

## Rule 5 – Business management in England and Wales

### Solicitors’ Code of Conduct 2007

Professional Ethics

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## **Rule 5 – Business management in England and Wales**

### **Introduction**

Rule 5 deals with the supervision and management of a firm or in-house practice, the maintenance of competence, and the internal business arrangements essential to the proper delivery of services to clients.

“Supervision” and “management” refer, respectively, to the professional overseeing of staff and clients’ matters; and to the overall direction and development of the firm or in-house practice and its day-to-day administration. The rule does not apply to your overseas practice but you must comply with 15.05.

Broadly, the rule aims to set out:

- (a) responsibility for the overall supervision and management framework of your firm or in-house practice;
- (b) the minimum requirements to be met in order to be “qualified to supervise”;
- (c) the minimum standards applying to supervision of clients’ matters; and
- (d) the minimum requirements in relation to those business arrangements considered to be essential to good practice and integral to compliance with supervision and other duties to clients.

## **Rule 5 – Business management in England and Wales**

### **5.01 Supervision and management responsibilities**

- (1) If you are a principal in a firm, a director of a recognised body which is a company, or a member of a recognised body which is an LLP, you must make arrangements for the effective management of the firm as a whole, and in particular provide for:
  - (a) compliance with the duties of a principal, in law and conduct, to exercise appropriate supervision over all staff, and ensure adequate supervision and direction of clients’ matters;
  - (b) compliance with the money laundering regulations, where applicable;
  - (c) compliance by the firm and individuals with key regulatory requirements such as certification, registration or recognition by the Solicitors Regulation Authority, compulsory professional indemnity cover, delivery of accountants’ reports, and obligations to co-operate with and report information to the Authority;
  - (d) the identification of conflicts of interests;

- (e) compliance with the requirements of rule 2 (Client relations) on client care, costs information and complaints handling;
  - (f) control of undertakings;
  - (g) the safekeeping of documents and assets entrusted to the firm;
  - (h) compliance with rule 6 (Equality and diversity);
  - (i) the training of individuals working in the firm to maintain a level of competence appropriate to their work and level of responsibility;
  - (j) financial control of budgets, expenditure and cashflow;
  - (k) the continuation of the practice of the firm in the event of absences and emergencies, with the minimum interruption to clients' business; and
  - (l) the management of risk.
- (2) If you are a solicitor or REL employed as the head of an in-house legal department, you must effect supervision and management arrangements within your department to provide for:
- (a) adequate supervision and direction of those assisting in your in-house practice;
  - (b) control of undertakings; and
  - (c) identification of conflicts of interests.

## **5.02 Persons who must be “qualified to supervise”**

- (1) The following persons must be “qualified to supervise”:
- (a) a sole principal;
  - (b) one of the partners of a partnership;
  - (c) one of the members of a recognised body which is an LLP;
  - (d) one of the directors of a recognised body which is a company;
  - (e) one of the solicitors or RELs employed by a law centre; or
  - (f) one in-house solicitor or in-house REL in any department where solicitors and/or RELs, as part of that employment:
    - (i) do publicly funded work; or
    - (ii) exercise or supervise the exercise of any right of audience or right to conduct litigation when advising or acting for members of the public.
- (2) To be “qualified to supervise” under this paragraph a person:
- (a) must have completed the training specified from time to time by the Solicitors Regulation Authority for this purpose; and
  - (b) must have been entitled to practise as a lawyer for at least 36 months within the last ten years; and must be able to demonstrate this if asked by the Solicitors Regulation Authority.

### **5.03 Supervision of work for clients and members of the public**

- (1) If you are a principal in a firm, you must ensure that your firm has in place a system for supervising clients' matters.
- (2) If you are an in-house solicitor or in-house REL and you are required to be "qualified to supervise" under 5.02(1)(e) or (f) above, you must ensure that your law centre or in-house legal department has in place a system for supervising work undertaken for members of the public.
- (3) The system for supervision under 5.03(1) and (2) must include appropriate and effective procedures under which the quality of work undertaken for clients and members of the public is checked with reasonable regularity by suitably experienced and competent persons within the firm, law centre or in-house legal department.

## **Guidance to rule 5 – Business management in England and Wales**

### *Geographical scope of the rule*

1. Rule 5 applies only to practice from an office in England and Wales; but if you are a solicitor practising from an office outside England and Wales or an REL practising from an office in Scotland or Northern Ireland, you will need to comply with 15.05 in relation to that practice.

### *Guidance on 5.01 generally*

2. The term "arrangements" is used broadly in 5.01 to encompass all systems, procedures, processes and methods of organisation put in place to achieve the required outcome. There is no requirement that these take a particular form; the method of delivery is a matter for the firm. Evidence that appropriate arrangements are actually in place and are operating will be required to demonstrate compliance. It is anticipated that most well run firms will already be complying.
3. Factors to be taken into account in determining the appropriateness of a set of arrangements will include the size and complexity of the firm; the number, experience and qualifications of staff; and the nature of the work undertaken. Arrangements are unlikely to be considered appropriate unless they include a mechanism for periodic review of their effectiveness.
4. The overarching responsibility for the management of the firm in the broadest sense – including, for example, practice development and business efficiency – rests with the principals, members of a recognised body which is an LLP and directors of a recognised body which is a company.
5. Firms will be expected to be able to produce evidence of a systematic and effective approach to management, and this may include the implementation by the firm of one or more of the following:
  - (a) guidance issued from time to time by the Solicitors Regulation Authority or the Law Society on the supervision and execution of

particular types of work, including guidance on solicitors' responsibilities for the supervision of clerks exercising rights of audience under section 27(2)(e) of the Courts and Legal Services Act 1990;

- (b) the firm's own properly documented standards and procedures;
  - (c) practice management standards promoted from time to time by the Law Society;
  - (d) accounting standards and procedures promoted from time to time by the Solicitors Regulation Authority;
  - (e) external quality standards such as BS EN ISO 9000, Investors in People, or quality standards required by the Legal Services Commission in connection with undertaking publicly funded work, or the Lexcel standard; and
  - (f) in the case of an in-house solicitor or in-house REL employed by a law centre, charitable or similar non-commercial advice service, management standards or procedures laid down by its management committee, the Law Centres Federation or equivalent "umbrella" organisation.
6. The day-to-day management of a firm can be delegated to an employee who is suitably experienced and competent, and a fit and proper person to perform the role. Firms must be able to demonstrate this if required.
7. Sections 41 to 44 of the Solicitors Act 1974 impose restrictions on the employment or remuneration of certain persons by a solicitor or REL.
- (a) Under section 41 of that Act, permission must be obtained from the Solicitors Regulation Authority by a solicitor or REL if he or she wishes to employ or remunerate any struck-off or suspended solicitor or REL. You can check with the Authority whether a solicitor has been struck off or suspended.
  - (b) Under section 43 of that Act, the Solicitors Disciplinary Tribunal can order that a former employee of a solicitor or REL may not be employed in future by any solicitor or REL without written permission. Such permission is given or withheld by the Solicitors Regulation Authority. You can check with the Authority whether a section 43 order exists.

*Compliance with duties in law and conduct, etc. – 5.01(1)(a)*

8. Principals are responsible in law and in conduct for their firms, including exercising proper control over their staff. For example, certain work may only be done by unqualified staff under the supervision and/or at the direction of persons who are allowed by law to do that work themselves. (See sections 22(2A) and 23(3) of the Solicitors Act 1974, section 9(4) of the Administration of Justice Act 1985, and section 84(2) of the Immigration and Asylum Act 1999.) Principals must therefore ensure that arrangements are in place to satisfy these statutory requirements, and this would mean that neither conveyancing nor probate work could be supervised by:
- (a) an RFL partner in an MNP; or

- (b) an REL who is not qualified to do the work under regulation 12 or 13 of the European Communities (Lawyer's Practice) Regulations 2000 (SI 2000/1119).
9. In conduct, principals are responsible for the acts and omissions of all staff, admitted and unadmitted alike. The duty to supervise staff covers not only employees but also independent contractors engaged to carry out work on behalf of the firm, e.g. consultants, locums and outdoor clerks. You cannot avoid responsibility for work carried out by the firm by leaving it entirely to staff, however well qualified.
  10. Responsibility for the overall supervision framework rests with principals, members of a recognised body which is an LLP, and directors of a recognised body which is a company. This includes, for example, matching staff expertise with relevant work so that work is supervised by the most appropriate individuals. More detailed requirements for the day-to-day supervision of work for clients and members of the public are set out in 5.03.
  11. Operationally, supervision can be delegated within an established framework of reporting and accountability. However, careful consideration should be given to the issues set out below.
  12. If a firm has more than one office, its principals, directors or members must be able to demonstrate the adequacy of their arrangements throughout the firm. This includes supervision and management of staff not working from a conventional office – for example, homeworkers, teleworkers, those visiting clients, attending court, at a police station, at a consulting room open only for a few hours a week, or staffing a stand at an exhibition.
  13. As a general guide, the lower the ratio of principals to offices and staff, the greater will be the onus on principals to demonstrate the adequacy of their supervision arrangements. For example, the more staff a sole principal employs, the higher the degree of personal involvement the sole principal may be expected to take in the supervision process, especially if those staff are inexperienced and/or unqualified.

*Money laundering – 5.01(1)(b)*

14. See the Money Laundering Regulations 2003 (SI 2003/3075) (and any subsequent regulations), and any guidance on compliance issued by the Solicitors Regulation Authority, including guidance on firms' internal anti-money laundering systems.

*Compliance with key regulatory obligations – 5.01(1)(c)*

15. The purpose of 5.01(1)(c) is to foster collective responsibility for the governance of the firm by requiring you to establish arrangements which provide for compliance with key regulatory obligations. These include arrangements to ensure that:
  - (a) every solicitor in the firm holds a practising certificate, and that the practising certificate is renewed promptly when required;

- (b) every lawyer in the firm who is required to be registered in the UK under the Establishment Directive (see rule 24) and is not registered with another UK regulatory body for lawyers, is registered as an REL and that registration is renewed promptly when required;
  - (c) every lawyer in the firm who is required under these rules to be an RFL (as a partner, member or director of the firm) is registered as an RFL and that the registration is renewed promptly when required;
  - (d) if the firm is a body corporate (or owns a body corporate which is required under these rules to be a recognised body), the body corporate has obtained recognition as a recognised body, its recognition is renewed promptly every three years when required, and it complies with the requirements of rule 14 (Incorporated practice);
  - (e) the firm complies with the Solicitors' Indemnity Insurance Rules;
  - (f) an accountant's report is delivered in accordance with the Solicitors' Accounts Rules 1998; and
  - (g) the firm notifies the Solicitors Regulation Authority of any change in the place or places of business of the solicitors, RELs and RFLs in the firm (a solicitor has a legal obligation to do this, under section 84 of the Solicitors Act 1974).
16. Some of these obligations mirror personal obligations of each solicitor, REL, RFL or recognised body (such as to renew a practising certificate or renew registration). The fact that 5.01(1)(c) is aimed at principals, members and directors will not relieve an individual solicitor, REL, RFL or recognised body, of responsibility in this regard. The precise nature of the arrangements required are for the firm to decide. See 20.01(Practising certificates).
17. If you are a partner in a partnership, a member of a recognised body which is an LLP, or a director of a recognised body which is a company, you are personally responsible for complying with the rules relating to solicitors' accounts and the delivery of an annual accountant's report. You will be liable to disciplinary action if there is a failure to comply with those rules, even if you have delegated book-keeping to someone else in the firm. The nature of the disciplinary action will depend on the seriousness of the breach and the extent to which you knew or should have known of the breach.
18. If you are an in-house solicitor or in-house REL and you receive or hold clients' money you must comply with the Solicitors' Accounts Rules 1998 and must submit an accountant's report.

*Identification of conflicts – 5.01(1)(d)*

19. Firms must adopt a systematic approach to identifying and avoiding conflicts of interests, dealing with conflicts between the duties of confidentiality and disclosure, and maintaining client confidentiality. See also the guidance to rule 3 (Conflict of interests) and to rule 4

(Confidentiality and disclosure) for assistance in identifying the sort of issues your arrangements will need to address.

*Compliance with the requirements of rule 2 on client care, costs information and complaints handling – 5.01(1)(e)*

20. This provision is designed to ensure that compliance with 2.02, 2.03 and 2.05 is addressed at the level of the firm's systems and procedures. If you have appropriate arrangements for compliance but a member of staff fails to follow established procedures in a one-off case, you will nevertheless have satisfied 5.01(1)(e). However, a serious breach or repeated 'minor' breaches of 2.02, 2.03 or 2.05 might indicate a failure to put in place effective arrangements, as required under 5.01(1)(e).

*Control of undertakings – 5.01(1)(f)*

21. See 10.05 (Undertakings) and the guidance to it for assistance in identifying the sort of issues your arrangements will need to address.

*Safekeeping of documents and assets – 5.01(1)(g)*

22. The terms "documents" and "assets" should be interpreted in a non-technical way to include, for example, client money, wills, deeds, investments and other property entrusted to the firm by clients and others.
23. The detail of the firm's arrangements will be a matter for you to decide in all the circumstances if you are a principal (or if your firm is a recognised body, if you are a company director or LLP member). However, as a minimum requirement you must be able to identify to whom documents and assets belong, and in connection with which matter.

*Equality and diversity – 5.01(1)(h)*

24. For guidance on equality and diversity and avoiding discrimination, see the guidance to rule 6 (Equality and diversity).

*The training of individuals working in the firm to maintain a level of competence appropriate to their work and level of responsibility – 5.01(1)(i)*

25. "Competence" is the ability to perform a task or role to a required standard by the application of essential knowledge, skill and understanding. The purpose of 5.01(1)(i) is to ensure that the competence of everyone in the firm involved in the provision of legal services is addressed systematically, at management level. Consequently, 5.01(1)(i) focuses on effecting arrangements to "provide for" competence levels to be maintained, and leaves it to the firm to determine the best method of doing this. It is anticipated that most firms will already have such arrangements in place.
26. The nature of the arrangements will vary significantly depending on the work and level of responsibility of each individual. However, if a breach of 5.01(1)(i) is alleged, evidence may be required to demonstrate that

issues of competence are addressed in the firm's procedures in relation to, for example, recruitment, ongoing work assessment and training.

27. Training is an integral element of maintaining competence. Subrule 5.01(1)(i) assumes that arrangements will include provision for training, but does not lay down any specific requirements. Training can be of any kind relevant to the work or responsibilities of the individual, and can be delivered by any appropriate method. For example, it could include on-the-job learning, mentoring schemes, in-house training, individual study, etc. It need not be accredited under the compulsory continuing professional development scheme (CPD) or involve attendance at courses.
28. Subrule 5.01(1)(i) does not relieve an individual of the duty to decline to act when unable to provide a competent service, or allow an individual to escape obligations under the CPD scheme.
29. Subrule 5.01(1)(i) is limited to effecting suitable arrangements. Therefore, an isolated case of incompetence would not normally indicate a breach. However, if you do not address issues of competence systematically, at management level, in your firm's arrangements for recruitment, ongoing work assessment and training, you would breach 5.01(1)(i).
30. It should be noted that training for the purpose of becoming "qualified to supervise" under 5.02 must be of a kind specified by the Solicitors Regulation Authority from time to time (see note 44 below).

*Financial control of budgets, expenditure and cashflow – 5.01(1)(j)*

31. Clients' money is more likely to be at risk in a firm whose principals do not exercise adequate oversight of the firm's own financial arrangements. The purpose of 5.01(1)(j) is to ensure this is addressed in the overall management framework – not to prescribe particular financial systems or to prevent principals from delegating day-to-day financial operations to suitable staff. It may also help firms to ensure that they are looking forward when undertaking their financial management, so that they will know they will be able to cover their commitments and plan their resources properly. It should be noted, however, that some accounting and management information systems do not assist in this regard, as they tend to deal only with historic information.

*Continuation of the practice of the firm in the event of absences and emergencies, etc. – 5.01(1)(k)*

32. There is a continuing duty to ensure that the practice of your firm will be carried on with the minimum interruption to clients' business even if you are absent. Your supervision and management arrangements must therefore provide for the running of the firm during any period of absence (for example, holiday or sick leave). The arrangements must ensure that any duties to clients and others can be fully met. If you are a sole principal, sole director or sole member you should make adequate provision for the running of the practice, in the event that you die or

become permanently disabled, by a person who is “qualified to supervise”.

33. If you are away for a month or more, and you are the only person in the firm “qualified to supervise” under 5.02, the arrangements for complying with 5.01(1)(k) will normally need to include the provision of another person qualified to supervise.
34. Rule 23 of the Solicitors’ Accounts Rules 1998 requires that a withdrawal from a client account cannot be made without a specific authority. This rule cannot be complied with if a principal, director or member leaves blank cheques for completion by staff at a later date, as signing a blank cheque is not giving a specific authority.
35. If you have not made adequate arrangements in advance to meet unforeseen circumstances, difficulties may arise in the conduct of clients’ affairs and in the administration of your own business. For example, an accountant’s report must be submitted, a practising certificate must be applied for, and indemnity cover must be obtained notwithstanding your absence. Consequently, if you are a sole principal or the sole member of a recognised body which is an LLP, or sole director of a recognised body which is a company, you should have an arrangement with another solicitor or REL (sufficiently experienced and entitled to practise) to supervise your firm until you return. You should notify your bank of these arrangements in advance, so that the solicitor or REL covering your absence can operate your client and office accounts.
36. If you are a sole principal and your absence lasts beyond the period covered by your practising certificate, you may be able to obtain permission, through the Solicitors Regulation Authority, for another solicitor to complete the application for a practising certificate. Your name can only remain on your professional stationery as principal if you continue to hold a practising certificate.
37. If you are a sole principal and you are struck off or suspended, any solicitor or REL with whom you have an arrangement to look after your firm in your absence will be left with full responsibility for the firm, as principal (but see the guidance to rule 12 for restrictions on the work an REL can do or supervise). They must inform clients of the firm, your bank, insurers, and the Solicitors Regulation Authority. Note that this will not apply if you are the sole director and owner of a recognised body because the recognised body would have become liable to revocation of its recognition – see rule 14 (Incorporated practice) and the guidance to it.
38. If you are a sole principal and you decide to stop practising, you must inform clients of the fact so that they may instruct another firm. Failure to inform clients could amount not only to negligence but also to misconduct. If you are considering retirement, guidance can be obtained from the Professional Ethics Guidance Team.

### *Management of risk – 5.01(1)(l)*

39. Firms should have arrangements in place for assessing the risks attaching to each area of their operation. The rule is aimed at ensuring risk is addressed in the firm's overall management framework. If a particular risk materialises which had not been foreseen in the firm's systems, this would not necessarily constitute a breach of 5.01(1)(l). Risk management arrangements are unlikely to be considered adequate unless they include periodic reviews of the firm's risk profile.
40. Ideally the scope of the arrangements should not be confined to risks arising from professional negligence, but should extend to client-related and business-related risks of all sorts. A non-exhaustive list might include complaints (including a complaints log); client-related credit risks and exposure; claims under legislation relating to such matters as data protection; IT failures and abuses; and damage to offices.

### *In-house practice – 5.01(2)*

41. As the head of an in-house legal department you do not have to institute all the arrangements required under 5.01(1). However, you must under 5.01(2) institute arrangements to ensure that:
  - (a) work done for members of the public is adequately supervised, and if unqualified staff within the department undertake work reserved to solicitors, they are supervised by a person qualified to do that work, and the work is done in the name of that qualified person;
  - (b) undertakings given by members of the department, whether or not they are solicitors or RELs, are given appropriately and can be fulfilled (you will be primarily responsible in conduct for fulfilling such undertakings); and
  - (c) conflicts of interests are identified.

### *Qualified to supervise – 5.02*

42. The purpose of 5.02 is to protect the public by ensuring that there is at least one person responsible for running the firm (or law centre or in-house legal practice falling within 5.02(1)(e) or (f)) who has the right kind of experience. The responsibilities involved relate to the management of the firm rather than the supervision of particular work, so the person "qualified to supervise" under 5.02 does not have to be personally entitled by law to supervise all work undertaken by the firm. However, an important part of that person's responsibilities would be to ensure that unqualified persons did not undertake reserved work except under the supervision of a suitably qualified person – see note 8 above.
43. Waivers may be granted in individual cases. An applicant must satisfy the Solicitors Regulation Authority that his or her circumstances are sufficiently exceptional to justify a departure from the requirements of 5.02, bearing in mind its purpose. Applications should be made to the Waivers Executive in the Professional Ethics Guidance Team.

44. The training presently specified by the Solicitors Regulation Authority is attendance at or participation in any course(s) or programme(s) of learning on management skills, for a minimum of 12 hours. The courses or programmes do not have to be accredited with CPD hours in order to satisfy the requirement. It is not normally necessary to check with the Authority before undertaking a course or programme unless the course is unusual and outside the mainstream of management training. Advice may be sought from the Professional Ethics Guidance Team.

### *Supervision of work for clients and members of the public – 5.03*

45. Subrule 5.03 is mainly aimed at principals in firms. However, it also applies to you if you are an in-house solicitor or in-house REL who acts for members of the public and fulfils the role of the person “qualified to supervise” under 5.02(1)(e) or (f).
46. A suitably experienced and competent person must undertake the supervision required by 5.03. This person need not hold a particular qualification or have been in legal practice for a particular time; but in certain circumstances (for example, where a sole principal has more than one office) these may be relevant factors in determining compliance with 5.03.
47. In supervising staff you would need to have sufficient legal knowledge and experience to be able to identify problems with the quality or conduct of the work; but you might not need to be an expert in the area of work you are supervising. The training and experience of the member of staff you are supervising will be relevant.
48. Subrule 5.03 requires that work for clients and members of the public is supervised wherever staff happen to be working, including at home or from “virtual” offices.
49. Supervision is an inherently internal function. The phrase “within the firm, law centre or in-house legal department” is included to ensure that supervision is not delegated outside your control but undertaken by someone who is genuinely part of the practice.
50. If a complaint is made, you will have to demonstrate that the work-checking procedures are “appropriate”, “effective”, and undertaken with “reasonable regularity”. Relevant factors will include the size and complexity of the firm, law centre or in-house department; the nature of the work; the experience of the individuals undertaking the work, and their level of responsibility.
51. Subrule 5.03 does not apply to the business development and practice management work of principals, directors or members.
52. Supervising “work for clients and members of the public” embraces all aspects of the work, including the handling of client money and compliance with rule 2 (Client relations).