

## Appendix 4

### Rules of professional conduct

#### 1. Practice rule 16A (solicitors acting as advocates)

##### 1.1 *The Guide to the professional conduct of solicitors 8<sup>th</sup> edition 1999 (the Guide) Chapter 21:*

“21.02 Any solicitor acting as advocate shall at all times comply with the Law Society’s Code for Advocacy.”

“21.06 Solicitors who have been granted a qualification of a right of audience in the higher courts may exercise their extended rights of audience whether they are engaged in private practice or employed as in-house solicitors. However, additional restrictions apply to in-house advocates.”

##### 2.2 It should be noted that the *The Solicitors Code of Conduct [2007] and Solicitor’s Recognised Bodies Regulations [2007]* Not yet in force, replaces chapter 21 of the guide with Rule 11. Rule 11 does not refer to HRA specifically. The current draft states:

#### 2. Rule 11 – Litigation and advocacy

##### 2.1 Introduction

Rule 11 imposes additional duties on you if you are a solicitor, an REL or an RFL whenever you exercise a right to conduct litigation or act as an advocate. “Court” in this rule has a wide meaning – see rule 24 (Interpretation). References to appearing or acting as an advocate apply when you are exercising rights of audience before any court, not just if you have been granted rights of audience in the higher courts. The rule only applies in a modified form to overseas practice - see 15.11.

##### 2.2 Rule 11 – Litigation and advocacy

###### 11.01 Deceiving or misleading the court

- (1) You must never deceive or knowingly mislead the court.
- (2) You must draw to the court’s attention;
  - (a) all relevant cases and statutory provisions;
  - (b) the contents of any document that has been filed in the proceedings where failure to draw it to the court’s attention might result in the court being misled; and

- (c) and procedural irregularity.

#### 11.02 Obeying court orders

You must comply with any court order requiring you or your firm to take, or refrain from taking, a particular course of action.

#### 11.03 Contempt of court

You must not become in contempt of court

#### 11.04 Refusing instructions to act as advocate

- (1) You must not refuse to act as an advocate for any person on any of the following grounds:
  - (a) the the nature of the case is objectionable to you or to any section of the public;
  - (b) that the conduct, opinions or beliefs of the prospective client are unacceptable to you or to any section of the public; or
  - (c) that the source of any financial support which may properly be given to the prospective client for the proceedings is unacceptable to you.
- (2) You are not required to act as an advocate:
  - (a) under a conditional fee agreement; or
  - (b) if you reasonably consider that you are not being offered a proper fee having regard to:
    - (i) the circumstances of the case;
    - (ii) the nature of you practice; o
    - (iii) your experience and standing.

#### 11.05 Appearing as an advocate

If you are appearing as an advocate:

- (a) you must not say anything which is merely scandalous or intended only to insult a witness or any other person;
- (b) you must avoid naming in open court any third party whose character would thereby be called into question, unless it is necessary for the proper conduct of the case;
- (c) you must not call into question the character of a witness you have cross-examined unless the witness has had the opportunity to answer the allegations during cross-examination; and

- (d) you must not suggest that any person is guilty of a crime, fraud or misconduct unless such allegations:
  - (i) go to a matter in issue which is material to your client's case; and
  - (ii) appear to you to be supported by reasonable grounds.

11.06 Appearing as a witness

You must not appear as an advocate at a trial or act in the litigation if it is clear that you, or anyone within your firm, will be called as a witness, unless you are satisfied that this will not prejudice your independence as an advocate, or litigator, or the interests of your client or the interests of justice.

11.07 Payments to witness

You must not make, or offer to make, payments to a witness dependent upon the nature of the evidence given or upon the outcome of the case.

11.08 Recordings of child witnesses' evidence

If you are acting in the defence or prosecution of an accused and you have in your possession a copy of an audio or video recording of a child witness which has been identified as having been prepared to be admitted in evidence at a criminal trial in accordance with the relevant provisions of the Criminal Justice Act 1991 or the Youth Justice and Criminal Evidence Act 1999, you must:

- (a) not make or permit any person to make a copy of the recording;
- (b) not release the recording to the accused;
- (c) not make or permit any disclosure of the recording or its contents to any person except when, in your opinion, it is necessary in the course of preparing the prosecution, defence or appeal against conviction and/or sentence;
- (d) ensure that the recording is always kept in a locked, secure container when not in use; and
- (e) return the recording when you are no longer instructed in the matter.

2.3 New guidance note 1 to rule 11 in the Code of Conduct:

“If you are a solicitor you are entitled to conduct litigation in any court. You are also entitled to exercise any right of audience which solicitors had immediately before 7 December 1989, provided that your exercise of that right is in compliance with these rules. You are entitled to exercise additional rights of audience in the higher courts if you have obtained a relevant high courts advocacy qualification under the Higher Courts Qualification Regulations 1990.”

Additional second sentence to be inserted in guidance note 1 to rule 11 (to become guidance note 3 – RFL’s advocacy rights):

“The only exception to this is that you have litigation and advocacy rights before Asylum Support Adjudicators and the Asylum and Immigration Tribunal, but only if you do the work as a partner in and MNP, or as a member of a recognised body which is an LLP, or as a director of a recognised body which is a company.”