

**THE LEGAL SERVICES CONSULTATIVE PANEL**

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**ADVICE TO THE SECRETARY OF STATE**

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**ON AN APPLICATION BY THE LAW SOCIETY FOR APPROVAL OF:**

**RULE 10 RELATIONS WITH THIRD PARTIES,**

**RULE 13 IN –HOUSE PRACTICE,**

**RULE 20 REQUIREMENTS OF PRACTICE**

**LSCP Ref: No 4/2005**

**Advice given February 2006**

## LEGAL SERVICES CONSULTATIVE PANEL

### APPLICATION BY THE LAW SOCIETY FOR APPROVAL OF RULE 10 RELATIONS WITH THIRD PARTIES, RULE 13 IN-HOUSE PRACTICE, AND RULE 20 REQUIREMENTS OF PRACTICE

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#### ADVICE TO THE SECRETARY OF STATE

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##### 1) The Panel and publication of advice

- 1.1 The Legal Services Consultative Panel (the Panel) was established by the Access to Justice Act 1999 in January 2000.
- 1.2 The Panel has considered a reference made by the Secretary of State (referral number 4/2005) seeking its advice concerning an application from the Law Society. The Application seeks approval for Rule 10 Relations with third parties, Rule 13 In-house practice, and Rule 20 Requirements of practice.
- 1.3 The Panel's advice was given in February 2006.
- 1.4 The advice is published on behalf of the Panel by the Department for Constitutional Affairs. The complete document appears on the Department for Constitutional Affairs' website [www.dca.gov.uk](http://www.dca.gov.uk) as well as being available in hard copy.
- 1.5 Further copies of the Panel's advice are available from the Panel Secretariat (*telephone*: Dawn Sanderson on 020 7210 8816).
- 1.6 The Panel comprises:

Lord Justice Moore-Bick (Chairman)  
Mr Jonathan Acton Davis QC  
Professor John Bell QC (Hon)  
Professor Hugh Brayne  
Mr Jonathan Goldsmith

Mr John Hannam  
Ms Karen Mackay  
Professor Richard Moorhead  
Mr John Randall QC  
Mr John P Randall

Mr Simon Sapper  
Mr Alan Street  
Ms Peta Sweet\*  
Mr John Young CBE

\* Ms Peta Sweet resigned from the Panel on 31 December 2005

## GENERAL PRINCIPLES

### 2) **Introduction**

- 2.1 In considering and putting forward its advice on the application, the Panel has had regard to the principle central to the policy of the Courts and Legal Services Act 1990 and the Access to Justice Act 1999, namely the development of legal services in England and Wales (and in particular the development of advocacy, litigation, conveyancing and probate services) by making provision for new or better ways of providing such services and a wider choice of persons providing them, while maintaining the proper and efficient administration of justice.
- 2.2 The Panel has also taken account of the five principles of good regulation identified by the Better Regulation Task Force (an independent group established in 1997 to advise the government) against which the appropriateness and effectiveness of any type of regulation should be tested, namely transparency, accountability, targeting, consistency and proportionality.
- 2.3 In addition the Panel has taken into account the message delivered by the Secretary of State in his speech on Legal Services Reform on the 21 March 2005. When setting out his intentions for reform, the Secretary of State said, "...ahead of the creation of the Legal Services Board, we will be looking closely at any rules of the professional bodies that we believe may not be operating fully in the consumers' interest". The Panel kept this in mind to ensure rules 10, 13 and 20 are subject to proper competition considerations and whether they will operate in the best interests of the public.

### **3) The Law Society's application**

- 3.1 This Advice relates to an application by the Law Society to the Secretary of State dated July 2005 to amend its rules on Relations with third parties; In-house practice; and Requirements of practice. The background to this referral is that the Law Society has undertaken a substantial revision of its Guide to Professional Conduct of Solicitors (1999) (the Guide).
- 3.2 The Law Society's application is made under Section 29 of the Courts and Legal Services Act 1990 ("CLSA"). In September 2005 the Secretary of State referred the proposal to the Legal Services Consultative Panel ("the Panel") for advice in accordance with the provisions of paragraph 11(1) of Schedule 4 to the CLSA 1990 as amended. The Panel understands that a similar referral has also been sent to the Office of Fair Trading.

### **4) The Proposed Amendments**

#### Rule 10 – Relations with Third Parties

- 4.1 The Law Society informed the Panel that this draft rule replaces Chapter 17 of the Guide. It seeks to bring together the obligations in the Guide, which impose duties in relation to third parties. The Law Society has also stated that there are no new requirements included in the new draft rule. There are, however some requirements in the current guide that do not appear in the new draft rule.
- 4.2 These relate to obligations to pay the fees of instructed lawyers and agents. They have been removed because in the case of agents, they have contractual and legal remedies; in the case of barristers, negotiations are taking place to give them contractual rights in relation to their fees; and in both cases, it is long established Law Society policy not to actively enforce the obligation in relation to individual cases. Any solicitor who repeatedly failed to pay agents or other lawyers fees would, however, be likely to breach draft rule 1.01 (integrity) or 1.10 (repute of profession).

#### Rule 13 – In-House Practice

- 4.3 The Law Society informed the Panel that the new draft rule is intended to replace Practice rule 4 and the Employed Solicitors Code 1990, and that there are few changes to the current position. It does point out that the draft rule includes a new section that deals with solicitors providing pro bono work services as part of their employment, and there are changes to the section dealing with local government to reflect changes to the statutory powers of local authorities.

#### Rule 20 – Requirements of Practice

- 4.4 The Law Society has advised that this draft rule contains no new requirements. The rule gathers and consolidates requirements that relate to the need to have a practising certificate and to co-operate with the Law Society in its regulatory role.

## 5) **The Panel's observations**

### Rule 10 – Relations with Third Parties

- 5.1 The Panel noted that the provisions of the new draft rule reflect those currently contained in Chapter 17 of the Guide, and other obligations in the Guide, which impose duties on third parties. The Panel considered in more detail the rules and guidance in respect of rule 10.04 relating to contacting a third party, and rule 10.05 relating to undertakings, in particular, whether or not they offered sufficient clarity and protection.
- 5.2 Rule 10.04(d) allows one party to communicate directly with a client who is represented by another lawyer or licensed conveyancers in exceptional circumstances. The Panel was content with the drafting of the rule. However, it considered that, in the interests of clarity, it would be helpful if paragraph 23 of the guidance could be expanded to include details of other circumstances in which it would be appropriate for a solicitor to have direct contact with a client other than his/her own.
- 5.3 The Panel considered whether the guidance notes to accompany the provisions relating to undertakings in rule 10.05 were sufficient. The Panel accepted that it was not always practical for a written undertaking to be given and in those circumstances paragraph 24 of the guidance adequately provided for oral undertakings to be confirmed or recorded in writing. The Panel was content with this approach and also welcomed that paragraph 36 of the guidance stated, "A promise to give an undertaking is normally treated as an undertaking and will be binding".
- 5.4 Following discussion, the Panel was satisfied that the overall provisions contained in the rule provided sufficient clarity and protection.

### Rule 13 – In - House Practice

- 5.5 The Panel noted that the provisions contained in Practice Rule 4 (employed solicitors) and the Employed Solicitors Code are replicated in rule 13 of the draft Code of Conduct. It also noted the new provisions at 13.04, which allow a solicitor to provide pro bono services, and the changes made to rule 13.08, which reflect the changes to the statutory powers of local authorities.
- 5.6 Overall, the Panel was satisfied that rule 13 clearly sets out the remit within which an employed solicitor can act for his or her employer and other persons. In doing so it provides clarity to the individual solicitor, employers and clients.

### Rule 20 – Requirements of Practice

- 5.7 The Panel noted that there were no changes to the current provisions and that the new rule brings together the requirements of practice, which had previously been scattered throughout the Guide. The Panel was content with the manner in which this rule had been expressed. The Panel was also satisfied that the rule clearly set out the duty of a solicitor and his or her relationship with the Law Society.

## **6) Recommendations**

### Rule 10 – Relations with Third Parties

- 6.1 The Panel has given full consideration to this application and recommends that the rule should be approved as drafted.
- 6.2 It does, however, recommend that paragraph 23 of the guidance should be expanded to include other examples of the circumstances in which direct contact between a solicitor and another represented party would be justified.

### Rule 13 – In - House Practice and Rule 20 - Requirements of Practice

- 6.3 The Panel has given full consideration to this application and recommends that these rules be approved as drafted.

## **7) Conclusion**

- 7.1 The Panel advises the Secretary of State that the proposed rule 10 of the Law Society's draft Code of Conduct should be approved.
- 7.2 The Panel advises the Secretary of State that the proposed rule 13 of the Law Society's Code of Conduct should be approved.
- 7.3 The Panel advises the Secretary of State that the proposed rule 20 of the Law Society's Code of Conduct should be approved.