

## Rule 23 – Application of these rules

### Solicitors' Code of Conduct 2007

Professional Ethics

Dated 10 March 2007 and commencing on 1 July 2007

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## Rule 23 – Application of these rules

### 23.01

Subject to 23.03 below these rules apply to you (and “you” must be construed accordingly) if you are:

- (a) a solicitor, in relation to practice as a solicitor from offices in England and Wales and outside England and Wales;
- (b) an REL, in relation to practice as a lawyer of an Establishment Directive state from offices in England and Wales, Northern Ireland and Scotland;
- (c) a recognised body incorporated in England and Wales, in relation to practice from offices in England and Wales and outside England and Wales;
- (d) a recognised body incorporated in an Establishment Directive state but outside England and Wales:
  - (i) in relation to practice from offices in England and Wales; and
  - (ii) in relation to practice from offices outside England and Wales, but only to the following extent:
    - (A) 1.06 (Public confidence);
    - (B) 12.04(4) (Framework of practice);
    - (C) rule 14 (Incorporated practice); and

- (D) rule 15 (Overseas practice), but only to the extent that rule 15 specifically applies any provision of these rules to a recognised body incorporated outside England and Wales;
- (e) an RFL, in relation to practice as a foreign lawyer from offices in England and Wales, as:
  - (i) a partner in an MNP as defined in rule 24 (Interpretation);
  - (ii) a director of a recognised body which is a company; or
  - (iii) a member of a recognised body which is an LLP; and
- (f) a solicitor who was formerly an REL, in relation to practice as a lawyer of an Establishment Directive state from offices in the UK;

but see also 3.07(1) in relation to acting for seller and buyer, and 3.16(1) in relation to acting for lender and borrower.

## 23.02

The following apply in relation to other forms of practice, and outside practice:

- (a) 1.06 (Public confidence);
- (b) 10.01:
  - (i) if you are a solicitor, in England and Wales and overseas; and
  - (ii) if you are an REL, within the UK;
- (c) 10.05(1)(c) and (d), (2) and (3), and 15.10(2)(a)(ii) and (iii), (b) and (c);
- (d) 12.03(2) and 12.03(3).

## 23.03

The provisions of rules 1 to 14 and 16 to 25 of these rules will only apply to your overseas practice if specifically applied by rule 15 (Overseas practice).

### **Guidance to rule 23 – Application of these rules**

1. The rules apply in different ways to a solicitor, an REL, a recognised body incorporated in England and Wales, a recognised body incorporated outside England and Wales, and an RFL.
2. The key to the application of a rule is whether a matter relates to practice from an office in England and Wales, or to practice from an office outside England and Wales. This does not mean that different rules apply at different times during a cross-jurisdictional transaction. For example, if a client gives instructions for a transaction to your London office, then that transaction will fall into the category of practice from an office in England and Wales.

3. A solicitor's, REL's or recognised body's practice from an office in England and Wales is subject to all the rules except rule 15 (Overseas practice). However, in relation to practice from an office outside England and Wales:
  - (a) a solicitor is subject to the rules as applied or modified by rule 15;
  - (b) a recognised body incorporated in England and Wales is subject to the rules as applied or modified by rule 15;
  - (c) an REL is subject to the rules as applied or modified by rule 15 in relation to practice from an office in Scotland or Northern Ireland, but is not subject to any of the rules in relation to practice from an office outside the UK, except 1.06 (Public confidence); and
  - (d) a recognised body incorporated outside England and Wales is subject to 12.04(4) (Framework of practice), rule 14 (Incorporated practice), and to the rules as applied or modified by rule 15 (Overseas practice). Only a few of the rules apply, and only in particular circumstances.
4. An RFL who is a partner in an MNP, a director of a recognised body which is a company, or a member of a recognised body which is an LLP is subject to the rules in relation to practice from an office in England and Wales. An RFL is not subject to any of the rules in relation to practice outside an MNP or a recognised body, or in relation to practice from an office outside England and Wales, except 1.06 (Public confidence).
5. Certain rules also apply in relation to other forms of practice, and outside practice:
  - (a) Under 1.06 (Public confidence) you must not behave in a way that is likely to diminish the trust the public places in you or the profession. 1.06 applies to your conduct both in your practice as a solicitor, REL or RFL and outside it, to the extent that:
    - (i) as a solicitor, you are an officer of the Supreme Court and must behave as befits a member of the solicitors' profession;
    - (ii) as an REL, you are to be treated under the Establishment Directive Regulations as if you were an officer of the Supreme Court; you must behave as befits a member of your own profession and as would befit a member of the solicitors' profession; and
    - (iii) as an RFL, you have been registered under the Courts and Legal Services Act 1990 as a lawyer suitable to be a solicitor's partner, a director of a recognised body which is a company, or a member of a recognised body which is an LLP, and must behave as befits a member of your own profession and as would befit a member of the solicitors' profession.

A recognised body has been recognised under the Administration of Justice Act 1985 as a suitable body to provide the services of practising solicitors and other lawyers, and must conduct itself accordingly.

- (b) Under 10.01 (Not taking unfair advantage) you must not take unfair advantage of your position as a solicitor, or (within the UK) as an REL.
- (c) Under 10.05(1)(c) and (d), (2) and (3), and 15.10(2)(a)(ii) and (iii), (b) and (c) you must fulfil an undertaking even if it is given outside the course of your practice as a solicitor or as an REL, if you give the undertaking as a solicitor or (within the UK) as a lawyer of an Establishment Directive state.
- (d) Under 12.03(2) and (3), if you are an RFL you must not be held out as an RFL, or as regulated by or registered with the Law Society or the Solicitors Regulation Authority, except in the context of practice as a partner in an MNP, director of a recognised body which is a company, or member of a recognised body which is an LLP. Note that if you are an RFL you are not required specifically to fulfil an undertaking given as an RFL but outside the course of practice as an RFL, or prohibited from taking unfair advantage of your position as an RFL – but if you did either of these things you would breach 12.03(2) or (3) and possibly 1.06 (Public confidence).