proceedings is represented by Counsel, where Counsel is instructed. Unless otherwise permitted by the Court, the Court will not accept any settlement unless each party is represented in Court at the announcement of the settlement.
3. Unless Senior Counsel specifically indicates that they intend to be present to announce a settlement or that they intend to be present at any callover, it is the duty of Junior Counsel to attend.
4. It is essential that the information provided to the Judge when a settlement is announced is accurate, so that the actual terms of settlement of the case that reflects what has been agreed between the parties are properly recorded.
5. It is the duty of Counsel involved in the case to ensure that this is done. This means not only the Counsel who actually appear for the parties in the case, but also any Counsel who has been asked by a colleague to announce the settlement is informed of all relevant matters.
6. The original Counsel has a duty to ensure that if they ask a colleague to mention a settlement, that the other Counsel is provided with all necessary information. Likewise, the Counsel who is asked to mention the settlement must ensure that they are provided with the necessary information. If the Counsel ask to mention a settlement by a colleague is not satisfied that they have been given all the necessary information, they should decline to mention the settlement for the colleague.
7. Prior to the Judge coming into Court Counsel shall notify the Registrar of their name and the party they represent.
8. When the Judge comes into court all Counsel should stand. When the Judge bows Junior Counsel should not bow in response.
9. At the first callover the case is called as "Going on", "Settled" or "Application" – normally by the Plaintiff's Counsel. No terms of settlement are to be mentioned at this stage, nor appearances given, unless the Judge specifically requests it.

10. Normally the Registrar will then call out in turn the title of the settled cases followed by the title of those in which it has been indicated that there is to be an application.

11. When the Registrar calls the name of the settled action the settlement is announced as follows:

- a. The Plaintiff's Counsel stands up and announces their appearance in the following terms: "May it please your Lordship, my Lordship/ My Lady, I appear for the Plaintiff with my learned friend Mr/Ms Jones". That Counsel then sits down.
- b. The Defendant's Counsel then stands up and announces their appearance, "May it please your Lordship, my Lordship/ My Lady, I appear for the Defendant with my learned friend Mr/Ms Jones". That Counsel then sits down.
- c. If there are several Defendants in the action, Counsel for each Defendant announce who they appear for, until the appearances in respect of all Defendants have been announced.
- d. Each Counsel should ensure that the Judge has had time to write down the previous Counsel's appearances before they start to speak.
- e. If there is only one Defendant, the Plaintiff's Counsel then stands again, and says "My Lord/ My Lady, the action is settled for £100,000 damages and costs to be agreed or taxed in default of agreement. There are no complications and a 3 week stay is agreeable". ( A 3 week stay means that the Defendant has 3 weeks in which to pay the Plaintiff's damages. It is a normal stay in the High Court. Complications, dealt with below, arise, e.g. in cases where the Plaintiff is legally aided, where there is a lodgement, fatal cases and cases where there are minors or other persons in respect of whom any settlement requires the approval of the court).
- f. If there are several Defendants it is for the Plaintiff's Counsel to be in possession of all relevant information as to which Defendant/s is/are paying the Plaintiff's damages and which, if any, are to have judgment against the Plaintiff. Where there are several Defendants of whom one or more is not contributing to the settlement each non-contributing Defendant normally takes judgment against the Plaintiff, with no order as to costs. This means that the non- contributing Defendant is paying its own costs of the action; the Plaintiff is not paying its costs. An example in a case where there are three Defendants is as follows – with the Plaintiff's Counsel informing the Judge – "My Lord/ My Lady, the action is settled. The plaintiff is to have judgment against the first and second named Defendants for £100,000 damages and costs to be agreed or taxed in default of agreement. The third-named

Defendant is to have judgment against the Plaintiff with no order as to costs. There are no complications and a 3 week stay is agreeable”.

- g. In an example such as in (f) above, it is for Counsel who appears for the relevant paying Defendants to know whether it is necessary to ask the Judge to make an order as between the paying Defendants. Sometimes the Judge will ask whether any such order is to be made. In the example above it may be that the first-named Defendant is paying 25% of the Plaintiff’s damages and costs. Usually, the Defendants do not require the Judge to make any order, but if one is required, Counsel for one of those Defendants should ask the Judge to make an order reflecting the apportionment.
- h. There are occasions when there are Third Parties in the action. The Plaintiff may not have knowledge of the arrangement arrived at between a Defendant and the Third Party, which that Defendant has joined to the action. In such circumstances, it is for Counsel appearing for the relevant Defendant to explain the position to the Judge. This is done after the Plaintiff’s Counsel has announced the terms of the settlement as between the Plaintiff and the Defendant/s. The relevant Defendant’s counsel will announce to the Court something along the following lines (assuming, for these examples, that they appear for the second-named Defendant) –  
“My Lord/ My Lady, the second-named Defendant is to have judgment against the Third Party for  
£x and its costs of the Third Party proceedings”, or “My Lord/ My Lady, the second-named Defendant is to have judgment against the Third Party for 50% of the Plaintiff’s damages and 50% of the Plaintiff’s costs, and its costs of the Third Party proceedings”, or “My Lord/ My Lady, no order is required in the Third Party proceedings”
- i. There are occasions when, as a result of the arrangements between a Defendant and a Third Party, both indicate to the Plaintiff’s Counsel that the Third Party is to be joined as a further Defendant in the action. In such circumstances, after the appearances for all the parties have been announced, Counsel for the Plaintiff, (prior to telling the Judge the settlement terms) should say, “My Lord/ My Lady, would your Lordship/ Ladyship by consent make an order adding the Third Party to the action as the second-named Defendant”, and then proceed to give the agreed terms of settlement.
- j. If for some reason it is not possible to give all the terms of the settlement to the Court, or if the parties prefer not to announce the terms of the settlement in open court, the case will normally be “stayed on terms endorsed”. If an action is stayed on terms endorsed it should be announced as follows:

“My Lord/ My Lady, the action has been settled on terms endorsed. Would your Lordship/ your Ladyship, by consent, stay the action upon those terms and give the parties liberty to apply? Would your Lordship/ Ladyship also make an order that the Defendant(s) shall pay the Plaintiff’s High Court costs to include 1 or 2 Counsel (as appropriate) with such costs to be taxed in default of agreement, (and/or in a legally aided case order taxation of the plaintiff’s costs under the second schedule)”.

In cases which are stayed on terms endorsed, it is essential for the Plaintiff’s Counsel to ensure that they ask for an order that the Plaintiff’s costs be taxed in default of agreement. This is because the Taxing Master requires a Court Order before they will entertain an application to tax the Plaintiff’s costs. Failure to ask for such an order will cause considerable delay in the taxation process, as the Plaintiff’s solicitor will have to list the case again for the Court to make the order for taxation.

k. Where an action is settled on terms endorsed it is preferable that the terms should be drawn up and signed before the settlement is announced. The Judge is not entitled to see the terms. The relief sought is that the action be stayed.

### **THE COMPLICATIONS**

12. If a solicitor for any Defendant has made a lodgement in the case, the solicitor on both sides should be in possession of a copy of the lodgement docket, the document on which the lodgement is recorded. It will not be in the Judge’s papers. When settlement in such a case is announced, the lodgement docket should be handed up by the Plaintiff’s Counsel (or solicitor, if attending on Counsel) on the announcement of the settlement to the Registrar and the Plaintiff’s Counsel says:

“My Lord/ My Lady there is a lodgement of £50,000. Would your Lordship/ Ladyship order that the lodgement be paid out to the Plaintiff’s solicitors and allow a 3 week stay on the balance? Would your Lordship/ Ladyship order the interest to be paid out to the Defendant’s solicitors?”

13. If the plaintiff has Legal Aid for the proceedings, Legal Aid taxation is required. The Plaintiff’s Counsel will say:

“My Lord/ My Lady, the Plaintiff is an assisted person. Would your Lordship/ Ladyship order taxation of the Plaintiff’s costs under the second schedule?”

[The second schedule is a reference to the schedule in the Legal Aid, Advice and Assistance (Northern Ireland) 1981 Order, pursuant to which costs are taxed by the Taxing Master]

14. Fatal cases require to have the damages apportioned between the [Fatal Accidents \(N.I\) Order 1977](#) (the dependants), and the [Law Reform \(Miscellaneous Provisions\) Act \(N.I\)](#)

1937 (the estate). If there are minor dependant children the settlement requires Court approval.

15. Any proposed settlement in a case in which the Plaintiff is a minor requires the approval of the Judge. In those circumstances, at the callover, when the case is first called, Counsel for the Plaintiff should say, "My Lord/ My Lady, that case is settled subject to the Court's approval". That case will then be dealt with by the Judge, normally after the end of the callover.

16. The same procedure applies where the Plaintiff is, for whatever reason, a person under a disability.

### **COMMON ERRORS**

17. Attempting to announce the whole settlement at the first callover.

18. Giving your opponent's appearance as well as your own.

19. It is acceptable for Counsel to ask a colleague to stand in for them to mention their appearance when a settlement of a case is announced. It is not acceptable for Counsel to tell the Judge that they are mentioning the settlement on behalf of another Counsel, as an explanation or excuse for being unable to deal with a query raised by the Judge. If Counsel is unable to answer the Judge's query, Counsel should ask the Judge for the appropriate time to permit them to ascertain the information. It may be true that Counsel is mentioning the case for a colleague but the Counsel who mentions the case must assume responsibility for ensuring that the Court is accurately informed of the settlement terms.

20. Informing the Court that you are instructed by XYZ Solicitors. While this is the normal way of announcing an appearance in a criminal case, it is not appropriate in the High Court. In a civil action the Court has the appearance of the solicitor in the Court papers.

21. Informing the Court that you are appearing with Mr/Ms/Mrs Smith Q.C. Your appearance should be "with my learned friend Mr/ Ms/Mrs Smith". It is not correct to add "KC" or "Senior Counsel" or the like.

22. Informing the court the first name of Senior Counsel, unless there are two or more members of the senior bar with the same surname. In the same vein, if Counsel is referring to any other Counsel by name, the first name of that Counsel should not be given, unless there are two or more Counsel at the Bar with the same surname.

23. Informing the Court that a case is settled for "£100,000 plus the CRU". If the CRU figure is not known at the time that the settlement is announced it may be appropriate to have the case stayed on terms endorsed.

24. Failing to mention the appropriate costs order.



25. In cases where the damages are £30,000 or less the Court requires to know the level at which costs are agreed to be paid. This will usually be “High Court costs to include 1 or 2 Counsel, (as appropriate) to be agreed or taxed in default of agreement”, or “County Court costs with High Court outlay, to include 1 or 2 Counsel”. Where costs are agreed the Court should be informed that “costs are agreed.” An order for taxation of costs that are agreed should not be sought.

26. Where an application is made to adjourn an action not in that day’s list, Counsel for both parties actually involved in the case should be in attendance to inform the Court of the reasons for the application to adjourn, and the reasons for objection, if relevant, so that the Judge can be fully informed of all relevant issues before making a decision on the application.

27. The correct response to the Judge’s ruling on any matter is “As your Lordship/Ladyship pleases”, whether you like the ruling or not.

28. It is not acceptable to refer to a solicitor (who may be appearing against Counsel in an application) as “My friend” or “My learned friend”. Only Counsel are referred to in such a way. The solicitor should be referred to by Counsel as “Mr Smith” or “Ms Jones”, as appropriate.

#### **FURTHER CALLOVERS**

29. During the course of the day, any action that is listed for hearing but not settled will be reviewed by the Judge periodically at further callovers. It is the duty of Counsel to be aware of the times of each of these callovers and to attend each, and keep the Judge informed of any relevant matters.

30. At each of these callovers Counsel should be aware of the state of the readiness of the case in which they are involved, and should be prepared if asked, to advise the Judge as to whether the case is ready to start, and if not, when it will be ready to start, the reasons why it is not ready to start, and whether there are any meaningful negotiations which might lead to settlement.

#### **COUNTY COURT APPEALS AND APPEALS FROM A MASTER**

31. Counsel in these appeals should announce their appearance as being “for the Plaintiff/Appellant” or “for the Defendant/Appellant” or “for the Plaintiff/Respondent” or “for the Defendant/Respondent”, whichever is appropriate.

32. The announcement of a settlement in a County Court appeal is different from the announcement of a settlement of a High Court action because there is already in existence a County Court decree. The result of the negotiations on the appeal must either be that the order of the County Court is affirmed or varied.

33. For example, if at the County Court the Plaintiff’s Civil Bill was dismissed but, on the Plaintiff’s appeal, the Plaintiff is to receive damages for £15,000, the appropriate way of announcing this is to say:

“Would your Lordship/ Ladyship, by consent, allow the appeal and vary the Order of the County Court by entering a decree for the Plaintiff for £15,000.”

If at the County Court the Plaintiff was awarded £15,000 but on the Defendant’s appeal the Plaintiff is to receive £7,500 counsel should say:

“Would your Lordship/ Ladyship, by consent, allow the appeal and vary the Order of the County Court by entering a decree for the sum of £7,500.

If, at the County Court the Plaintiff received £15,000 and, on the Defendant’s appeal, the Plaintiff is still to receive £15,000 counsel should say:

“Would your Lordship/ Ladyship, by consent, dismiss the appeal and affirm the Order of the County Court”.

34. Whatever be the result of the appeal, the issue of costs will have to be explained to the Judge. For example, a successful party may be getting the costs of the County Court hearing and of the appeal (“costs above and below”); or may be getting only the costs of the appeal (“costs of the appeal only”). There are several possibilities and Counsel announcing the appeal know what order is being sought following the settlement of the appeal.

35. The settlement of any appeal from a Master, as from the County Court, means that an existing order has either to be varied or affirmed. Similarly, the Judge will expect to be told what order is required in relation to costs both before the Master and in High Court.

### **REVIEWS**

36. Counsel attending reviews of cases should only attend such reviews in cases in which they are involved, and should be in a position to inform the Judge of all relevant matters.

### **DRESS OF BARRISTERS**

37. Counsel are reminded of the provisions of [Section 24](#) of the Code of Conduct.

**GUIDELINES FOR NEGOTIATION WITH INSURANCE COMPANY REPRESENTATIVES**

1. It is still to be regarded as the preferable practice in negotiations that such negotiations be carried out with a legal representative retained on behalf of the Defendant.
2. If Counsel has been retained on behalf of the Defendant then Counsel for the Plaintiff should carry out negotiations with that Counsel unless Counsel confirms they have not been retained for the purposes of those negotiations.
3. It is not appropriate for Counsel on behalf of the Plaintiff to negotiate directly with an insurance company's representative where there have been previous negotiations either with Counsel or solicitor representing the Defendant and those negotiations have been unsuccessful.
4. It is not appropriate to negotiate directly with an insurance company's representative where a solicitor has been engaged on behalf of the Defendant unless it has been clearly confirmed that the solicitor has a limited engagement. Counsel negotiating with an insurance company's representative in those circumstances has an obligation to ensure through their own instructing solicitor that the solicitor, who has been retained by the insurance company, has confirmed that they have only a limited retainer which does not include authority to enter into negotiations.
5. Negotiations should be carried out preferably on a face-to-face basis, not through correspondence, emails or by telephone communication directly with insurance representatives.
6. Face to face negotiations with an insurance company's representative should take place within the precincts of a Court or the Bar Library. It is not appropriate to have such negotiations in a solicitor's office except where there are compelling or special reasons such as disability which make it difficult for the client to attend at Court or the Bar Library. Negotiations should never take place in an insurance company's premises.
7. A memo should be kept of all discussions or communications with an insurance representative and should be provided to their instructing solicitor as soon as reasonably.

*Last reviewed 31st September 2022*

## **BAR OF NORTHERN IRELAND PUPILLAGE GUIDELINES**

### **PUPILLAGE GUIDELINES**

The aim of these guidelines is to provide pupils with information as to what they should expect to gain from pupillage, to enhance their confidence in coping with the first stage of their professional lives, to help improve standards and to achieve greater consistency between the experience of one pupil and another whilst interfering as little as possible with what must vary for each individual. The aim is further to put pupillage on a less ad hoc basis without being overly prescriptive, as the nature of the practices of Pupil Masters will vary widely.

Members are referred to [Section 25](#) of the Code of Conduct concerning “Pupillage.”

### **PUPILS**

Pupils should bear in mind the following matters: -

1. Pupil's duties - a pupil should be conscientious in receiving instruction from a Pupil Master and should be in a position to apply their full-time efforts thereto (but see 5 below in relation to part-time employment or other work). This will normally involve being available every working day during term time at the direction of the Pupil Master. Every pupil should ensure that they are provided with, and retains, a copy of the Pupillage Checklist, familiarise themselves with contents and use it during Pupillage
2. Pupils are referred to the [Statements of Principles](#) and the general duties of the individual at [Section 5](#) of the Code of Conduct. Compliance with the same is central to maintaining the highest standards at the Bar.
3. Relationship with Pupil Master - It is important that if at all possible the pupil meets the Pupil Master prior to the commencement of the pupillage. The pupil should expect the Pupil Master to clarify what is expected by the Pupil Master on a day-to-day basis. It is important that the pupil is open with the Pupil Master and that at the appropriate time the pupil raises all and any questions that occur to them no matter how trivial they may seem. The pupil may at all times rely upon the Pupil Master to take the lead.
4. Content of Work - The pupil should expect to receive a good grounding in the procedural and tactical aspects of practice at the Bar. Pupils should make particular reference to the “Pupillage Checklists”. The pupil should expect to be allowed to read the Pupil Master’s opinions and draft pleadings and to have the opportunity of discussing them with them. Practice in drafting pleadings and writing opinions are important parts of pupillage and pupils

should expect the Pupil Master to discuss their drafts with them and make suggestions for improvement.

The pupil should expect to attend consultations with their Pupil Master and should ascertain from the Pupil Master before attending any consultation what exactly is expected from them before or during it. Pupils should expect to read the instructions and all other papers in relation to a consultation in advance.

The pupil should expect to see as much as possible of the Pupil Master's work both in and out of Court and should also expect and be prepared to attend and observe cases in Courts where the Pupil Master does not regularly practise. When attending Court with their Pupil Master pupils should normally expect to travel with the Pupil Master but this will sometimes depend on individual circumstances.

5. Part-time employment or other work – Pupils are reminded of [Section 5.25](#) of the Code of Conduct and [Appendix 8. Section 5.22](#).

6. Advice and assistance – Members of the Bar Council and the Professional Conduct Committee of the Bar are prepared and willing to give advice and assistance on any matter in relation to pupillage in the strictest confidence and, in particular, where a pupil has a problem which for any reason they feel unable to raise with their Pupil Master. Names of members of the Bar Council and Professional Conduct Committee can be obtained from the Chief Executive's Office.

7. Continuing education – Various lectures and courses are organised in the Bar Library throughout the year. These provide an excellent opportunity to learn and ask questions. Pupils are encouraged to make a particular point of attending such events.

## **PUPIL MASTERS**

Pupil Masters will be aware of the provisions of [Section 25](#), and in addition should bear the following in mind:

1. The Pupil Master should encourage a relationship between themselves and their pupil whereby the pupil is encouraged to discuss problems and receive information on all matters relating to practice and etiquette. It is for the Pupil Master to take the lead in the relationship and direct the pupillage. It is for the Pupil Master to ascertain the nature and extent of the knowledge and experience of the pupil and shape the pupillage accordingly.

2. The Pupil Master will be aware that the pupil will learn much by the experience of watching the Pupil Master running their practice and will conduct themselves accordingly.

3. The Pupil Master should arrange for their pupil to spend time with a colleague or colleagues who practise in any areas which do not form part of the Pupil Master's own practice. In this regard the Pupil Master will be guided by the Pupillage Checklists.

4. Pupil Masters are encouraged to take an ongoing interest in the practice of their pupil after the completion of Pupillage. It is often during the first few years of actual practice that advice and assistance are most needed. Pupil Masters should encourage their former pupils to advise and assist the current pupils both before and after completion of Pupillage.

5. Pupillage checklists are guidelines for areas of work to be covered during pupillage. The checklist is not exhaustive. It is expected that Pupil Masters will ensure that pupils have a working knowledge of the practice and procedures in most if not all of these areas.

6. Members of the Bar Council and the Professional Conduct Committee are available to Pupil Masters should confidential advice or guidance be felt necessary. The names of members can be obtained from [the Chief Executive's Office](#).

## **PUPILLAGE CHECKLISTS**

### **High Court – Civil**

Pupils should be familiar with all current [Practice Directions](#) and Protocols, including the Pre Action Protocol for Personal Injury Litigation, last reviewed on 27<sup>th</sup> June 2008, the Protocol for Clinical Negligence in the High Court and Practice Direction for Experts No 2 of 2021, and the Pre Action Protocol in Defamation last reviewed on 14<sup>th</sup> April 2011.

#### **Paperwork**

- ❖ Basic principles of High Court pleading in common law claims [personal injury, contract] to include drafting of: -
  - Endorsement for Writ of Summons including service outside jurisdiction, Statement of Claim, Defence, Reply to Defence, Counterclaim, Third Party Notice and Third-Party Statement of Claim, Notice for Particulars and Replies thereto, Notice to Admit Facts and Interrogatories and Notice of Appeal to Court of Appeal.*
- ❖ Practice and Procedure in the Motion Court; familiarity with the most recent [Practice Directions](#) of the King's Bench Master, familiarity with the Supreme Court Practice, (the White Book) 1999 version, and Valentine on Civil Proceedings the Supreme Court, and with typical Orders sought, including Applications in relation to Summary Judgment and Setting Aside, Remittal, Removal, Particulars, Specific Discovery, Inspection facilities, Interrogatories and Leave to Amend. To include drafting of:
  - Summons, grounding Affidavits, Replying Affidavits and Notice of Appeal from decision of Master to High Court Judge.*
- ❖ Opinions on Liability and Quantum.
- ❖ Direction of Proofs.

### **Attendance at Court**

- ❖ Conduct and presentation of High Court Action and Civil Bill Appeal to include opening, examination in chief, cross examination, and re-examination of witnesses of fact and opinion, closing of case, legal submissions, basic advocacy, and rules of procedure.
- ❖ Conduct of Interlocutory Applications before the Master.
- ❖ Conduct of Assessment of Damages hearings.
- ❖ Pre-trial consultations.  
The pupil should get to know the time limits prescribed by the Rules of Supreme Court, [the Limitation \[NI\] Order 1989](#) and be familiar with the Guidelines for the Assessment of General Damages.

## **County Court and District Judge's Court - Civil**

### **Paperwork**

- ❖ Basic principles of County Court pleading in common law claims [personal injury, trespass to the person and contract] to include drafting of: -
  - Civil Bill endorsement of claim, Counterclaim, Third Party Notice, Notice for Particulars and Replies thereto, Notice to Admit Facts and Interrogatories, Interlocutory Notices and grounding Affidavits and Notice of Appeal.
- ❖ Opinions on Liability and Quantum.
- ❖ Direction of Proofs.

### **Attendance at Court**

- ❖ Conduct and presentation of Civil Bill hearing to include opening, examination in chief, cross examination, and re-examination of witnesses of fact and opinion, closing of case, legal submissions, basic advocacy, rules of procedure.
- ❖ Interlocutory Applications. Familiarity with typical Orders sought including Applications in relation to amendment, joinder of additional parties, discovery by parties and non-parties, specific discovery, inspection facilities, interrogatories and leave to issue Third Party Proceedings.
- ❖ Assessment of Damages.
- ❖ Small Claims Arbitration.
- ❖ Applications in respect of listing and adjournments.

Pupils are to familiarise themselves with: -

- ❖ County Court Rules generally with particular attention to procedural time limits.
- ❖ [The Limitation \(Northern Ireland\) Order 1989](#).
- ❖ Damages – Guidelines for the Assessment of General Damages

## Judicial Review

### Paperwork

- ❖ Pleadings, including: - Order 53 Statement, Affidavits (including grounding / replying / rejoinder affidavits), *Ex parte* docket, Notice of Motion, Order 121 Notices (Convention compatibility) Order 120 Notice (Devolution issue) and Notice of Appeal / Respondent's Notice
- ❖ Opinion on merits
- ❖ Skeleton arguments

### Attendance at Court

- ❖ Leave hearing
- ❖ Review hearings
- ❖ Interlocutory application hearings
- ❖ Substantive hearing
- ❖ Judgment and orders (Relief / Costs) hearings

### Additional

Pupils should have a working knowledge of basic practice and procedures, and of: -

- ❖ [Judicature \(Northern Ireland\) Act 1978](#), sections 18 – 25
- ❖ [Order 53, Rules of the Court of Judicature \(Northern Ireland\) 1980](#)
- ❖ [Judicial Review Practice Direction 03/2018](#)
- ❖ Pre-action protocol
- ❖ Time limits / Application for extension of time
- ❖ The grounds on which judicial review may be sought
- ❖ Anonymity
- ❖ 'Criminal cause or matter'
- ❖ [Human Rights Act 1998](#) / Order 121
- ❖ Devolution issues / Order 120
- ❖ Case Management Directions Orders
- ❖ The duty of candour
- ❖ Relief: mandamus, certiorari, prohibition, declaration, injunction
- ❖ Costs
- ❖ Renewal of application for leave / Appeal (against leave or substantive decision)



## Chancery Division

### Paperwork

- ❖ Bankruptcy Master e.g., bankruptcy application, application to set aside statutory demand.
- ❖ County Court: see Arts.12, 14-17 Of [County Courts \(NI\) Order 1980](#): e.g. Equity Civil Bill; Ejectment Civil Bill; Title Jurisdiction Civil Bill; Equity Civil Bill for Partition; Construction Civil Bill, Civil Bill for arrears of rent; Married Women's Property Act summons and affidavit; Third Party Notice; Counterclaim.
- ❖ Chancery Court/Chancery Master

#### *Pleadings:*

*Basis principles of pleadings in actions in the Chancery Division, including Writ of Summons, Statement of Claim, Defence, Counterclaim, Reply, third party proceedings, Notices of Contribution and Indemnity, Notice for Particulars, Replies to Particulars, Notices to Admit Facts and Interrogatories, Originating Summons/Organizing Notice of Motion. The basic principles, applicable law and Court Rules, concerning the preparation of affidavit evidence, Equitable remedies, including the law, practice, procedure of injunctions, specific performance, declarations and rectification, and the drafting of proceedings and direction of proofs concerning same, Construction Summons, Draft Orders, Company petitions e.g., winding up petition; Art. 452 Companies (NI) Order 1986 petition, Mortgagee summons, case law and practice directions and Summons and affidavit under the Inheritance (Provision for Family and Dependents) (Northern Ireland) Order 1979*

- ❖ [Practice Directions](#).
- ❖ Opinions on Merits and Quantum
- ❖ Direction of proofs.
- ❖ Notice and grounds of appeal to Court of Appeal.
- ❖ Interlocutory applications e.g., discovery, particulars.

### Attendance at Court

- ❖ Chancery Court & Master;
- ❖ Bankruptcy Master
- ❖ County Court.

## **Criminal Law**

### **Paperwork**

- ❖ Indictment
- ❖ Notice and Grounds of Appeal – From Magistrates' Court

### **From Crown Court**

- ❖ Advice on plea, evidence, and disclosure.
- ❖ Direction of proofs.
- ❖ Defence Statement for Magistrates' Court and for Crown Court.
- ❖ Third Party disclosure application.
- ❖ Skeleton Argument e.g., abuse of process/ human rights issues.
- ❖ Be familiar with bail application form in High Court prepared by solicitor.

### **Attendance at Court**

#### **Crown Court/High Court/Court of Appeal**

- ❖ Arraignment.
- ❖ Bail application.
- ❖ Plea.
- ❖ Voir Dire.
- ❖ Trial: Jury and non-Jury.
- ❖ Appeal against sentence or conviction.
- ❖ Miscellaneous Applications e.g., disclosure, abuse of process.
- ❖ Video link proceedings.

### **Magistrates' Court**

- ❖ Remand and application for bail.
- ❖ PE and PI.
- ❖ Plea.
- ❖ Trial.
- ❖ County Court appeal against conviction or sentence.
- ❖ Miscellaneous Applications e.g., disclosure, abuse of process.
- ❖ Video link proceedings.

## Commercial Court

### Paperwork

- ❖ Pleadings: Writ of Summons, Statement of Claim, Defence, Counterclaim, Reply, third party proceedings and contribution notice, Notice for Particulars, Replies to Particulars, Interrogatories.
- ❖ Opinions on Merits and Quantum.
- ❖ Direction of proofs.
- ❖ Preliminary points.
- ❖ Skeleton arguments.
- ❖ Notice and grounds of appeal to Court of Appeal.
- ❖ Interlocutory applications e.g., discovery, particulars, Khanna summons.
- ❖ [Practice Directions](#), in particular the Commercial Hub Practice Direction, and new direction in relation to Expert Reports.
- ❖ The drafting and preparation of documents as required in accordance with the Commercial Hub Practice Direction for Early Directions Hearings, Case Management Conferences and Pre-Trial Reviews

### Attendance at Court

- ❖ Commercial Action
- ❖ Commercial Review and interlocutory applications.
- ❖ Early Directions Hearings, where directed, Case Management Conferences, and Pre Trial Reviews
- ❖ Joint Consultation with/without experts presents.

## Family – Matrimonial

Pupils should be familiar with all current [Practice Directions](#) and Protocols, including the Ancillary Relief Practice Note 2012, Ancillary Relief Pre-Application Protocol and the Ancillary Relief Guidance Notes for the High Court.

[Matrimonial Causes \(NI\) Order 1978](#)

[Family Proceedings Rules \(NI\) 1996](#)

[Rules of the Court of Judicature \(NI\) 1980](#) (updated June 2021)

[County Court Rules 1981](#)

[Family Homes and Domestic Violence \(NI\) Order 1998](#)

## Paperwork

### ***Divorce (Judicial Separation & Nullity)/ Dissolution of a Civil Partnership***

- ❖ Grounds
- ❖ Draft petition
- ❖ Answer
- ❖ Cross – petition
- ❖ Reply

### ***Ancillary relief***

- ❖ Application and Summons
- ❖ Advice on proofs
- ❖ Service
- ❖ Requests for discovery and interrogatories
- ❖ Affidavits in support of application and answer
- ❖ Calderbank letter

### ***Injunctions***

- ❖ Mareva
- ❖ Anton Pillar
- ❖ Non molestation/occupation order

## Financial provision

- ❖ Agreement
- ❖ Child support
- ❖ Maintenance including maintenance pending suit
- ❖ Mesher orders
- ❖ Pensions including ear marking and pension sharing orders

### ***Attendance at Court – County court, high Court, Master***

- ❖ Presentation of petition
- ❖ Ancillary relief hearing
- ❖ Review before hearing (Master)
- ❖ Interlocutory applications
- ❖ Injunction applications including - non – molestation, ouster, Mareva Injunction and Anton Pillar

## Family - Children

Pupils should be familiar with all current [Practice Directions](#) and Protocols, including the COAC Best Practice Guidance, The Guide to Case Management in Public Law Proceedings, Case Management – Private Law Guide

[Children \(NI\) Order 1995](#)

[The Children \(Allocation of proceedings\) Order \(NI\) 1996](#)

[Family Proceedings Rules \(NI 1996](#)

[Magistrates Courts \(Children \(NI\) Order 1995\) Rules \(NI 1996](#)

[Rules of the Court of Judicature \(NI\) 1980 – updated June 2021](#)

[Adoption \(NI\) Order 1987](#)

[Family Law Act 1986](#)

[Family Homes and Domestic Violence \(NI\) Order 1998](#)

[1996 Hague Convention](#)

[1980 Hague Convention on Child Abduction](#)

[Human rights Act 1998](#)

### ***Paperwork***

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- ❖ Jurisdiction and transfer of proceedings
- ❖ Grounding Applications C1 - Children (NI) Order 1995 OR Summons Adoption Order/Hague
- ❖ Applications for discovery/ interlocutory matters C2 OR Summons and affidavit
- ❖ Evidence including - Statement of evidence - Children Order OR affidavits – Adoption/Hague applications, substance of oral evidence, copy documents and copy expert’s reports

### ***Financial provision***

- ❖ Child support
- ❖ Lump sums
- ❖ Periodical payments

### ***Children - Public Law Applications***

- ❖ Application for an emergency protection order
- ❖ Application for an interim care order – removal
- ❖ Application for an expert
- ❖ Application for a care/supervision order – Art 50 Children (NI) Order
- ❖ Adoption – Application to have a child freed for adoption
- ❖ Role of Guardian ad litem
- ❖ Wardship – originating summons
- ❖ Children – Private Law Applications
- ❖ Attendance at Court - High Court, County Court, Family Care Centre, Family Proceedings Court

### ***Children – Private Law Proceedings – Article 8 orders***

- ❖ Residence
- ❖ Contact
- ❖ Prohibited steps
- ❖ Specific issue
- ❖ Application for directions C2
- ❖ Financial provision – application in above mentioned matters
- ❖ Relocation application
- ❖ Application for adoption – stepparent adoption
- ❖ Wardship application
- ❖ Application for non-molestation order/occupation order
- ❖ Appeals Public/Private
- ❖ Attendance at Court - High Court, County Court, Family Care Centre, Family Proceedings Court
- ❖ Terms of settlement between counsel

## **Employment Law**

### **Tribunals/Employment**

#### **Paperwork**

- ❖ Application (IT1)
- ❖ Time limits
- ❖ Notice of appearance
- ❖ Notice of Hearing
- ❖ Direction of Proofs

#### ***Interlocutories***

- ❖ Notice for particulars and replies
- ❖ Statutory questionnaire and answer
- ❖ Answers to questions
- ❖ Witness statements
- ❖ Discovery

#### ***Settlement***

- ❖ Conciliation arrangement (under Labour Relations Agency)
- ❖ Compromise agreement

#### ***Challenging a decision***

- ❖ Review – grounds
- ❖ Appeal to Northern Ireland Court of Appeal – on point of law
- ❖ Judicial review to High Court

#### ***Attendance at Hearing***

- ❖ Industrial Tribunal – contract of employment e.g., unfair dismissal, discrimination on grounds of sex, disability, race, Trade Union membership etc
- ❖ Fair Employment Tribunal – discrimination in - politics and religion
- ❖ Preliminary hearing
- ❖ Direction's hearing
- ❖ Interlocutory applications e.g., discovery
- ❖ Contested hearing

***NB. Please be aware that many other Tribunals exist in specialised areas that are too numerous to list here.***

***Pupils are also expected to familiarise themselves with the following aspects of this Code:***

- ❖ Conduct and Etiquette at the Bar,
- ❖ Code of Conduct,
- ❖ Modes of address,
- ❖ Conduct in and out of Court,
- ❖ Counsel's duty to lay client,
- ❖ Counsel's duty to Legal Services Agency NI (LSANI),
- ❖ Acceptance of Instructions,
- ❖ Duty to return Brief if unable to continue to accept instructions,
- ❖ Relations between Counsel and Solicitor,
- ❖ Relations between Counsel and Counsel,
- ❖ Counsel's duty to Court and conduct at and in Court.

**The Education Committee of**

**The Inn of Court of Northern Ireland**

*Last reviewed 30<sup>th</sup> June 2022*



**CIRCULATION RULES**

*These Rules are made by the Member Services Committee under the Regulations of the Inn of Court of Northern Ireland and may be revised from time to time*

*(Last revised and agreed by the Member Services Committee January 2018)*

**GENERAL**

1. Each item required must be issued properly and the loan recorded, even if only required for use in the Bar Library. This is necessary for the accurate tracing of items.

The Member must provide their Library number to the member of Library Staff to enable the loan to be recorded on the circulation system.

2. Members are responsible for each item they borrow, for ensuring that it is properly discharged from their loan record, and for any fines or charges accruing against their name. For this reason, the “passing on” of books between members is discouraged, as the originating borrower will remain responsible.
3. Members are prohibited from “passing on” books to non-members of the Bar Library.

**LOAN CATEGORIES**

4. There are three categories of loan in the Bar Library:-
  - (a) overnight loan: due back before 5pm the next working day (e.g. Issue Desk stock, Halsbury etc, noted “OVERNIGHT LOAN” on the spine)
  - (b) three day loan: due back before 5pm on the day as per table below:-

Day borrowed	Monday	Tuesday	Wednesday	Thursday	Friday
Day due back	Thursday	Friday	Monday next week	Monday next week	Monday next week

- (c) restricted loan: at an hourly rate. If no other copy of the book is available, the reference or key copy may be borrowed for use within the RCJ only. It may not be removed from the building and must be returned before 5pm the same working day. Members borrowing a restricted copy must agree with staff at the time of borrowing how many hours they may keep it.

**Restricted copies may not be retained overnight.**

## **NB**

Overnight and three day loan periods are affected by statutory or public holidays when the Library is closed, in which case the loan periods will be extended to include closed days. The rules outlined above are not affected by general recess periods when the Library continues to operate as normal.

## **RENEWALS**

5. Items may be renewed unless
  - (a) they have been requested by another member, or
  - (b) they have reached their maximum renewal limit (which varies upon the type of material and the demands upon it), or
  - (c) their return has been requested by Library staff to ensure free circulation of stock.

Fines will accrue in the way described below (para 5) on items which have not been renewed or if a renewal was refused once they fall overdue.

Items may be renewed in person or by leaving a message on 9056 2472 or by email on [enquiries@barlibrary.com](mailto:enquiries@barlibrary.com).

## **LEVYING OF FINES AND MISSING ITEMS**

6. Fines will be charged on all overdue items, and are levied as soon as an item becomes overdue. The fine rate depends upon the loan period:-
  - (a) overnight loan - £1.00 per day, chargeable from the first day overdue
  - (b) three day loan - £1.00 on the first day overdue, and a further £1.00 on every third day the library is open thereafter
  - (c) reference - £1.00 per hour or part hour after the designated time of return

Fines are not charged over weekends or periods when the Library is closed.

7. An overdue notice will be produced and emailed the first day an item falls overdue. Members should return or renew the item in question immediately. Failure to comply will result in a final notice on the second day. If the item in question is still not returned by the close of business on the second day overdue, the member will be deemed to be in default. Further borrowing rights and all other core Library services, i.e. Enquiry, BLAG and Current Awareness Services will be withdrawn from the third day overdue until all overdue items are returned to the Library. Renewing books on loan to a defaulting borrower will not be allowed; they must be returned.
8. Any member who assists a defaulting member whose own borrowing rights have been suspended (see Rule 6 above), by borrowing books on behalf of the defaulter, will be deemed an accessory

and be liable for disciplinary action. Both will be referred to the Member Services Committee which will decide the course of action to be followed.

9. If an item is lost, this must be notified to the Librarian at once so that appropriate steps may be taken. Opportunity will be afforded to locate missing items, but lost items remain the responsibility of the borrower, and they must be properly renewed throughout this period. Loan terms and overdue procedures (as in paras 4 - 6 above) continue to apply. If after a period of 28 days from notification the lost item has not been returned or the matter has not been otherwise resolved, the Librarian will seek replacement of the lost item. Fines will cease to accrue after the 28<sup>th</sup> day overdue. If the item is still available, an invoice will be raised for the full cost of replacement, including any fines or charges incurred. The Librarian may decide, if a future edition is pending, to delay purchase until the updated text is available. The borrower will be notified of this. Once the invoice has been raised, the loan transaction will be terminated and the item marked as "lost and paid for" in the Library catalogue. If the item is out of print or not easily replaced (e.g. one volume or part of a set of reports not sold as single volumes) the Librarian will inform the borrower. In these circumstances it is imperative that every effort is made to locate lost items. If the item cannot be found, the Librarian will discuss reparation with the borrower. There may be no other option but to purchase a full set of volumes. If necessary, the matter will be referred to the Member Services Committee.
10. An item that has been overdue for a period of 28 days will be deemed to be "lost" and the replacement provisions described above will apply in these circumstances.

A refund of the replacement cost paid, less a £5 administrative charge, may be granted at the discretion of the Member Services Committee on any lost book for which a replacement cost has been paid if subsequently found and returned in good condition.

### **COLLECTION OF FINES**

11. Fines must be paid when requested by a member of Library Staff.

A general sweep up of fines will take place during the last week of every term when all fine records will be discharged from OLIB and the debt transferred to the Finance Office to invoice through Bar Library Accounts

All Members will be notified that this exercise has taken place and advised to check their invoices on receipt.

A copy of the discharged fine record will be made available to Finance Staff should any queries arise.

The Finance Office will manage debts owed in line with the terms of the current Debtors' Policy.

## **MISCELLANEOUS**

12. Members must return any item of Library stock when requested to do so by Library staff whether to meet the needs of other members or to ensure availability and free circulation of materials. Renewing such items will not be allowed.
13. Any queries or problems arising out of the application of the Circulation Rules shall be dealt with in the first instance by the Librarian (or, in her absence, the Assistant Librarian). Matters may be referred to the Member Services Committee for adjudication or interpretation.
14. Persistent abuse of the Library or failure to abide by these Rules will result in the matter being brought to the Member Services Committee for possible referral to the Professional Conduct Committee.

Version 9: January 2018

*Last reviewed 30<sup>th</sup> June 2022*

## **HOUSE RULES**

### **GOVERNANCE AND RESPONSIBILITIES**

The Code of Conduct allows the Library Committee [Member Services Committee] to agree and revise, from time to time, the House Rules which will govern general conduct within the New and Old Bar Libraries. [[See Section 26.2](#)]

Any complaint raised in relation to the House Rules or alleged derogation or non-compliance of the House Rules will be referred to the Member Services Committee. The Member Services Committee will be responsible for progressing the issues raised which may include referral to the Professional Conduct Committee should the circumstances merit.

The House Rules in their entirety apply to all Full Members of the Bar Library. The rules also apply to Employed and Non-Practising Members in so far as the rules relate to their particular use of the Bar Library buildings.

### **EQUALITY STATEMENT**

The Bar Council is committed to promoting principles equality and dignity to all of the users of the Bar Library including members, staff, contractors and visitors. The aim is to create an environment in which people treat each other with mutual respect, regardless of age, disability, family responsibility, marital status, race, colour, ethnicity, nationality, religion or belief, gender, sexual orientation and other relevant criteria.

### **HOUSE RULES**

The rules are divided into the following sections:

1. No Smoking/Vaping
2. Emergency Evacuation
3. Reasonable Use of Space
4. Leaving the Library
5. Car Parking
6. Access Control
7. Data Protection
8. IT Rules
9. Bar Library Membership and Regulatory Communications

## 10. Visitors

### **NO SMOKING/VAPING**

In compliance with the [Smoking \(Northern Ireland\) Order 2006](#), smoking is prohibited throughout both Bar Library buildings with no exceptions. Smoking is also prohibited in the precincts of the RCJ.

Electronic cigarettes or “vaping” is prohibited in both Bar Library buildings, with no exceptions, in the same manner as applies to tobacco-based products and in line with British Medical Association recommendations. This is in order to protect all Library users from being exposed to e-cigarette vapours and nicotine and also to ensure that the existing policy to provide smoke-free premises is not undermined.

### **EMERGENCY EVACUATION**

#### **Personal Emergency Evacuation programmes [PEEPS]:**

Members with conditions that may hinder fast and efficient exit from the building in the event of an emergency MUST contact the Head Evacuation Warden in order to agree a PEEP.

It is the responsibility of the member to make this information known and to update it as circumstances change. Details of the current Evacuation Warden can be obtained by contacting [Reception@barlibrary.com](mailto:Reception@barlibrary.com).

#### **Evacuation Procedures:**

In the event of an emergency, all Library users are obliged to comply with the emergency evacuation procedures as follows:

#### **New Bar Library:**

On sounding of the alarm (high pitched single tone siren), all members must immediately exit the building via the nearest safe exit. Route maps are posted on each floor and members should familiarise themselves with the exits. In the event of an emergency, Evacuation Wardens will provide instructions to building users on how to exit the building as safely as possible. Instructions from Evacuation Wardens must be followed immediately. Delay will put the lives of others at risk. During the evacuation process and for the duration of the evacuation, Members will not be permitted to return to desks, offices or any other areas to pick up professional or personal belongings until the areas have been declared safe.

#### **Old Bar Library:**

On sounding of the alarm in the RCJ (high pitched single tone siren), all members must immediately exit the building using the nearest safe exit. Route maps are provided here. In the event of an emergency, Evacuation Wardens will provide instructions to building users on how to exit the building as safely as possible. Instructions from Evacuation Wardens must be followed immediately. Delay will put the lives of others at risk.

During the evacuation, Members will not be permitted to return to the Bar Library to pick up professional or personal belongings until the areas have been declared safe.

### **REASONABLE USE OF SPACE**

Members have an obligation to all other building users; colleagues, staff, visitors and external contractors, to maintain a safe and hazard free environment. Members are therefore required to comply with the following advice:

#### **Open Desk Areas including Hot Desk Areas:**

- Maintain working areas within the open desk space within common-sense boundaries of reasonable use of space. Whilst there is currently no “clear desk” policy in operation the contents of a member’s desk should be kept under constant review and in no circumstances should be allowed to encroach upon another’s space.
- No boxes/materials/files/suitcases or other physical impediment should be stored in the passageways and thoroughfares in either the open desk areas or communal spaces.
- Using tops of lockers for storage is prohibited as such practice represents a potentially serious hazard to other users of the building.
- Personal items such as clothes, shoes, towels etc. should be stored out of sight either in drawers or lockers.
- Consideration of colleagues’ use of space must be respected at all times with, for example, noise levels kept to a minimum, ring tones kept on silent or as low as possible on both mobile and desk phones, food and drink consumption kept to a minimum.
- All “hot desks” are non-proprietary. No materials or personal belongings should be left on, under or in the vicinity (including the chairs) of these desks overnight.
- Any member without an allocated desk who wishes to use an allocated desk at which to work must seek the express permission of the desk owner before doing so.

#### **Offices:**

- Maintain working areas within office space within common-sense boundaries of reasonable use of space. Whilst there is currently no “clear desk” policy in operation the contents of
- one member’s desk, cupboards and shelving areas should be kept under constant review and in no circumstances should be allowed to encroach upon another’s space.
- No boxes/materials/files/suitcases or other physical impediment should be stored in the passageways and thoroughfares within offices.

- Members renting space in an office with unlet space must not encroach onto the available desk, cupboards, shelving and floor space.
- Members renting space in an office with unlet space must do nothing to hinder the opportunity for the Council to let the available space.
- Consideration of colleagues' use of space must be respected at all times with noise levels kept to a minimum, ring tones kept on silent or as low as possible on both mobile and desk phones and food and drink consumption kept to a minimum.
- Members are permitted to have wall hangings in their offices provided they are mounted from the picture rails provided. Wall hangings must be appropriate and not cause embarrassment or offence to others.

The obligations above in respect of use of office space are supplemental to terms contained in the Office Licence which office tenants are expected to be familiar.

Members who find themselves with inadequate storage space should make enquiries with the Post Room team which will provide advice on possible storage solutions. The Post Room team can also provide practical assistance with desk space and office clear out. Please contact [postroom@barlibrary.com](mailto:postroom@barlibrary.com) for more information.

#### Old Bar Library:

##### Main Library

- The Main Library is reserved for members undertaking quiet research. It must not be used for consultations, negotiations or dictation.
- Mobile phones must be switched to silent mode. Members wishing to take or make telephone calls should do so in an area other than the Main Library.
- Bags and trolleys must not be placed on top of desks.
- There is no allocated seating in the Main Library. Members are prohibited from leaving any papers, materials or any other belongings beyond the close of business other than in their allocated lockers.

##### Members' Room

- There is no allocated seating in the Members' Room which is often used for functions. Members are prohibited from leaving any papers, materials or any other belongings beyond the close of business other than in their allocated lockers.
- Members must discard all cups and food debris in the bins provided.



## Inn of Court

- Members are prohibited from accessing the Inn of Court area unless they are attending a function or need to consult the books shelved in this area. Members are asked to check the books out through the Issue Desk and use them in another area of the Library.
- Members are prohibited from using the Inn of Court area for work.

## Robing Rooms

- Members may only store material in their allocated lockers.
- Members are asked not to leave personal clothing in the Robing Rooms for extended periods of time. Cloakrooms are cleared periodically and unclaimed items will be disposed of.

## **LEAVING THE LIBRARY**

- When a member leaves the Bar Library, they must return all Bar Library keys in their possession to the Post Room and Maintenance Supervisor. This will include desk, drawer, locker and office keys. Members who fail to do so will be charged £10 for the replacement of each key. Charges will be itemised in the closing statement.
- Car parking stickers must be returned to the Post Room and Maintenance Supervisor.
- Bar of NI SmartCards must be returned to the IT Department. Any balance remaining in the member's e-Wallet will be credited to their Bar Library account and itemised in closing statement.
- Members leaving the Library must remove all belongings, personal and business, from their desk, lockers and offices. Any items left behind one working week after leaving the Library will be shredded or in the case of clothing, disposed of.

## **CAR PARKING**

Car Parking is a benefit only available to those members that rent a space for an annual fee. The following rules in respect of car park use apply:

- The Bar Library surface and basement car parks are strictly for use by Members that have purchased a space in same.
- Members that have purchased a space in the basement car park may park either above or below ground but are encouraged to use the basement unless all basement spaces are occupied.
- Members who purchase a car park space will be issued annually with a sticker which must be displayed on their vehicle to gain access. Members who have the use of more

than one car may have additional stickers issued, however, they must only ever have one car in the car park at any given time.

- Members may not purchase a car park space to share even if the same vehicle is used between them. The total number of spaces available to rent has been calculated using a formula based on the assumption that not all lessees will be in Belfast on the same day. i.e. the Council rents more spaces than are physically available.
- Any member attempting to use the car park without the necessary authorisation will be declined access.
- By prior arrangement only, which can be arranged via the Post Room team, occasional access may be granted to Members needing to pick up or drop off heavy and bulky materials. Members may on those occasions park up at the Post Room window to pick up and drop off materials there. They may not take a parking space.
- No member shall park any vehicle in any area other than in designated parking spaces.
- Members may only access Bar Library designated parking spaces and the occasional use provision by prior arrangement as defined above, via the Bar Library May Street entrance.
- Abuse of the Car Parking rules by lessees and others will be referred to the Member Services Committee.

### **ACCESS CONTROL**

Access control is a fundamental part of the Bar Council's safety and data protection strategies and the following rules apply:

- Sharing and transferring Bar of NI Smart Cards is strictly prohibited to ensure the safety and security of all Members, Staff and Contractors within the Bar Library.
- Your Smart Card is issued to you for your sole use only. Smart Cards are programmed with specific access rights, e.g. Female or Male Robing Rooms, Car Park, etc.
- Smart Cards should not be shared with other users of the Bar Library, i.e. other Members, Staff or Onsite Contractors.
- Smart Cards must not be shared with any third parties such as Solicitors, Expert Witnesses, Clients, etc as this will provide them with access to controlled areas of the Library
- Members are asked to be vigilant when using their SmartCards to gain access at controlled points within the Library and not to allow anyone, whether they are known to them or not, to "tail gate" their own entry.

## **DATA PROTECTION**

It is a requirement that all barristers in independent practice are registered data controllers and with that obligation comes various statutory and best practice responsibilities. Members are asked to heed the following advice to maximise security of the data for which they are responsible.

- Members should at all times be aware of their responsibilities as registered data controllers. Therefore, Members are advised to store securely in their lockers all hard copy sensitive personal data that they keep in the Library. Whilst the Library maintains an access control system these systems are not fail safe and there is always a risk that data may be compromised by the unauthorised access by other building users.
- Members are also asked to be aware that they do not retain sensitive personal data beyond the time that is necessary for the purposes members hold it for processing.

Detailed advice can be obtained from the Senior Manager: IT at [ITManager@barlibrary.com](mailto:ITManager@barlibrary.com)

## **ICT RULES**

**Acceptable Use:** The Bar Library defines Acceptable Use as the use of Bar Library IT and Communications equipment, networks, systems and services in support of the Library Member's Practice.

### **Unacceptable Use:**

1. Under no circumstances is any user authorised to engage in any activity that is illegal using Bar Library ICT resources.
2. Misuse of the Wired, Wireless and Internet Bandwidth. The Bar Library reserve the right to monitor and audit network traffic and bandwidth usage on a periodic basis to ensure acceptable levels of service are available to all members.
3. Any activity that infringes or misappropriates the intellectual property rights of others.
4. Using the Bar Library network to advertise, transmit, store, post, display, or otherwise make available pornography or obscene speech or material.
5. Using the Bar Library network as a means to transmit or post defamatory, harassing, abusive or threatening language.
6. Illegal or unauthorised access to other computers and networks.
7. Introduction or distribution of Internet viruses or other destructive activities.
8. Making fraudulent offers of services, products or items from any Bar Library account.

9. Effecting security breaches or disruptions of network communication. Security breaches include accessing data of which the member is not an intended recipient or logging into a server or account that the member is not expressly authorised to access.
10. Circumventing user authentication or security of any host, network or account.
11. Interfering with or denying ICT services to any other Library member.
12. Engaging in other activities that the Bar Council deems to be harmful to its subscribers, operations, reputations or customer relations.

### **BAR LIBRARY AND REGULATORY COMMUNICATIONS**

All official communications to full members of the Bar Library relating to Bar Library membership and Bar of Northern Ireland regulatory matters will be made using the barlibrary.com email accounts. Therefore, members must, at the very least, monitor their barlibrary.com email accounts to ensure they do not miss important communications.

It is the responsibility of the employed member to provide the Bar Council administration with an email address to which official communications relating to membership and regulatory matters may be sent. It is also the responsibility of the employed member to inform Bar Council administration of any change to the contact email address.

It is the responsibility of the non-practising member to provide the Bar Council administration with an email address to which official communications relating to membership may be sent. It is also the responsibility of the non-practising member to inform Bar Council administration of any change to the contact email address.

### **VISITORS**

Members must not bring anyone onto the either Bar Library premises without first having that person register and sign in with Reception Staff in the new Bar Library and Library staff at the Issue Desk in the Old Bar Library. The visitor will be issued with a "Visitor" badge which must be worn at all times for the duration of their visit.

Members are asked to ensure that any visitor they invite to the Bar Library premises who has a condition that may hinder fast and efficient access in the event of an emergency to inform Reception staff on check-in.

**V1: 09 March 2017**

**V1.01 03 May 2018**

**V1.02 01 August 2019**

*Last reviewed 30<sup>th</sup> June 2022*

## **BAR OF NORTHERN IRELAND**

### **Summary of constitutional and governance provisions**

1. The Bar of Northern Ireland grew out of the Irish Bar as it existed before the 1<sup>st</sup> October 1921 when the relevant provisions of the Government of Ireland Act 1920 establishing a separate Supreme Court of Judicature of Northern Ireland and giving recognition to the creation of a separate Bar of Northern Ireland came into force. That Act preserved the right of all then existing members of the Irish Bar to practise at and be members of the Bar of both Northern Ireland and Southern Ireland. It was as a sequel to a meeting of twenty-two of these members held on 26 October 1921 that the first General Council of the Bar of Northern Ireland was elected.
2. The original Bar of Northern Ireland consisted of a mixture, in territory as well as personnel, of the North East and North West Circuits of the former Irish Bar. Belfast (for County Antrim), Downpatrick and Armagh, which became three of the towns of the Circuit of Northern Ireland, were former North East Circuit towns and Enniskillen, Omagh and Londonderry, which became three other towns of the Circuit of Northern Ireland, were former North West Circuit towns.
3. The Inn of Court of Northern Ireland was established at a meeting of the Bench and Bar held on 11 January 1926. Prior to that date and following the coming into force of the Government of Ireland Act 1920, the Lord Chief Justice of Northern Ireland had, under appropriate warrants, called members of the Bar to the Inner Bar in Northern Ireland as King's Counsel.
4. Accordingly, subsequent to 11 January 1926 there were both:
  - a) the Inn of Court of Northern Ireland governed by the Benchers of the Inn (a body consisting of all the Judges of the Supreme Court, the Attorney General and at least nine practising members of the Bar of Northern Ireland) and
  - b) the General Council of the Bar of Northern Ireland (the "Bar Council").
5. At a General Meeting of the Inn of Court of Northern Ireland on the 5 October 1983 it was resolved that the then Constitution be adopted as the Constitution of the Honourable Society of the Inn of Court of Northern Ireland with effect from the 14th November 1983 the Bar of Northern Ireland at a General Meeting on 22 June 1983 having resolved that with effect from the same date the Bar of Northern Ireland and the General Council of the Bar of Northern Ireland should be governed by the Regulations of the same Constitution.

6. The 1983 Constitution of the Inn of Court of Northern Ireland was amended with effect from 24<sup>th</sup> June 2015 and the [Constitution of the Bar Council](#) was approved on 12<sup>th</sup> June 2015. Since then the Bar of Northern Ireland and the Bar Council have been governed by the Constitution and Bye-Laws of the Inn of Court of Northern Ireland and the Constitution of the Bar Council respectively.
7. The 2015 amendments to the Constitution of the Inn of Court made provision for the disciplinary function previously exercised by the Executive Council of the Inn of Court to be transferred to the Bar Council under its new Constitution.
8. The Executive Council now deals with the admission of students, education of students, liaison with corresponding bodies in other countries, fees on admission as a student, call to the Bar, administration of the Bar Library, the fixing of annual subscriptions to the Bar Library and all other matters of finance including income and expenditure.
9. The Bar Council deals with the maintenance of the standards, honour and independence of the Bar. The conduct of barristers is regulated by the Bar Code of Conduct (“the Code”). The Bar Council is responsible for supervising the adherence of members of the Bar to the Code and, pursuant to its Constitution, may amend the provisions of the Code from time to time as may seem appropriate.
10. The Professional Conduct Committee is a standing committee of the Bar Council which, in addition to its responsibility for receiving and dealing with complaints and/or matters concerning professional conduct and the provision of professional services by members of the Bar and providing advice and assistance to members of the Bar on matters concerning professional conduct and the provision of professional services, may make recommendations as from time to time may be appropriate on matters of professional conduct and etiquette to the Inn of Court and the Bar Council and may also review from time to time the Code of Conduct and make recommendations to the Bar Council for such amendment of same as may be appropriate.
11. This Code of Conduct will therefore be kept under regular review, normally subject to formal review once every five years and will be amended as and when considered appropriate by the Bar Council, taking into consideration any recommendation/s of the Professional Conduct Committee, in order to reflect relevant statutory requirements and best practice in relation to professional conduct and the provision of professional services and the maintenance of the high standing of the profession of barrister in the context of modern legal practice.

*Last reviewed 30<sup>th</sup> June 2022*