

SOLICITORS (SCOTLAND) (STANDARDS OF CONDUCT) PRACTICE RULES 2008

Rules dated 28 November 2008 made by the Council of the Law Society of Scotland under section 34(1) of the Solicitors (Scotland) Act 1980 and approved by the Lord President of the Court of Session in terms of section 34(3) of the said Act.

Citation and Commencement

- 1.- (1) These Rules may be cited as the Solicitors (Scotland) (Standards of Conduct) Practice Rules 2008.
- (2) These Rules shall come into operation on 1 January 2009.

Interpretation

- 2.- (1) In these Rules,
 - "the Act" means the Solicitors (Scotland) Act 1980;
 - "cross-border practice" shall have the meaning given in the Solicitors (Scotland) (Cross-Border Code of Conduct) Practice Rules 2003;
 - "solicitor" means any person enrolled or deemed to have been enrolled as a solicitor in pursuance of the Act and shall include a firm of solicitors, an incorporated practice and a multi-national practice; and
 - "standards of conduct" means the standards of conduct set out in the Schedule to these Rules.
- (2) The provisions of the Interpretation Act 1978 shall apply to these Rules as they apply to an Act of Parliament.

Standards of Conduct

- 3.- (1) A solicitor shall comply with the standards of conduct.
- (2) The standards of conduct shall not apply to cross-border practice.

Professional Practice

- 4.- Failure to comply with these Rules may be treated as professional misconduct or unsatisfactory professional conduct.

SCHEDULE

STANDARDS OF CONDUCT

Trust and personal integrity

- 1.- Solicitors must be trustworthy and act honestly at all times so that their personal integrity is beyond question. In particular, they must not behave, whether in a professional capacity or otherwise, in a way which is fraudulent or deceitful.

Independence

- 2.- Solicitors must give independent advice free from external influences or personal interests which are inconsistent with these standards. It is the duty of all solicitors not to allow their independence to be impaired irrespective of the nature of the matter in which they are acting.

The interests of the client

- 3.-
 - (1) Solicitors must act in the best interests of their clients subject to preserving their independence and complying with the law, professional practice rules and the principles of good professional conduct.
 - (2) Solicitors must not permit their own personal interests or those of the legal profession in general to influence their advice to or actions on behalf of clients.
 - (3) Solicitors must at all times do, and be seen to do, their best for the client and must be fearless in defending their clients' interests, regardless of the consequences to themselves (including, if necessary, incurring the displeasure of the bench). But they must also remember that the client's best interests require them to give honest advice however unwelcome that advice may be to the client and that the duty to the client is only one of several duties which they must strive to reconcile.

Proper instructions

- 4.-
 - (1) Solicitors are agents of their clients and must have the authority of clients for their actions. Solicitors must not accept improper instructions, for example to assist a client in a matter which the solicitor knows to be criminal or fraudulent, but they may properly advise on the legal consequences of a proposed course of action or on the scope or application of the law to particular circumstances.
 - (2) Solicitors may decline to accept new instructions, whether from a new or established client, without giving a reason for doing so, provided the refusal to act is not motivated by discrimination in breach of paragraph 15 of these standards.

Confidentiality

- 5.- Solicitors must maintain client confidentiality. This duty is not terminated by the passage of time. Solicitors must also supervise their employees to ensure that they keep client matters confidential. Only the client, Acts of the legislature, subordinate legislation or the court can waive or override the duty of confidentiality. The duty does not apply to information about any crime a client indicates they will commit.

Conflict of Interest

- 6.- (1) Solicitors must not act for two or more clients in matters where there is a conflict of interest between the clients or for any client where there is a conflict between the interest of the client and that of the solicitor or the solicitor's practice.
- (2) Even where there is only a potential conflict of interest solicitors must exercise caution. Where the potential for conflict is significant, solicitors must only act for both parties with the full knowledge and consent of the clients.

Disclosure of Interest

- 7.- Where solicitors are consulted about matters in which they have a personal or a financial interest, the position must be made clear to the client as soon as possible. If the interest is such that the solicitor could not reasonably give independent advice, the solicitor must decline to act and advise the client to consult another solicitor.

Drafting a Will

- 8.- Solicitors may only accept instructions to prepare a will containing a legacy in favour of themselves, their spouse, their civil partner, their child or their business partner if:
- (a) the legacy is a token specific or token pecuniary legacy;
 - (b) the will is by their, or their business partner's, spouse or civil partner; or
 - (c) the will is by their or their spouse's, civil partner's or business partner's parent, grandparent, child, brother, sister, aunt or uncle and the legacy is not of a greater share of the estate than the legatee would be entitled to on intestacy at the time the will is prepared.

Effective communication

- 9.- Solicitors must communicate effectively with their clients and others. This includes providing clients with any relevant information which the solicitor has and which is necessary to allow informed decisions to be made by clients. It also includes accounting to clients for funds passing through the solicitor's hands. Information must be clear and comprehensive and, where necessary or appropriate, confirmed in writing.

Solicitors must advise their clients of any significant development in relation to their case or transaction and explain matters to the extent reasonably necessary to permit informed decisions by clients regarding the instructions which require to be given by them. In particular solicitors must advise clients in writing when it becomes known that the cost of work will materially exceed any estimate that has been given and must also advise the client when the limit of the original estimate is being approached.

Competence, diligence and appropriate skills

10.- Solicitors must only act in those matters where they are competent to do so. They must only accept instructions where the matter can be carried out adequately and completely within a reasonable time. They must exercise the level of skill appropriate to the matter.

Professional fees

- 11.- (1) The fees charged by solicitors must be fair and reasonable in all the circumstances.
- (2) When the work is to be charged at an hourly rate, solicitors must inform the client what that hourly rate will be.

Withdrawing from acting if instructions are accepted

12.- Solicitors must not cease to act for clients without just cause and without giving reasonable notice, or in a manner which would prejudice the course of justice. So far as possible, the client's interests should not be adversely affected, but solicitors are entitled to exercise their rights in law to recover their justified fees and outlays.

Relations with the courts

- 13.- (1) Solicitors must never knowingly give false or misleading information to the court. They must maintain due respect and courtesy towards the court while honourably pursuing the interests of their clients.
- (2) Solicitors must not do or say anything which could affect evidence or induce a witness, a party to an action, or an accused person to do otherwise than give in evidence a truthful and honest account of that person's recollection.
- (3) As far as reasonably practical, solicitors must give reasonable notice to witnesses of court hearings and when questioning witnesses, treat them with appropriate respect and courtesy.
- (4) Where solicitors appear against a person who represents him or herself, they must avoid taking unfair advantage of that person and must, consistently with their duty to their client, co-operate with the court in enabling that person's case to be fairly stated and justice to be done. However they must not sacrifice the interests of their client to those of the person representing him or herself.

- (5) In paragraphs (1) to (4), references to the "court" include tribunals and other bodies or persons exercising judicial or determinative functions.

Relations between Solicitors

- 14.- (1)_ Solicitors must act with other solicitors in a manner consistent with persons having mutual trust and confidence in each other. They must not knowingly mislead other solicitors or, where they have given their word, go back on it.
- (2) Other than as permitted by the Solicitors (Scotland) (Advertising and Promotion) Practice Rules 2006, a solicitor ("the first solicitor") may only communicate with a person known or believed to be the client of another solicitor("the other solicitor") if:
- (a) the other solicitor has agreed to the communication;
 - (b) the other solicitor confirms that he or she is no longer acting;
 - (c) the first solicitor is serving a court document or formal notice;
 - (d) the first solicitor is sending a fee note to a former client;
 - (e) the first solicitor has –
 - (i) warned the other solicitor in writing that a reply to correspondence is needed within a specified and reasonable length of time and that if no reply is received within that time, he or she will write direct to the other solicitor's client, and
 - (ii) no reply has been received within that time; or
 - (f) the first solicitor is not already acting for another party in the matter and the person has sought advice from that solicitor.
- (3) In paragraphs (1) and (2), references to "other solicitors" include English/Welsh solicitors, Northern Ireland solicitors, Isle of Man advocates, Jersey solicitors, and Guernsey, Alderney and Sark advocates.

Diversity

- 15.- (1) Solicitors must not discriminate on the grounds of race, sex (including on the grounds of marriage), disability, sexual orientation, religion and belief, or age (including perceived orientation, religion and belief, and/or age) in their professional dealings with clients, employees or other lawyers.
- (2) Solicitors must ensure that, where they act in a managerial capacity or supervise others:

- (a) there is no unlawful discrimination in employment including recruitment, training, employment terms, promotion, advancement and termination of employment;
- (b) those they manage or supervise do not discriminate unlawfully;
- (c) they, and those they manage or supervise, have appropriate awareness and understanding of the issues surrounding equal opportunities, unlawful discrimination, equality and diversity; and
- (d) there is no unlawful discrimination in the provision of legal services, and that those to whom legal services are provided can access them in a manner most appropriate to their needs.