

Rule 10 – Relations with third parties

Solicitors' Code of Conduct 2007

Professional Ethics

Dated 10 March 2007 and commencing on 1 July 2007

An addition to guidance note 3 is shown underlined and highlighted in red and was made on 24 July 2007.

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Rule 10 – Relations with third parties

Introduction

Rule 10 draws together a variety of obligations linked by the need to deal with third parties in a proper manner. The rule as it applies to your overseas practice is modified by 15.10.

Rule 10 – Relations with third parties

10.01 Not taking unfair advantage

You must not use your position to take unfair advantage of anyone either for your own benefit or for another person's benefit.

10.02 Agreeing costs with another party

When negotiating the payment of your client's costs by another firm's client or a third party, you must give sufficient time and information for the amount of your costs to be agreed or assessed.

10.03 Administering oaths

You can administer oaths or affirmations or take declarations if you are a solicitor or an REL. You must not do so where you or your firm is acting for any party in the matter.

10.04 Contacting other party to a matter

You must not communicate with any other party who to your knowledge has retained a lawyer or licensed conveyancer to act in a matter, except:

- (a) to request the name and address of the other party's lawyer or licensed conveyancer;
- (b) where it would be reasonable to conclude that the other party's lawyer or licensed conveyancer has refused or failed for no adequate reason either to pass on messages to their client or to reply to correspondence, and has been warned of your intention to contact their client direct;
- (c) with that lawyer or licensed conveyancer's consent; or
- (d) in exceptional circumstances.

10.05 Undertakings

- (1) You must fulfil an undertaking which is given in circumstances where:
 - (a) you give the undertaking in the course of practice;

- (b) you are a principal in a firm, and any person within the firm gives the undertaking in the course of practice;
 - (c) you give the undertaking outside the course of practice, but as a solicitor; or
 - (d) you are an REL based at an office in England and Wales, and you give the undertaking within the UK, as a lawyer of an Establishment Directive state, but outside your practice as an REL.
- (2) You must fulfil an undertaking within a reasonable time.
 - (3) If you give an undertaking which is dependent upon the happening of a future event, you must notify the recipient immediately if it becomes clear that the event will not occur.
 - (4) When you give an undertaking to pay another's costs, the undertaking will be discharged if the matter does not proceed unless there is an express agreement that the costs are payable in any event.

10.06 Dealing with more than one prospective buyer in a conveyancing transaction

- (1) Each time a seller of land, other than in a sale by auction or tender, either:
 - (a) instructs you to deal with more than one prospective buyer; or
 - (b) to your knowledge:
 - (i) deals directly with another prospective buyer (or their conveyancer); or
 - (ii) instructs another conveyancer to deal with another prospective buyer;

you must, with the client's consent, immediately inform the conveyancer of each prospective buyer, or the prospective buyer if acting in person.
- (2) If the seller refuses to agree to such disclosure, you must immediately stop acting in the matter.
- (3) You must not act for both the seller and any of the prospective buyers.
- (4) You must not act for more than one of the prospective buyers.

10.07 Fees of lawyers of other jurisdictions

- (1) If in the course of practice you instruct a lawyer of another jurisdiction you must, as a matter of professional conduct, pay the lawyer's proper fees unless the lawyer is practising as a solicitor or barrister of England and Wales; or
 - (a) you have expressly disclaimed that responsibility at the outset, or at a later date you have expressly disclaimed responsibility for any fees incurred after that date;

- (b) the lawyer is an REL or is registered with the Bar of England and Wales under the Establishment Directive; or
 - (c) the lawyer is an RFL based in England and Wales and practising in a firm.
- (2) If in the course of practice you instruct a business carrying on the practice of a lawyer of another jurisdiction you must, as a matter of professional conduct, pay the proper fees for the work that lawyer does, unless:
- (a) you have expressly disclaimed that responsibility at the outset, or at a later date you have expressly disclaimed responsibility for any fees incurred after that date; or
 - (b) the business is a firm.

Guidance to rule 10 – Relations with third parties

Not taking unfair advantage – 10.01

1. Subrule 10.01 does not only apply to your actions which arise out of acting for a client. For example, if you are personally involved in a road accident and use your position as a solicitor unfairly to harass or intimidate the other motorist, you would breach 10.01. If, on the other hand, you intimidated the other motorist without making reference to your position as a solicitor, you would not breach 10.01. However, you should have regard to 1.06 (Public confidence) in respect of your general behaviour outside practice.
2. Particular care should be taken when you are dealing with a person who does not have legal representation. You need to find a balance between fulfilling your obligations to your client and not taking unfair advantage of another person. To an extent, therefore, 10.01 limits your duty to act in the best interests of your client. For example, your duty may be limited where an unrepresented opponent provides badly drawn documentation. In the circumstances you should suggest the opponent finds legal representation. If the opponent does not do so, you need to ensure that a balance is maintained between doing your best for the client and not taking unfair advantage of the opponent's lack of legal knowledge and drafting skills.
3. You should take care, when dealing with an unrepresented third party, that any help given does not inadvertently create a contractual relationship with that party. For further information see Cordery on Solicitors. [See also note 8 of the guidance to rule 3 \(client relations\).](#)¹ You should also be careful, when dealing with unqualified persons, that you are not involved in possible breaches of the Solicitors Act 1974, in terms of the prohibitions relating to reserved work. For further details see 20.02 (Reserved work) and the guidance to that rule.

¹ Amendment inserted 24 July 2007.

4. There may be situations where it is inappropriate for you to use the title “solicitor” in advancing your personal interests. You should consider public confidence in the profession – see 1.06 (Public confidence).
5. It would be unfair to demand anything that is not recoverable through the proper legal process. This would include a letter of claim and any other communication with another party to the action. For instance, where you are instructed to collect a simple debt, you should not demand from the debtor the cost of the letter of claim, since it cannot be said at that stage that such a cost is legally recoverable.
6. The following are some further examples of how you should act in order to ensure you comply with 10.01 and core duty 1.02 (Integrity):
 - (a) If a person sends you documents or money subject to an express condition, you should return the documents or money if you are unwilling or unable to comply with the condition.
 - (b) If you are sent documents or money on condition that they are held to the sender’s order, you should return the documents or money to the sender on demand.
 - (c) If you ask anyone to supply copies of documents, you should expect to pay a proper charge for them.

Agreeing costs with another party – 10.02

7. Subrule 10.02 applies to all types of work. Its application is clear in litigation matters but will also commonly be relevant to other matters, such as where a landlord’s solicitor’s costs for dealing with a request for a licence to assign a lease are to be paid by the tenant.
8. You should expect to supply information about the basis of charging (for example an hourly rate or an estimate of the total amount) together with an indication of the nature of the elements of the work done or to be done.

Administering oaths – 10.03

9. You may administer oaths if you are:
 - (a) a solicitor with a current practising certificate – see section 81(1) of the Solicitors Act 1974; or
 - (b) an REL, under the Establishment Directive.
10. When administering oaths or affirmations or taking declarations, you must ensure the giver:
 - (a) is present;
 - (b) signs the document in your presence or, if the document is already signed, confirms that the signature is their own and that any attachments are correct; and
 - (c) appears to understand what they are doing and that the purpose is to confirm that the contents of the document and any attachments are true.

11. You are not responsible for the contents of the document, but if you have a good reason to believe that the contents may be false, you should not proceed.
12. Section 81(2) of the Solicitors Act 1974 and other related legislation prohibits you administering an oath where you are or your firm is acting for any party in the matter. The effect of this section would, for example, prevent a solicitor administering an oath for the solicitor's own spouse where it arises out of a personal matter.
13. When the document has already been signed, it is sufficient for you to accept the giver's word that it is their signature, unless there is clear evidence to the contrary.

Contacting other party to a matter – 10.04

14. Subrule 10.04 requires that you do not contact another party to a matter, subject to exceptions, if that party is represented by a lawyer or a licensed conveyancer. It is not intended to prevent you from dealing with other types of representative, if appropriate. If you are asked to deal with such a representative you should ensure that you are not involved in possible breaches of the Solicitors Act 1974 (see note 3 above) and that to do so is in your client's best interest. For example, where the other party is disabled and vulnerable you may well think it appropriate to deal with a representative from a specialist advice organisation or a disability charity. To do so, may mean that the matter is dealt with more efficiently and that you derive some protection from an allegation that you are acting in breach of 10.01 (Not taking unfair advantage). On the other hand, you would be unlikely to want to deal with a person purporting to represent another party who clearly does not have the relevant knowledge or skill.
15. Where an enquiry agent has been instructed, the agent may serve documents where the other party's lawyer or licensed conveyancer has refused to accept service, but should not take a statement or in any other way communicate with the other party.
16. Care should be taken if you are instructed in a dual capacity. For example, if you are additionally instructed as an estate agent for the seller, you may contact the buyer, but solely about estate agency matters.
17. The other party's lawyer or licensed conveyancer may consent explicitly to your contacting their client, or this may be implied, such as when a protocol is being followed or where it has been agreed that certain documents be sent to all parties.
18. It is not always easy to establish why another lawyer or licensed conveyancer involved in a matter is not responding to correspondence. If you reasonably consider that the other lawyer or licensed conveyancer may be refusing or failing to take instructions from their client, or may be refusing or failing to communicate your requests or correspondence to their client, then a warning should give them the opportunity to object if an incorrect conclusion has been drawn. If there

is no valid objection, then you should be able to advance the matter by directly contacting the other client.

19. It is recommended that any communications permitted by 10.04 between you and another lawyer or licensed conveyancer's client be in writing.
20. Subrule 10.04 extends to your contact with the in-house lawyers or licensed conveyancers of organisations. For example, if you are acting for a client in a matter concerning a local authority, and you have express or implied notice that the authority's solicitor has been instructed to act in the matter, you must not discuss that matter directly with the appropriate committee chair, any individual councillor or any political group on the authority. You can be involved in political lobbying of individual councillors or a political group on the local authority on behalf of a client, even if you know that the authority's solicitor has been instructed to deal with the legal issues.
21. Where the other party is an organisation, you will not breach 10.04 by contacting employees who are not responsible for the giving of instructions because they are not regarded as the client for the purpose of 10.04. However, you should have regard to any contractual obligations employees may have to their employer. It may be appropriate to notify the employer or its lawyer or licensed conveyancer of your intention to contact the employee. This would enable the employee to be advised as to the appropriate response.
22. Lawyers or licensed conveyancers employed by organisations such as the Solicitors Regulation Authority or the Land Registry may properly deal with represented clients when carrying out a statutory function.
23. There may be other situations where it becomes necessary to communicate directly with a represented client. Subrule 10.04(d) refers to these as "exceptional circumstances". Such circumstances would include where you are contacted by the client of another lawyer or licensed conveyancer. Care should be taken to avoid taking unfair advantage of this situation but it is acceptable for you to deal with that client's request, if appropriate, and explain that in future they should contact you through their own lawyer or licensed conveyancer.

Undertakings – 10.05

24. An undertaking is any statement, made by you or your firm, that you or your firm will do something or cause something to be done, or refrain from doing something, given to someone who reasonably relies upon it (see rule 24 (Interpretation)). It can be given orally or in writing and need not include the word "undertake". However, it is recommended that oral undertakings be confirmed or recorded in writing for evidential purposes.
25. An agreement to pay a trading debt such as your electricity bill is not normally an undertaking. Once an undertaking is given and the recipient has relied upon it, it can only be withdrawn by agreement.
26. You are not obliged to give or accept undertakings.

27. In 10.05(1)(b) “person within the firm” includes anyone held out by the firm as representing the firm, as well as locums, agents, consultants and other employees.
28. It is important that there be a time frame within which an undertaking should be fulfilled. In the event that no specific time is referred to when the undertaking is given, fulfilment “within a reasonable time” will be expected. What amounts to a “reasonable time” will depend on the circumstances but the onus is on the giver to ensure that the recipient is kept informed of the likely timescale and any delays to it.
29. Failure to fulfil an undertaking may result in disciplinary action.
30. If an undertaking requires the recipient to take certain steps and the recipient fails to do so, the giver may ask the Solicitors Regulation Authority to give notice to the recipient that unless these steps are taken within a period of time it will not then consider a complaint.
31. All undertakings given by solicitors and RELs can be enforced by the court. (See court rules for the appropriate procedure to be followed.) The Solicitors Regulation Authority will not investigate complaints of breaches of undertakings given to the court unless the court makes a complaint to the Authority.
32. Where you undertake to pay the costs of another party or a professional agent’s costs, unless a specific amount is agreed, the term “costs” will mean “proper costs”. This allows you to request an assessment of the costs by the court.
33. If a complaint is made to the Solicitors Regulation Authority concerning an alleged breach of an undertaking and it is found that the undertaking was procured by fraud, deceit or, in certain circumstances, innocent misrepresentation, the Authority is unlikely to take any action in respect of the alleged breach.
34. The Solicitors Regulation Authority will generally interpret an ambiguous undertaking in favour of the recipient.
35. If you give an undertaking “on behalf” of a client it will usually fall within the definition of an undertaking (see rule 24 (Interpretation)) and its performance would, therefore, be your responsibility. If this is not what you intend, you should ensure that liability is disclaimed or it is made clear that you are simply informing the other party about your client’s intentions.
36. A promise to give an undertaking is normally treated as an undertaking and will be binding.
37. Where an undertaking has been breached, the aggrieved party may seek compensation. Your firm’s insurance as required by the Solicitors’ Indemnity Insurance Rules should cover valid claims. If you are in in-house practice, you should consider whether your employer has appropriate insurance. You will remain personally liable in conduct, and may also be financially liable, regardless of whether you have adequate insurance.

38. An undertaking is binding even if it is to do something outside your control. For example, if you undertake to make a payment out of the proceeds of sale of an asset, unless you clearly state to the contrary, you will be expected to make the payment even if the fund (gross or net) is insufficient.
39. If you have received written instructions from your client that are expressed as irrevocable, they are nonetheless revocable, until you have acted on them in such a way as to change your personal position.
40. Certain areas of work, particularly conveyancing, involve the use of standard undertakings. Care should be taken when using standard undertakings to ensure that they suit the specific circumstances. For further details, please refer to a specialist publication.
41. Guidance on undertakings can be obtained from the Professional Ethics Guidance Team.

Seller's solicitor dealing with more than one prospective buyer – 10.06

42. When you are asked to “deal” with more than one prospective buyer you must comply with 10.06. “Deal” means any communication you have with any of the relevant parties intended to progress the matter – for example, the sending of a draft contract or a plan of the property. Communicating information of an estate agency nature, such as sending out particulars of sale or showing prospective buyers around a property, would not amount to “dealing” for the purposes of 10.06. If you provide information for an estate agent or Home Information Pack provider only as part of the creation of a Home Information Pack, you will not have “dealt” with prospective buyers for the purpose of 10.06. However, providing additional information to buyers, either direct or through the estate agent or Home Information Pack provider, will normally amount to “dealing”.
43. This requirement is sometimes known as the “contract races” rule. This has created the impression that when a transaction is proceeding under such terms, whichever party presents their contract ready for exchanging first is the “winner”. In fact, the terms of the arrangement are entirely at the discretion of the parties and speed may or may not be a factor. You should be careful to agree the terms of the arrangement.
44. If you are required to inform another conveyancer of your intention to proceed with two or more prospective buyers, you should do so immediately by the most suitable means. If the information is given in person or on the telephone, there is no requirement that the details be confirmed in writing but this is advisable.
45. Special care should be taken when dealing with unqualified conveyancers or unrepresented buyers. See notes 2 and 3 above.

Fees of lawyers of other jurisdictions – 10.07

46. Subrule 10.07 does not apply when you merely introduce or refer a client to a lawyer of another jurisdiction. However, when you instruct

such a lawyer, you will be accepting the liability to pay the lawyer's proper fees unless one of the exceptions in 10.07 applies. For example, if you do not hold money on account and your client is declared bankrupt, you may have to pay the lawyer's proper fee out of your own funds.

47. The fees of a lawyer of another jurisdiction may be regulated by a scale approved by the relevant bar association or law society. You can contact the International Unit of the Law Society for advice.
48. In the event that a dispute arises concerning the payment of the fees of a lawyer of a CCBE state, 16.07 and note 12 of the guidance to rule 16 (European cross-border practice) should be consulted and the necessary action taken before starting any proceedings.