

Rule 20 – Requirements of practice

Solicitors’ Code of Conduct 2007

Professional Ethics

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Rule 20 – Requirements of practice

Introduction

Rule 20 sets out the requirements for certification, the types of work which you are permitted to do, and co-operation with, and provision of information to, the Solicitors Regulation Authority.

Rule 20 – Requirements of practice

20.01 Practising certificates

- (1) If you are practising as a solicitor you must:
 - (a) have in force a practising certificate issued by the Solicitors Regulation Authority; or
 - (b) be exempt under section 88 of the Solicitors Act 1974 from holding a practising certificate.
- (2) You will be practising as a solicitor if you are involved in legal practice and:
 - (a) your involvement in the firm or the work depends on your being a solicitor;
 - (b) you are held out explicitly or implicitly as a practising solicitor;
 - (c) you are employed explicitly or implicitly as a solicitor; or
 - (d) you are deemed by section 1A of the Solicitors Act 1974 to be acting as a solicitor.
- (3) In (2) above “legal practice” includes not only the practice of law but also the provision of business services such as are provided by solicitors.
- (4) If you are a solicitor who was formerly an REL, and you are practising from an office in the UK as a lawyer of an Establishment Directive state, you must have in force a practising certificate issued by the Solicitors Regulation Authority, even if you are not practising as a solicitor.

20.02 Reserved work

A firm may undertake activities reserved to solicitors under the Solicitors Act 1974 relating to the conveyancing of land or the administration of a deceased's estate only if:

- (a) the firm has a principal who is:
 - (i) a solicitor;
 - (ii) an REL qualified to provide that service under regulation 12 or 13 of the Establishment Directive Regulations; or
 - (iii) a recognised body qualified to provide that service under (b) below; or

- (b) the firm is a recognised body which is:
 - (i) a company with a director who is a solicitor, or an REL qualified to provide that service under regulation 12 or 13 of the Establishment Directive Regulations; or
 - (ii) an LLP with a member who is:
 - (A) a solicitor;
 - (B) an REL qualified to provide that service under regulation 12 or 13 of the Establishment Directive Regulations;
 - (C) a recognised body which is a company with a director who is a solicitor, or an REL qualified to provide that service under regulation 12 or 13 of the Establishment Directive Regulations; or
 - (D) a recognised body which is an LLP with a member who is a solicitor, or an REL qualified to provide that service under regulation 12 or 13 of the Establishment Directive Regulations.

20.03 Duty to co-operate with the Solicitors Regulation Authority and the Legal Complaints Service

- (1) You must deal with the Solicitors Regulation Authority and the Legal Complaints Service in an open, prompt and co-operative way.
- (2) You must:
 - (a) provide the Solicitors Regulation Authority with information necessary in order to issue you with a practising certificate, or deal with renewal of registration or renewal of recognition, as appropriate; and
 - (b) during the period your practising certificate, registration or recognition is in force, notify the Authority of any changes to relevant information about you or your firm or in-house practice.

20.04 Reporting serious misconduct and serious financial difficulty

You must (subject, where necessary, to your client's consent) report to the Solicitors Regulation Authority if:

- (a) you become aware of serious misconduct by a solicitor, an REL, an RFL or a firm;
- (b) you are a principal in a firm, and you become aware of serious misconduct by an employee of the firm;
- (c) you have reason to doubt the professional integrity of a solicitor, an REL or an RFL; or
- (d) you have reason to believe that a solicitor, an REL, an RFL or a firm is in serious financial difficulty which could put the public at risk.

20.05 Obstructing complaints

- (1) You must not try to hinder or prevent a person who wishes to report your conduct to the Solicitors Regulation Authority or the Legal Complaints Service from doing so.
- (2) You must not victimise a person for reporting your conduct to the Solicitors Regulation Authority or the Legal Complaints Service.
- (3) You must not on your own or on your clients' behalf enter into an agreement which would attempt to preclude the Solicitors Regulation Authority or the Legal Complaints Service from investigating any actual or potential allegation of professional misconduct.
- (4) Unless you can properly allege malice, you must not issue defamation proceedings in respect of a complaint to the Solicitors Regulation Authority or the Legal Complaints Service.

20.06 Production of documents and information

- (1) You must promptly comply with a notice served by the Solicitors Regulation Authority in accordance with (2) below for the purpose of ascertaining whether a solicitor, an REL, an RFL or a recognised body is complying with or has complied with any provision of these rules, or of any other rules, codes or mandatory guidance made or issued by the Board of the Solicitors Regulation Authority.

Such notice will be to the effect that you must produce for inspection by the appointee of the Solicitors Regulation Authority all documents held by you or held under your control and all information and explanations requested:

- (a) in connection with your practice; or
- (b) in connection with any trust of which you are, or formerly were, a trustee;

and you must promptly comply with any notice served under (2) below.

- (2) Notice served under this rule:
 - (a) must be in writing;
 - (b) must be left at, or sent by registered post or recorded delivery to, the most recent address held by the Solicitors Regulation Authority, or delivered by the Authority's appointee; and
 - (c) will be deemed to have been received upon proof of its having been delivered at your practising address or last known practising address (or, in the case of a recognised body, its registered office) 48 hours (excluding Saturdays, Sundays and Bank Holidays) after posting.
- (3) You must provide any necessary permissions for information to be given so as to enable the appointee of the Solicitors Regulation Authority to:
 - (a) prepare a report on the documents produced under (1) above; and

- (b) seek verification from clients, staff and the banks, building societies or other financial institutions used by you.
- (4) (a) You must comply with all requests from the Solicitors Regulation Authority or its appointee as to:
 - (i) the form in which you produce any documents you hold electronically; and
 - (ii) photocopies of any documents to take away.
- (b) The Authority's appointee is not entitled under 20.06 to take original documents away.

20.07 Dealing with claims

- (1) If you are a principal in a firm, a director of a recognised body which is a company, a member of a recognised body which is an LLP or a recognised body, and you discover an act or omission which could give rise to a claim, you must inform your client.
- (2) If a client makes a claim against you, or notifies an intention to do so, or if you discover an act or omission which could give rise to a claim, you must:
 - (a) inform your client that independent advice should be sought (unless your client's loss, if any, is trivial and you promptly remedy that loss);
 - (b) consider whether a conflict of interests has arisen, and if so not act further for your client in the matter giving rise to the claim; and
 - (c) notify the qualifying insurer or the Assigned Risks Pool (ARP) Manager in accordance with the terms of the policy or, if appropriate, the Solicitors Indemnity Fund Ltd (SIF).

Guidance to rule 20 – Requirements of practice

Requirements and exemptions under the Solicitors Act 1974 – 20.01

- 1. Subrule 20.01 includes, in rule form, the requirements of section 1 of the Solicitors Act 1974. The section reads:
 - “No person shall be qualified to act as a solicitor unless –
 - (a) he has been admitted as a solicitor, and
 - (b) his name is on the roll, and
 - (c) he has in force a certificate issued by the Society in accordance with the provisions of this Part authorising him to practise as a solicitor (in this Act referred to as a ‘practising certificate’).”

The issuing of practising certificates under Part II of the Act is the responsibility of the Solicitors Regulation Authority.

2. If you practise as a solicitor without having a practising certificate, you will commit a criminal offence unless you are entitled to rely on a statutory exemption.
3. Section 88 of the Solicitors Act 1974 exempts from the requirement to hold a practising certificate the solicitor to certain public authorities, and a solicitor who is the “clerk” to such a solicitor. The section reads:
 - “(1) *Nothing in this Act shall prejudice or affect any rights or privileges of the solicitor to the Treasury, any other public department, the Church Commissioners or the Duchy of Cornwall, or require any such officer or any clerk or officer appointed to act for him to be admitted or enrolled or to hold a practising certificate in any case where it would not have been necessary for him to be admitted or enrolled or to hold such a certificate if this Act had not been passed.*
 - (1A) *The exemption from the requirement to hold a practising certificate conferred by subsection (1) above shall not apply to solicitors who are Crown Prosecutors.*
 - (2) *Sections 31 and 32(1) shall not apply to, and nothing in this Act shall prejudice or affect any rights or privileges which immediately before the commencement of this Act attached to the office of the Solicitor of the City of London.”*
4. Although section 88 of the Solicitors Act 1974 preserves certain pre-existing rights, privileges and exemptions, it does not say what these are. They are to be found in a number of statutory provisions of some age, each conferring different rights, privileges or exemptions on different persons. Some of the older provisions do not fit easily into modern conditions and it is not possible to provide a full list of exemptions. The view of the Board of the Solicitors Regulation Authority is as follows.
 - (a) A solicitor is exempt who holds office as the solicitor (i.e. the principal solicitor) to:
 - (i) the Treasury;
 - (ii) any other public department;
 - (iii) the Church Commissioners, and
 - (iv) the Duchy of Cornwall; or
 - (v) a solicitor who is a clerk or officer appointed to act for one of the above.
 - (b) The exemption relates to the capacity and employment of the solicitor. Thus, for instance, a solicitor who holds office as the principal solicitor to a public department, but in a different capacity or employment administers oaths, cannot rely on the section 88 exemption in respect of that other capacity or employment.
 - (c) There is no definition of “public department” in the Solicitors Act. In the absence of a definition, the Board of the Solicitors Regulation Authority takes the view that “any other public department” would include any department of central government in the UK, the National Assembly of Wales and any “non-ministerial department”,

but would not include other agencies or “non-departmental public bodies”.

Assistance in determining whether a department or agency is a “non-ministerial department” or a “non-departmental public body” can be found on the Civil Service website.

Section 88(1A) of the Solicitors Act requires a solicitor who is a Crown Prosecutor to hold a practising certificate.

Being held out as a practising solicitor – 20.01(2)(b)

5. Being described on your firm’s notepaper or website as a member of the Law Society is an example of being held out “implicitly” as a solicitor.
6. There is a presumption that you are practising as a solicitor if you are held out (explicitly or implicitly) as a solicitor whilst providing lawyer-like services. The same presumption arises if you are described as a lawyer in such a context, if you have no other legal qualification to justify that description. It is possible in some circumstances to rebut the presumption by ensuring that some such words as “non-practising” are used whenever you are held out as a solicitor or lawyer. However, you cannot rebut the presumption if you rely on being a solicitor in the context of legal practice – for example in order:
 - (a) to be a partner in a firm of lawyers;
 - (b) to be employed as a solicitor or lawyer;
 - (c) to do work in England and Wales which is reserved to solicitors;
 - (d) to do work in another jurisdiction which is reserved to lawyers;
 - (e) to be a registered foreign legal consultant in another jurisdiction; or
 - (f) to be a registered lawyer in another European state under the Establishment Directive.
7. If you are dually qualified you may be practising as a member of both professions simultaneously, either through a single combined practice, or through two separate practices. In the latter case you would need separate notepaper, etc., to distinguish the two practices.
8. The context of a description can make a real difference as to whether you are held out as a practising solicitor or not. For example:
 - (a) if you are running a web-based or telephone advice service, and describe yourself as a solicitor (without qualifying the description with words such as “non-practising”), you will need a practising certificate; and
 - (b) if your only work is as an academic and writer, and you have written a legal textbook in which you are described as a solicitor or as a lawyer on the title page, you will not need a practising certificate. This is because there is no context of services normally provided by practising solicitors.

Reserved work – 20.02

9. Reserved work is work that is restricted, by statute or otherwise, to a limited category or categories of person, including solicitors.

10. The following activities are reserved work:

(a) Litigation, advocacy, conveyancing and probate activities

Sections 20 to 22 and 23 to 24 of the Solicitors Act 1974 and sections 27 and 28 of the Courts and Legal Services Act 1990 reserve to solicitors (and certain other persons) the following essential steps in litigation, conveyancing and probate:

- (i) conducting litigation;
- (ii) appearing as an advocate before a court; and
- (iii) unless the work is done free, or at the direction and under the supervision of a qualified employer or fellow employee:
 - (A) drawing or preparing instruments relating to legal proceedings;
 - (B) drawing or preparing instruments relating to real or personal estate, including the contract, conveyance and mortgage in a land transaction;
 - (C) making applications or lodging documents for registration at the Land Registry; and
 - (D) drawing or preparing papers upon which to found or oppose a grant of probate or letters of administration.

(b) Oaths

Section 81 of the Solicitors Act 1974 extends the rights of Commissioners for Oaths to all solicitors with practising certificates. See also 10.03 (Administering oaths).

(c) Instructing counsel

Instructing counsel is not restricted to any particular category of person by statute. However, barristers only accept instructions made professionally on behalf of clients from solicitors and limited categories of non-solicitors – see the Bar Council website for details. If you instruct counsel as a solicitor, you will be practising as a solicitor and must have a practising certificate.

(d) Immigration advice and immigration services

The Immigration and Asylum Act 1999 requires most persons providing immigration advice and services to be registered with the Office of the Immigration Services Commissioner. Solicitors and solicitors' firms do not have to register because they are authorised by the Solicitors Regulation Authority in relation to such work. In order to rely on this exemption you must have a practising certificate. You should note that you may not provide immigration advice or services through a separate business – see 21.02(1)(d).

(e) *Financial services*

The Financial Services and Markets Act 2000 reserves the provision of “regulated activities” to persons authorised by the Financial Services Authority (FSA). Certain “regulated activities”, ancillary to the provision of a professional service, are exempt from regulation by the FSA when carried out by solicitors’ firms; but you must have a practising certificate to rely on this exemption. For the definition of “regulated activity” see 19.01(4).

Solicitors in firms

11. If you are a solicitor in a firm you will almost certainly need a practising certificate, for the following reasons:

- (a) If you are a principal in a firm then, as a principal, you will be practising as a solicitor.
- (b) If you are an owner of an interest in a corporate firm, whether it is a recognised body or an overseas body corporate, you will be practising through a body corporate – see rule 24 (Interpretation). Also rule 14 (Incorporated practice) does not allow solicitors without practising certificates to participate in a recognised body as members or shareowners.
- (c) If you are an employee, a consultant or a locum employed in England and Wales in connection with the provision of legal services, then even if you are not held out as a solicitor, and even if you do no reserved work, you will need a practising certificate. Section 1A of the Solicitors Act 1974 states that:

“A person who has been admitted as a solicitor and whose name is on the roll shall, if he would not otherwise be taken to be acting as a solicitor, be taken for the purposes of this Act to be so acting if he is employed in connection with the provision of legal services –

- (a) by any person who is qualified to act as a solicitor;
- (b) by any partnership at least one member of which is so qualified; or
- (c) by a body recognised by the Council of the Law Society under section 9 of the Administration of Justice Act 1985 (Incorporated practices).”

Note that if you are a solicitor or REL director of a corporate firm you are employed in connection with the provision of legal services, so section 1A will apply. Also rule 14 (Incorporated practice) does not allow solicitors without practising certificates to participate in a recognised body as directors.

The recognition of bodies corporate under section 9 of the Administration of Justice Act 1985 is the responsibility of the Solicitors Regulation Authority.

- (d) If you are an employee of a firm and you are based at an office outside England and Wales, you are likely to be employed, explicitly or implicitly as a solicitor, and/or held out, explicitly or

implicitly, as a solicitor or as a lawyer in connection with your employment.

12. Your job title alone may be insufficient to tell you whether you will fall within section 1A of the Solicitors Act 1974. If you are not employed as a solicitor, but you work in any capacity which involves your input into client matters, you will need a practising certificate. For example:
 - (a) you will need a practising certificate if you are employed as the firm's librarian, and you undertake research for fee earners in connection with a client matter; and
 - (b) you will need a practising certificate if you are employed by a firm as a compliance manager, but also handle complaints from clients.

In-house solicitors

13. If you are an in-house solicitor, you must hold a practising certificate if:
 - (a) you are held out as, or employed as, a solicitor or lawyer;
 - (b) you do reserved work (other than at the direction and under the supervision of a fellow employee as provided in the Solicitors Act 1974);
 - (c) you fulfil the role of a "person qualified to supervise" – see 5.02 (Persons who must be "qualified to supervise"); or
 - (d) you authorise the withdrawal of money from a client account, under rule 23(1)(a) of the Solicitors' Accounts Rules 1998.

Retirement from practice

14. You may continue to need a practising certificate after you retire, depending on how complete your retirement is. If you are in the process of closing your firm, but will continue to hold money for clients only while you tie up loose ends and submit bills of costs, you will still be subject to the Solicitors' Accounts Rules 1998. However, if that is all you are doing you will not need a practising certificate, provided that a solicitor with a practising certificate authorises any withdrawals from your client account.
15. If you have retired but continue to do some work, you may need a practising certificate. For example:
 - (a) you must have a practising certificate if you continue to work in a firm in connection with the provision of legal services. This would include being a consultant or supervising fee-earners, even if you only help out on an occasional basis or cover a professional colleague's holiday absences; or
 - (b) you must have a practising certificate if you continue to undertake any reserved work.
16. If you are completely retired from all legal work you may still need a practising certificate if, for example:
 - (a) you continue to be held out as a solicitor or lawyer by your former firm; or

- (b) your name appears on your firm's notepaper as a "consultant", unless it is made clear on the notepaper that you are not practising.

Duty to co-operate with the Solicitors Regulation Authority and the Legal Complaints Service – 20.03

- 17. Subrule 20.03 requires you to deal with any communication from the Solicitors Regulation Authority or the Legal Complaints Service properly. This means that you will need to respond promptly and substantively to communications when appropriate – for example, to a letter referring to a complaint made against you or a member of your firm.
- 18. The duty imposed by 20.03 may be limited by your legal obligations to your clients or others, for example your obligation to protect clients' confidentiality and privilege.
- 19. If you are a solicitor you should note that failure to comply with a request for an explanation of any matter in relation to your conduct may result in the imposition of conditions, or even refusal by the Solicitors Regulation Authority to issue a practising certificate (sections 12(1)(e) and 13A Solicitors Act 1974).
- 20. Subrules 1.02 (Integrity) and 1.06 (Public confidence) require you to act with integrity and to refrain from behaviour likely to diminish the trust the public places in you or the profession. You should therefore, unless there is good reason to the contrary, comply with binding orders or requests for information from the Legal Services Ombudsman. Similarly, it may be appropriate, subject to any overriding duties, to assist the Bar Council or other regulatory body when they are investigating the conduct of a member of their profession.
- 21. Abusive communications and unreasonable attempts to delay an investigation or enquiry are inconsistent with the co-operation required by 20.03.

Reporting serious misconduct and serious financial difficulty – 20.04

- 22. The purpose of 20.04 is to protect the public and the integrity of the profession. Often, professional colleagues will be aware of serious misconduct and/or risk arising from a firm's financial problems before any complaint has been made, and if the Solicitors Regulation Authority is notified it can take timely action. The Authority's Forensic Investigations Unit and Fraud Intelligence Officers will consider information of this nature on an anonymous basis if requested.
- 23. Unless you are required by law to report a matter, 20.04 does not apply to confidential and/or privileged information another lawyer discloses to you:
 - (a) as your client or the client of your firm; or
 - (b) when seeking advice from a confidential helpline, such as the Solicitors' Assistance Scheme or Lawcare.

24. You will not breach 20.04 if you take no action because you know that someone else has already reported a matter of which you are aware.
25. Whether or not “misconduct” can be considered “serious”, and whether or not a firm’s financial difficulties could put the public at risk, will depend on the circumstances. In general, any conduct involving dishonesty or deception or a serious arrestable offence (as defined by the Police and Criminal Evidence Act 1984) would amount to “serious misconduct”. If in your judgement a firm’s financial difficulties present a risk to its clients or to others, you should report the matter, and can do so on a confidential basis if you wish.
26. If you are an employee and you become aware of serious misconduct on the part of a fellow employee, you should bring the matter to the attention of the principal(s), director(s) or member(s) of the firm so they can report the matter under 20.04(b).
27. If reporting misconduct within your own firm which may give rise to a claim, you should also consider your obligations to your insurers. See also note 55 of the guidance to rule 3 (Conflict of interests).
28. If making a report about another lawyer or firm would involve disclosing confidential information, you should obtain your client’s consent before proceeding.
29. You should exercise care where there may be evidence of money laundering activities (see the Proceeds of Crime Act 2002, other relevant law and directives, and guidance issued by the Solicitors Regulation Authority on this subject).

Obstructing complaints – 20.05

30. No agreement, whether with a client or a third party, can affect the rights of the Solicitors Regulation Authority or the Legal Complaints Service to investigate misconduct or to consider complaints. To attempt to make such an agreement is a breach of 20.05. Examples of situations that would breach 20.05 are:
 - (a) accepting instructions to act for a client which involve any agreement preventing the Solicitors Regulation Authority or the Legal Complaints Service from investigating your conduct or the conduct of a member of your firm;
 - (b) improperly demanding, offering or accepting payment in return for not reporting alleged misconduct;
 - (c) harassing or bringing improper pressure to bear on a complainant or potential complainant; and
 - (d) issuing proceedings for defamation against a client or former client in relation to material contained in a complaint to the Solicitors Regulation Authority or the Legal Complaints Service, unless you are alleging malice.
31. The following, however, would not breach 20.05:

- (a) proper attempts to persuade the client that the client's complaint is unfounded; and
- (b) in a case of inadequate professional services, genuine attempts to propose an agreement to compensate the aggrieved client.

Production of documents and information – 20.06

- 32. The Solicitors Regulation Authority will only exercise its powers under 20.06 in accordance with the law, in pursuit of a legitimate aim and proportionate to that aim.
- 33. The Solicitors Regulation Authority may use or disclose any information obtained under 20.06 and the report prepared by its appointee:
 - (a) in proceedings before the Solicitors Disciplinary Tribunal;
 - (b) to the police, the Crown Prosecution Service or the Serious Fraud Office for use in investigating the matter and in any subsequent prosecution, if it appears that you or any partner, employee, member or owner of your firm may have committed a serious criminal offence;
 - (c) to your regulatory body in your home state or states if you are an REL or RFL;
 - (d) to the regulatory body with which you are registered, if you are a solicitor registered under the Establishment Directive; and/or
 - (e) to the professional body of which the accountant who has signed an accountant's report under 15.27 is a member, or by which the accountant is regulated (and the information and report may also be taken into account by the Solicitors Regulation Authority in relation to a possible disqualification of that person from signing an accountant's report in future).

Dealing with claims – 20.07

- 34. The aim of 20.07 is to ensure that a claim or a potential claim is dealt with fairly and efficiently. In particular, the client should be advised at the earliest possible opportunity of an act or omission which could give rise to a claim. "Claim" has the meaning given in the Solicitors' Indemnity Insurance Rules (Minimum Terms and Conditions).
- 35. You must consider whether a conflict of interests has arisen between your interests and your client's. It will be rare for there to be no conflict. Where there is, you must refuse to act further in the matter.
- 36. Under 2.05 firms must operate a complaints handling procedure. Complaints should be dealt with under that procedure, where appropriate, rather than as claims. For example, if your client makes a complaint purely relating to poor service, it would rarely be appropriate to treat that complaint as a claim.
- 37. In order that a claim can be dealt with efficiently, you should consult the qualifying insurer or ARP Manager in accordance with the policy terms. In some circumstances, you may need to take limited steps to preserve your client's position.

38. Although there is no general duty for you to keep under review work which has been concluded, if you discover an act or omission which could give rise to a claim relating to a former client, you should notify the qualifying insurer or ARP Manager (or, if appropriate, SIF) and seek their advice as to what further steps to take.
39. Under the Solicitors' Indemnity Insurance Rules a firm must provide details of its insurer to a person who asserts a claim against the firm. The details are the name and address of the qualifying insurer and the policy number. It is good practice for you also to provide these details to a potential claimant if you discover an act or omission which could give rise to a claim. The Solicitors Regulation Authority may disclose information regarding a firm's qualifying insurer where it considers it appropriate to do so to any person asserting a claim against the firm.
40. You and your insurers should also comply with the terms of the professional negligence pre-action protocol (available from the website of the Department for Constitutional Affairs).
41. The aim of this protocol is to establish a framework in which there is an early exchange of information between the parties so that a claim can be fully investigated and, if possible, resolved without the need for litigation. This includes:
 - (a) ensuring that the parties are on an equal footing;
 - (b) saving expense;
 - (c) dealing with the dispute in ways which are proportionate:
 - (i) to the amount of money involved;
 - (ii) to the importance of the case;
 - (iii) to the complexity of the issues; and
 - (iv) to the financial position of each party; and
 - (d) ensuring that the claim is dealt with expeditiously and fairly.
42. The court can make an order for costs against a party for failure to comply with the protocol. While normally it would be a matter for the insurer to ensure that the protocol is complied with, you should be aware of it when asked to provide information to the insurer, and in the occasional circumstances where an insurer may agree to you handling the claim.