

Rule 7 - Publicity

Solicitors' Code of Conduct 2007

Professional Ethics

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Rule 7 – Publicity

Introduction

You are generally free to publicise your practice as a solicitor, REL or RFL, subject to the requirements of this rule. The rule as it applies to your overseas practice is modified by 15.07.

Rule 7 – Publicity

7.01 Misleading or inaccurate publicity

Publicity must not be misleading or inaccurate.

7.02 Clarity as to charges

Any publicity relating to your charges must be clearly expressed. In relation to practice from an office in England and Wales it must be clear whether disbursements and VAT are included.

7.03 Unsolicited visits or telephone calls

- (1) You must not publicise your practice by making unsolicited visits or telephone calls to a member of the public.
- (2) “Member of the public” does not include:
 - (a) a current or former client;
 - (b) another lawyer;
 - (c) an existing or potential professional or business connection; or
 - (d) a commercial organisation or public body.

7.04 International aspects of publicity

Publicity intended for a jurisdiction outside England and Wales must comply with:

- (a) the provisions of rule 7 (and 15.07, if applicable); and
- (b) the rules in force in that jurisdiction concerning lawyers' publicity.

Publicity intended for a jurisdiction where it is permitted will not breach 7.04 through being incidentally received in a jurisdiction where it is not permitted.

7.05 Responsibility for publicity

You must not authorise any other person to conduct publicity for your practice in a way which would be contrary to rule 7 (and 15.07, if applicable).

7.06 Application

- (1) Rule 7 applies to any publicity you or your firm conduct(s) or authorise(s) in relation to:
 - (a) your practice;
 - (b) any other business or activity carried on by you or your firm; or
 - (c) any other business or activity carried on by others.
- (2) 7.01 to 7.05 apply to all forms of publicity including the name or description of your firm, stationery, advertisements, brochures, websites, directory entries, media appearances, promotional press releases, and direct approaches to potential clients and other persons, and whether conducted in person, in writing, or in electronic form.

7.07 Letterhead

- (1) The letterhead of a firm must bear the words "regulated by the Solicitors Regulation Authority".
- (2) (a) The letterhead of:
 - (i) a sole principal must include the name of the sole principal;
 - (ii) a partnership of 20 or fewer persons must include a list of the partners; and
 - (iii) a recognised body which is a company with a sole director must include the name of the director, identified as director.
- (b) The letterhead of:
 - (i) a partnership of more than 20 persons must include either a list of the partners;
 - (ii) a recognised body which is an LLP must include either a list of the members, identified as members; and

- (iii) a recognised body which is a company with more than one director must include either a list of the directors, identified as directors,
or a statement that the list is open to inspection at the office.
 - (c) (i) On the letterhead of a recognised body which is an unlimited company; or
 - (ii) in the list of partners referred to in 7.07(2)(a) or (b) if a partnership has an unlimited company as a member; or
 - (iii) in the list of members referred to in 7.07(2)(b) if an LLP has an unlimited company as a member,
it must be stated, either as part of the unlimited company's name or otherwise, that the unlimited company is a body corporate.
- (3) In a firm, if the partners (or directors in the case of a company, or members in the case of an LLP) comprise both solicitors and foreign lawyers, the list referred to in 7.07(2)(a) or (b) must:
 - (a) identify any solicitor as a solicitor;
 - (b) in the case of any lawyer or notary of an Establishment Directive state other than the UK:
 - (i) identify the jurisdiction(s) – local or national as appropriate – under whose professional title the lawyer or notary is practising;
 - (ii) give the professional title(s), expressed in an official language of the Establishment Directive state(s) concerned; and
 - (iii) if the lawyer is an REL, refer to that lawyer's registration with the Solicitors Regulation Authority; and
 - (c) indicate the professional qualification(s) as a lawyer and the country or jurisdiction of qualification of any RFL not included in (b) above.
- (4) Whenever an REL is named on the letterhead used by any firm or in-house practice, there must be compliance with 7.07(3)(b).
- (5) In 7.07, "letterhead" includes a fax heading.

Guidance to rule 7 – Publicity

Geographical scope of the rule

1. (a) Rule 7 applies to publicity in connection with practice from any office, whether in England and Wales or overseas – but the provisions are amended by 15.07 for publicity in connection with overseas practice.
- (b) Rule 7 does not apply to the website, e-mails, text messages or similar electronic communications of any practice you conduct from an office in an EU state other than the UK (see 15.07(a)).

- (c) Subrule 7.07 (Letterhead) does not apply to a solicitor's practice conducted from an office outside England and Wales or to an REL's practice conducted from an office in Scotland or Northern Ireland. However, you must comply with 15.07(b).

General

- 2. In the delivery of professional services, there is an imbalance of knowledge between clients and the public on the one hand, and the service provider on the other. Rule 7 addresses this in a number of ways – for example, by ensuring that clients and the public have appropriate information about you, your firm and the way you are regulated; and by prohibiting misleading publicity and inappropriate approaches for business.

Local law society involvement in dealing with minor breaches

- 3. In the case of breaches of the rule which are not serious, the Solicitors Regulation Authority encourages local law societies to bring the breaches to the attention of the practitioners concerned. Serious or persistent cases should be reported to the Authority.

Statutory requirements and voluntary codes

- 4. You must comply with the general law on advertising, including:
 - (a) any regulations made under the Consumer Credit Act 1974, concerning the content of advertisements;
 - (b) sections 20 and 21 of the Consumer Protection Act 1987, regarding misleading price indications;
 - (c) the Business Names Act 1985, concerning lists of partners and an address for service on stationery, etc.;
 - (d) chapter 1 of Part XI of the Companies Act 1985, regarding the appearance of the company name and other particulars on stationery, etc.;
 - (e) the Consumer Credit (Advertisements) Regulations 1989 (SI 1989/1125), in relation to advertisements to arrange mortgages;
 - (f) the Control of Misleading Advertisements (Amendment) Regulations 2000 (SI 2000/914), in relation to comparative advertising;
 - (g) the Data Protection Act 1998;
 - (h) E-Commerce Directive 2000/31/EC and the Electronic Commerce (EC Directive) Regulations 2002 (SI 2002/2013); and
 - (i) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426).
- 5. You should also have regard to the British Code of Advertising, Sales Promotion and Direct Marketing ("the Advertising Code"). The main principle of the Advertising Code is that media advertisements be legal, decent, honest and truthful. For further information see the website of the Advertising Standards Authority.

6. A breach of a statutory provision or the Advertising Code may also entail a breach of rule 7 or another rule of conduct, but would not necessarily do so. For example, an advert adjudged by the Advertising Standards Authority to be untruthful under the Advertising Code might also, in the context of a complaint, be found by the Solicitors Regulation Authority to breach 7.01 (which requires that publicity is not misleading or inaccurate).

Responsibility for publicity – 7.05

7. Where you become aware of breaches of rule 7 in publicity conducted on your behalf, you should take reasonable steps to have the publicity changed or withdrawn.

Clarity as to charges – 7.02

8. Publicity relating to charges must not be misleading or inaccurate, and must be clearly expressed. The following examples in notes 9 to 11 below will assist in complying.
9. Particular care should be taken when quoting fees which are intended to be net fees, i.e. fees which are reduced by the availability of commission (such as that on an endowment policy). Any fee quoted in these circumstances should be the gross fee.
10. The following are examples of publicity which would breach 7.01 and/or 7.02:
 - (a) publicity which includes an estimated fee pitched at an unrealistically low level;
 - (b) publicity which refers to an estimated or fixed fee plus disbursements, if expenses which are in the nature of overheads (such as normal postage and telephone calls) are then charged as disbursements; and
 - (c) publicity which includes an estimated or fixed fee for conveyancing services, if you then make an additional charge for work on a related mortgage loan or repayment, including work done for a lender – unless the publicity makes it clear that any such additional charge may be payable (e.g. by the use of a phrase like “excluding VAT, disbursements, mortgage related charges and fees for work done for a lender”).
11. Offers of discounts could be misleading if there are no clear rates of charges included. Similarly, if you publicise a service or services as being “free”, this should genuinely be the case and should not be conditional upon some other factor (e.g. receiving further instructions or some other benefit). If you publicise work as being done on a pro bono basis there must be no fees charged to the client, except where a conditional fee agreement is used and the only fees charged are those which you receive by way of costs from the client’s opponent or other third party and which are paid to a charity under a fee sharing agreement.

Agreeing to donate fees to charity

12. If you publicise that you will donate all, or a percentage, of your fees in respect of certain matters to charity, it would be misleading not to do so. The same applies if you agree to pay to a charity fees received by way of costs from your client's opponent or other third party where you act under a conditional fee agreement.

Name of firm

13. It would be misleading for a name or description to include the word "solicitor(s)", if none of the principals or directors (or members in the case of an LLP) is a solicitor.
14. It would be misleading for a sole principal to use "and partners" or "and associates" in a firm name unless the firm did formerly have more than one principal.

E-commerce, e-mail and websites

15. The Electronic Commerce (EC Directive) Regulations 2002 (SI 2002/2013) implementing the E-Commerce Directive 2000/31/EC came into force on 21 August 2002. The Directive covers cross-border e-commerce within the EU, including e-mails and websites. It will affect any firm with a website, because a website can be accessed from other member states.
16. The Electronic Commerce (EC Directive) Regulations 2002 require you to give certain information to persons visiting your firm's website or receiving e-mails from the firm (other than certain activities outside the scope of the E-Commerce Directive 2000/31/EC, e.g. litigation). The information you will need to give includes:
 - (a) details of the professional body with which you are registered;
 - (b) your professional title and the member state where it was granted; and
 - (c) a reference to the professional rules applicable to you in the member state where you are established and the means to access them.
17. If you are "established" in the UK, the professional body will be the Solicitors Regulation Authority and the applicable rules will be the solicitors' rules. For the rules, you may wish to provide a link to the Authority's website. If you are "established" in another member state, the professional body will be the bar or law society with which you are registered under the Establishment Directive, and the applicable rules will be their rules.
18. Any promotional material is publicity. E-mails sent to individuals, companies or organisations with the intention of promoting your practice are advertisements and therefore publicity. Any promotional material in a business e-mail – such as the name and description of the firm – will also be publicity. In these cases 7.01 to 7.06 will apply.

19. However, 7.07 applies only to “letterheads”. E-mails do not normally have a letterhead, so 7.07 will not normally apply to an e-mail. If, however, you send an e-mail which has a letterhead, or attaches a document with a letterhead, 7.07 will apply.
20. Subrule 7.07 reflects some of the provisions of the Business Names Act 1985 and Chapter 1 of Part XI of the Companies Act 1985, which apply to “business letters”. It is for the courts to determine whether or to what extent these Acts may apply to e-mails. However, the Board of the Solicitors Regulation Authority’s guess is that e-mails will only be “business letters” when they are formally set out as such and not when they are used as an alternative to a telephone call, telegram or telex. In the meantime it would be prudent for you to ensure that third parties with whom you deal by e-mail are given your practising address at an early stage, together with the details which would normally appear on the firm’s letterhead.

Unsolicited e-mails

21. Subrule 7.03 prohibits unsolicited visits or telephone calls to members of the public. E-mails do not fall within this prohibition. However, you should check the terms of your agreement with your internet service provider as to the use of unsolicited e-mail, and in some jurisdictions the law prohibits unsolicited e-mail. See also note 31 below on data protection.

Websites

22. Websites are publicity and should comply with 7.01 to 7.06. See also notes 24 and 26 below.
23. If your website or e-mails are to include any financial promotion as defined in the Financial Services and Markets Act 2000, your firm will need to be authorised by the Financial Services Authority. See also notes 29 and 30 below.

International aspects of publicity – 7.04

24. The implementation of the E-Commerce Directive 2000/31/EC means that there are two different regimes governing international e-publicity:
 - (a) cross-border e-publicity within the EU; and
 - (b) other cross-border e-publicity, i.e. the e-publicity of solicitors who are established outside the EU, wherever it is accessed or received; and the e-publicity of solicitors or RELs who are established in the EU, if it is accessed or received outside the EU.
25. Cross-border e-publicity within the EU is governed by the E-Commerce Directive 2000/31/EC and national implementing legislation. Other cross-border e-publicity is not. However, as a website can be accessed from anywhere, your website will have to comply with the E-Commerce Directive and the relevant implementing legislation if you are established anywhere within the EU.

26. Subrule 7.04 provides that publicity intended for a jurisdiction outside England and Wales must comply with rule 7 (or, in the case of overseas practice, 15.07) and with the rules in force in that jurisdiction concerning lawyers' publicity. Publicity intended for a jurisdiction where it is permitted will not breach this provision through being incidentally received in a jurisdiction where it is not permitted.
27. Websites can, of course, be accessed worldwide. The relevant factor is the jurisdiction or jurisdictions at which a website is targeted. For example, a website aimed at Australia must comply with rule 7 (if the solicitor's office is in England and Wales) or 15.07 (if the office is elsewhere), and any other restrictions in force in Australia concerning lawyers' publicity.

Mailshots

28. Unsolicited mailshots may be sent and may be targeted. However, you should note the data protection considerations discussed in note 31 below.

Financial promotions

29. Under section 21 of the Financial Services and Markets Act 2000 an unsolicited communication which invites or induces a person to enter into an investment activity is a financial promotion, and cannot be made by an unauthorised person.
30. If you intend to make any form of unsolicited contact allowed under 7.03, where it relates to an investment activity you must consider carefully whether you are authorised to carry out the activity, and also consider whether your contact constitutes a financial promotion and whether you are authorised to make such an approach. Breach of the Act is a criminal offence.

Data protection

31. Subrule 7.03(2)(a) permits unsolicited visits or telephone calls to a current or former client. Before contacting clients or former clients in order to publicise your firm you should consider the requirements of the Data Protection Act 1998. It is advisable to give all clients the opportunity to refuse to receive direct marketing correspondence or contact – for example, in a terms of business letter. This applies to unsolicited mailshots to current or former clients as well as unsolicited visits and telephone calls. Under the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426), prior opt-in consent is needed for direct marketing by e-mail.

Naming non-partners

32. If non-partners are named on a partnership's letterhead, their status should be made clear. A printed line is not sufficient in itself to distinguish partners from non-partners in a list. A similar standard applies to a recognised body's letterhead.

Salaried partners

33. A solicitor, REL or RFL who is held out on the letterhead of an unincorporated firm as a partner – even if separately designated as a “salaried” or “associate” partner – is treated by the Solicitors Regulation Authority as a full partner, and therefore must comply with the Solicitors’ Accounts Rules 1998 and the Solicitors’ Indemnity Insurance Rules.

“Partners” in an LLP

34. In the context of an LLP, it is permitted, if desired, to refer to members of the LLP as “partners”, provided the firm complies with the provisions of the Companies Act 1985, the Business Names Act 1985 and 7.07(2) as regards the items that must appear on the firm’s notepaper, including use of the word “members” in heading up or referring to the list of members.
35. Some firms may also wish to designate some non-members of the LLP as “partners”. This is potentially misleading, so if a firm wishes to go down this path care must be taken to ensure that:
 - (a) no person is designated as a “partner” unless he or she:
 - (i) is a member of the LLP, or a consultant or employee of the LLP with equivalent standing to a member; and
 - (ii) would be entitled under the solicitors’ rules to become a member of the LLP;
 - (b) appropriate explanatory wording (see note 36 below) appears on:
 - (i) the firm’s notepaper, faxes, e-mails, brochures and websites; and
 - (ii) any bill on which the word “partner” appears;
 - (c) care is taken to distinguish between a member of the LLP and a person who is not a member but who is referred to as a “partner”:
 - (i) in any agreement, terms of business letter or client care letter in which the word “partner” appears;
 - (ii) when addressing any client or third party who is not in receipt of a letter, fax or e-mail; and
 - (iii) in any formal context such as an affidavit, a statement to a court, or a communication with the Legal Services Commission.
36. Appropriate explanatory wording for a firm’s notepaper, faxes, e-mails, brochures, websites or bills would be to the effect that:

“We use the word ‘partner’ to refer to a member of the LLP, or an employee or consultant with equivalent standing and qualifications.”

If a firm wishes to refer to a list of “partners” as well as the statutory list of members, it is suggested that this might be done by way of some such wording as:

“A list of the members of the LLP is displayed at the above address, together with a list of those non-members who are designated as partners.”

37. Notes 34 to 36 above deal only with what is or is not professionally proper. They do not deal with any legal consequences for individuals or the firm if members or non-members are held out as “partners”.

“Partners” in a company

38. In the context of practice carried on by way of a company, it may be desired to designate some participants in the practice as “partners”. This is potentially misleading, so if you wish to go down this path care must be taken to ensure that:

- (a) the company complies with the provisions of the Companies Act 1985, the Business Names Act 1985 and 7.07(2) as regards the items that must appear on the firm’s notepaper, including use of the word “directors” in heading up or referring to the list of directors;
- (b) no person is designated as a “partner” unless he or she:
 - (i) is a shareowner or director of the company, or a consultant in or employee of the company with equivalent standing; and
 - (ii) would be entitled under these rules to own shares in the company;
- (c) appropriate explanatory wording (see note 39 below) appears on:
 - (i) the company’s notepaper, faxes, e-mails, brochures and websites; and
 - (ii) any bill on which the word “partner” appears; and
- (d) no misunderstanding arises as to the status of a “partner”:
 - (i) in any agreement, terms of business letter or client care letter in which the word “partner” appears;
 - (ii) when addressing any client or third party who is not in receipt of a letter, fax or e-mail; or
 - (iii) in any formal context such as an affidavit, a statement to a court, or a communication with the Legal Services Commission.

39. Appropriate explanatory wording for a company’s notepaper, faxes, e-mails, brochures, websites or bills would be to the effect that:

“We use the word ‘partner’ to refer to a shareowner or director of the company, or an employee or consultant with equivalent standing and qualifications.”

If you wish to refer to a list of “partners” as well as the statutory list of directors, it is suggested that this might be done by way of some such wording as:

“A list of the directors is displayed at the above address, together with a list of those persons who are designated as partners.”

40. Notes 38 and 39 above deal only with what is or is not professionally proper. They do not deal with any legal consequences if shareowners or other participants are held out as “partners”.

RELS

41. Subrules 7.07(3) and (4) set out the requirements to be followed when an REL is named on a letterhead, including a letterhead used by a firm or in-house practice. The following example illustrates how to comply:
“Paul van den Hoek, Advocaat (Brussels), registered with the Solicitors Regulation Authority”.

Naming staff

42. You may name staff on your letterhead. However, it would be misleading (and could involve a criminal offence) to use the word “solicitor” to refer to an individual who is not a solicitor of the Supreme Court of England and Wales.
43. A lawyer whose professional title is “solicitor” in another jurisdiction but who is not a solicitor of England and Wales can only be referred to in publicity as “solicitor” if the word is suitably qualified, for example by the name of that lawyer’s jurisdiction of qualification.

Naming clients

44. The fact that you have acted for a client and details of the client’s transactions are subject to the duty of confidentiality – see rule 4 (Confidentiality and disclosure) – and you will therefore normally need the client’s consent before disclosing such information in any publicity.

Fee earner leaving a firm

45. It is not in itself misconduct for you to write to clients of a firm after leaving that firm, inviting their instructions. However, this cannot absolve you from any legal obligations arising out of your former contract of employment or partnership agreement.