

Regulation of the legal profession in the UK (England and Wales): overview

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INTRODUCTION TO THE REGULATORY FRAMEWORK

1. How many categories of lawyer are there in your jurisdiction?

LSA regulated providers

The legislative framework for the regulation of legal services in England and Wales is set out in the Legal Services Act 2007 (LSA). Under the LSA, only individuals and businesses authorised by an Approved Regulator (AR) or those exempt from the requirement to be authorised are entitled to provide reserved legal activities. The six reserved legal activities are:

- The exercise of a right of audience.
- The conduct of litigation.
- Reserved instrument activities.
- Probate activities.
- Notarial activities.
- The administration of oaths.

Note that once a professional is authorised to practise reserved legal services by their AR, they become subject to regulation by that AR in respect of the carrying out of reserved legal activities as well as their other legal activities.

In certain circumstances, persons considered exempt for the purposes of the LSA can carry on a reserved legal activity without needing to be authorised. For example, in relation to exercising a right of audience a person is considered to be exempt if a right of audience has been granted by a specific court in relation to specific proceedings (such as to a paid or unpaid McKenzie Friend). The full list of exemptions is found in Schedule 3 of the LSA.

The professionals that can be authorised to carry out reserved legal activities under the LSA are:

- **Solicitors.** Solicitors form the largest part of the legal profession and often have direct contact with their clients, providing legal advice and assistance on a range of matters. They represent clients personally in the lower courts (Magistrates' Courts, County Court and tribunals). They may also represent clients in the higher courts (Crown Court, High Court, Court of Appeal and the Supreme Court) where they have obtained higher rights of audience. The AR for solicitors is the Solicitors Regulation Authority (SRA).
- **Barristers.** Barristers form the second largest part of the legal profession that is authorised to conduct reserved legal activities. Barristers are legal advisers and courtroom advocates. The AR for barristers is the Bar Standards Board (BSB).
- **Legal executives.** Practising Fellows of the Chartered Institute of Legal Executives specialise in a particular area of law. The

everyday work of a chartered legal executive is similar to that of a solicitor. Chartered legal executives have the option to become solicitors in one or two years after becoming Fellows and usually are exempt from the training contract graduates must complete to qualify as solicitors. The AR for chartered legal executives is CILEx Regulation.

- **Licensed conveyancers.** A licensed conveyancer is a specialist legal professional that deals with property transactions. The AR for licensed conveyancers is the Council for Licensed Conveyancers.
- **Patent attorneys.** Patent attorneys are patent and intellectual property specialists. The AR for patent attorneys is the Intellectual Property Regulation Board.
- **Trade mark attorneys.** A trade mark attorney is a person who is qualified to act in matters involving trade mark law and practice and provide legal advice on trade mark and design matters. The AR for trade mark attorneys is the Intellectual Property Regulation Board.
- **Costs lawyers.** Costs lawyers ensure that a firm's clients are properly charged for work undertaken on the client's behalf. They can represent clients in court when there is an issue over costs. The AR for costs lawyers is the Costs Lawyer Standards Board.
- **Notaries.** Notaries are lawyers appointed by the Archbishop of Canterbury. Notaries authenticate and certify signatures and documents. The AR for notaries is the Master of the Faculties.
- **Chartered accountants.** The title "chartered accountant" indicates that the person has undertaken a minimum of three years in-depth training, passed a series of examinations in financial management, auditing, business strategy and taxation, and committed to continuing professional development to keep their skills up to date. The AR for Chartered Accountants is the Institute of Chartered Accountants in England and Wales (ICAEW).

Non-LSA regulated providers

These are individuals and entities that provide legal services as a significant focus of their activity and are authorised and regulated by a regulator that is not an AR under the LSA. They include:

- Authorised Claims Management Companies regulated by the Claims Management Regulator.
- Immigration Advisers regulated by the Office of the Immigration Services Commissioner.

Unregulated providers

Providers that are not authorised and regulated under any legal sector or other specific legislation can provide legal services as a significant focus of their work. Unregulated legal services providers operate outside the areas of reserved legal activities under the LSA, for example, in the following areas:

- Will writing and estate administration.

- Family.
- Intellectual property.
- Employment.

Solicitors and barristers

As solicitors and barristers form the largest part of the legal profession in England and Wales, the answers below focus primarily on the position in relation to those professionals and, in particular, solicitors.

2. What stages of legal education must be completed to qualify as a lawyer in your jurisdiction?

Qualifying as a lawyer in England and Wales is a lengthy process and this article can provide a general overview only, with a focus on solicitors and barristers.

Broadly, there are three stages corresponding essentially to:

- Academic stage (university and post-graduate study).
- Vocational stage (professional training before qualification).
- Practising stage (continuing professional development (CPD) after qualification).

The Solicitors Qualifying Examination (SQE) is being introduced from 1 September 2021, replacing the Graduate Diploma in Law and the Legal Practice Diploma. There will be a phased period of introduction until 2032 when the SQE will fully replace the current route to practice, the Legal Practice Course (LPC).

To qualify as a solicitor, a person must:

- Have a degree in any subject or a qualification or experience equivalent to a degree, such as a solicitor apprenticeship which combines on the job experience and training.
- Pass both stages of the SQE assessment:
 - SQE1 on legal knowledge;
 - SQE2 on practical legal skills and knowledge.
- Two years' full-time (or equivalent) qualifying work experience.
- Pass the character and suitability requirements.

To become a barrister the process is very similar except that rather than taking the SQE, the relevant vocational course is the Bar Professional Training Course (BPTC) followed by one year of pupillage usually with a barristers' chambers.

See, further, *Question 12* on routes to qualification and changes to legal education in England and Wales.

3. What are the requirements to obtain a practising certificate/licence? How often must this be renewed?

Solicitors

The SRA has published standards and regulations which its regulated community is required to observe. These can be found on the SRA's website (<https://www.sra.org.uk/solicitors/standards-regulations/>).

In summary, and subject to some limited exceptions, the effect of these rules is that in relation to SRA-regulated firms a person must have a practising certificate if they are involved in the firm as a practising solicitor, even if they are not employed in that capacity, and they are:

- A sole practitioner.

- A manager or a member or they have an ownership interest in an authorised body, either directly or through an EU corporate practice which is a manager in the firm.
- An employee, consultant or locum of a sole practitioner or an authorised body if they are on the roll and are employed in connection with the provision of legal services.

A practising certificate must be renewed annually subject to payment of a fee.

Barristers

Barristers are only legally entitled to undertake a reserved legal activity if they have been authorised to do so by the BSB. To practise in England and Wales a barrister must have an annual Practising Certificate. This is renewed online via a process known as Authorisation to Practise subject to payment of a fee.

The Bar's Code of Conduct allows pupils who have completed the non-practising (six-month) period of pupillage to practise as a pupil barrister. By submitting a satisfactorily completed certificate of completion or exemption from the non-practising period of pupillage (first six months) and registering a practising period, pupils will be issued with a provisional practising certificate, which will be valid for the duration of the practising period of pupillage.

4. Are there any limitations on lawyers advising throughout your jurisdiction?

There are no geographic limitations placed on lawyers advising throughout England and Wales, provided that they have the relevant authorisation to practice (see *Question 2*) and comply with the relevant code of conduct (see *Question 4*).

5. Are there any written codes of conduct or handbooks, or rules and/or principles that lawyers are required to abide by?

LSA regulatory framework

The five professional principles in the LSA are:

- That authorised persons must:
 - act with independence and integrity;
 - maintain proper standards of work;
 - act in the best interests of their clients.
- That persons who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorised persons, must comply with their duty to the court to act with independence in the interests of justice.
- That the affairs of clients must be kept confidential.

These principles are reflected in the written codes of conduct to which those lawyers carrying out reserved legal services are subject.

Solicitors

The SRA Handbook was replaced by the SRA Standards and Regulations on 25 November 2019 (www.sra.org.uk/solicitors/standards-regulations-resources/). The SRA Handbook and Code of Conduct 2011 still applies to conduct taken before 25 November 2019.

The new rules are shorter and less prescriptive than the previous set of rules.

Under the Standards and Regulations, seven principles apply to individual lawyers and firms.

Solicitors must act:

- In a way that upholds the constitutional principle of the rule of law, and the proper administration of justice.
- In a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons.
- With independence.
- With honesty.
- With integrity.
- In a way that encourages equality, diversity and inclusion.
- In the best interests of each client.

There are two Codes of Conduct which apply to all solicitors, firms, registered European lawyers (RELS) and registered foreign lawyers (RFLs) authorised by the SRA:

- Code of Conduct for Solicitors, Registered European Lawyers and Registered Foreign Lawyers (www.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/).
- Code of Conduct for Firms (www.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/).

Other regulations relevant to solicitors are the:

- Authorisation of Individuals Regulations.
- Transparency rules.

The Accounts Rules 2019 (www.sra.org.uk/solicitors/standards-regulations/accounts-rules/) apply to law firms including lawyers practising on their own.

Barristers

Part 2 of the BSB Handbook (BSB Handbook) provides a code of conduct for barristers. The Handbook includes Core Duties (CD), Outcomes (o), Guidance (g), Rules and Regulations (r). The second edition of the BSB Handbook was published in April 2015.

6. What are the key rules governing the legal profession in the jurisdiction?

The key legislation governing the legal profession in England and Wales is the LSA (see *Question 1*).

7. Who has the right to conduct litigation in court, and who has rights of audience?

Right to conduct litigation

The conduct of litigation is a reserved activity under the LSA. The following categories of professional have the right to conduct litigation where they have been authorised to do so by their AR:

- Solicitors.
- Barristers.
- Legal executives.
- Patent attorneys.
- Trade mark attorneys.
- Costs lawyers.

The BSB now allows both self-employed and employed barristers to apply to be authorised to conduct litigation. There are three ways in which barristers can be authorised to conduct litigation:

- Self-employed and employed barristers can apply for an extension of their practising certificate by meeting the requirements of rule section 47 of the Scope of Practice Rules in the BSB Handbook (this process has been in place since 22 January 2014).
- Employed barristers previously authorised to conduct litigation under Annex I of the old Code of Conduct (8th Ed) retain their authorisation, provided that they remain in employed practice.
- By being independently entitled to conduct litigation by virtue of primary legislation (see *Schedule 3, LSA*).
- In certain circumstances, persons may be exempt from the requirement for authorisation. This includes:
 - Where a right to conduct litigation has been granted by a specific court in relation to specific proceedings.
 - Where a right to conduct litigation has been granted in relation to specific proceedings because of a particular legislative provision.
- Litigants in person.

Rights of audience

The right to appear before and address a court, including the right to call and examine witnesses is a reserved activity under the LSA.

The following categories of professionals have the rights of audience where they have been authorised by their AR:

- Solicitors.
- Barristers.
- Legal executives.
- Patent attorneys.
- Trade mark attorneys.
- Costs lawyers.
- The exercise of rights of audience in the higher courts is subject to additional assessment requirements.

In certain circumstances, persons may be exempt from the requirement for authorisation. This includes:

- Where a right of audience has been granted by a specific court in relation to specific proceedings (for example, to a paid or unpaid McKenzie Friend (someone who assists a litigant in person in court)).
- Where a right of audience has been granted before a specific court in relation to specific proceedings because of a particular legislative provision.
- Litigants in person.

PROFESSIONAL STRUCTURES

8. How are law firms in your jurisdiction usually organised?

Solicitors can be organised as sole practitioners, limited companies, partnerships or limited liability partnerships. The SRA adopts a broadly similar approach for those applying for authorisation as either a recognised sole practitioner, recognised body or licensable body (see *Question 9* on Alternative Business Structures). All firms and recognised sole practitioners must appoint a Compliance Officer for Legal Practice (COLP) and a Compliance Officer for Finance and Administration (COFA).

About 80% of barristers are self-employed. Self-employed barristers work in offices called chambers, which they can share with other barristers, but they are all independent practitioners. On completion of their training (including an academic, vocational and apprenticeship stage called pupillage), barristers apply for a permanent position known as tenancy in a set of chambers. Barristers can practise on their own as self-employed barristers provided that they have practised for a total of three years following completion of pupillage with full rights of audience in the chambers or office of a qualified person.

Barristers can also work in an employed capacity in a multi-disciplinary practice (MDP). Most MDPs are regulated by the SRA and are distinguished from law firms by rules permitting non-lawyers to hold ownership interests. Barristers can become owners or managers of MDPs (see *Question 8*).

9. Are multi-disciplinary practices (MDPs) allowed in your jurisdiction?

The LSA aimed to increase competition in the legal services market by allowing new business models known as "Alternative Business Structures" (ABS) to provide legal services. Before the LSA there were generally restrictions on non-lawyers owning or investing in businesses providing regulated legal services. The LSA sets out the regulatory framework for ABS.

ABS allow non-lawyers and lawyers to form companies, invest or be involved in the management of companies providing reserved legal activities. ABS cover a range of different types of business model, including multi-disciplinary firms in which lawyers and non-lawyers work together to provide a range of legal and non-legal services.

Some of the ARs are also licensing authorities (LA), which means that they can license ABS that provide reserved legal activities.

10. Are alternative legal service providers common? If so, to what restrictions are they subject, if any?

Community legal service providers

There are a range of unregulated legal services providers including charities, public bodies, membership bodies and trade unions.

Citizens Advice, for example, provides free advice online, by web chat, by phone and locally in high street premises, community centres, doctors' surgeries, courts and prisons.

Some not-for-profit providers offer free advice to the public, while others (such as trade unions and membership bodies) provide advice to their members.

Alternative legal service providers

Legal process outsourcing generally consists of sending the more "routine", commoditised aspects of legal work out to third-party providers.

This commoditised work includes:

- Litigation and business document review.
- Contract management.
- Electronic discovery.
- Legal analytics.
- Document preparation.

There are now increasing signs that both law firms and companies are also starting to outsource legal services that move up the value chain and require more complex analysis or advice.

11. Are there any restrictions on self-employed lawyers providing legal services on a freelance basis?

There are a variety of different structures for the provision of legal services in England and Wales (see *Question 8 to 10*).

Most associate solicitors will operate as employees of law firms, although it is open to an individual to establish themselves as a sole practitioner solicitor, typically after three years of qualification. The overwhelming majority of barristers are self-employed.

Increasingly, the legal services market in England and Wales has seen the development of alternative and flexible career options including operating on a contract or freelance basis where the lawyer provides services directly to the client, or as an independent consultant. Where the individual provides reserved legal services, they must typically hold a current practising certificate from their AR.

12. Do restrictions apply to lawyers qualified outside your jurisdiction/law firms established in another country practising in your jurisdiction?

"Foreign lawyer" is defined in section 89 of the Courts and Legal Services Act 1990 (CLSA) as "a person who is not a solicitor of England and Wales or a barrister but who is a member, and entitled to practise as such, of a legal profession regulated within a jurisdiction outside of England and Wales". This section provides a brief overview of the requirements and routes by which foreign lawyers can be entitled to practise as a solicitor or barrister in England and Wales.

Routes to practise as a solicitor

A foreign lawyer who wants to become a manager or owner of an authorised law firm (other than a licensed body) in England and Wales, must register with the SRA as a Registered Foreign Lawyer (RFL).

A Scottish advocate or solicitor, a Northern Irish barrister or solicitor or a barrister of the Irish Republic not registered with the BSB must register as an RFL if they are based wholly or partly in England and Wales and want to be a manager or owner of an authorised firm (which is not a licensed body).

If a foreign lawyer wants to work in England and Wales but does not wish to be an owner or manager of a relevant firm as above, and does not intend to carry out the reserved legal activities that RFLs are permitted to do, they will not need to become an RFL. They will not be able to conduct immigration work unless authorised by the Immigration Services Commissioner to do so.

There is no requirement to register for the following:

- An employee of an authorised body who does not carry out any reserved legal activities other than those which are allowed under the LSA to be carried out under the supervision of an authorised person.
- An in-house lawyer.
- Owners/employees of a foreign law firm who are practising in England and Wales for that foreign firm.

An RFL can practise the law of their home state and advise on English and Welsh law, providing unreserved legal services. There are some very limited exceptions for reserved services.

An application to become a RFL is subject to the following requirements:

- The applicant must be a foreign lawyer (see above) and a member of a profession which is approved by the SRA as appropriately regulated.
- The applicant's own professional rules must allow practice with solicitors in England and Wales.
- The applicant must satisfy the SRA as to their character and suitability.

RFLs can become solicitors by taking the Qualified Lawyers Transfer Scheme assessments, where they are qualified in a jurisdiction recognised by the SRA for this purpose.

Routes to practice as a barrister

A qualified solicitor, qualified lawyer from another jurisdiction, or a legal academic wishing to practise as a barrister in England and Wales, must transfer to the Bar of England and Wales. Depending on their qualifications and experience, they may be exempt from some or all of the requirements for training for the Bar. Some of these exemptions may be granted subject to passing the Bar Transfer Test (BTT).

To be granted an exemption, an applicant must submit an application to the BSB which includes information on their qualifications and experience.

CLIENT PROTECTION

13. Is there a national regulator of the legal profession? In a federal jurisdiction, which body regulates the legal profession in the individual states?

The Legal Services Board (LSB) is the oversight regulator for the legal services ARs under the LSA. The LSB has regulatory objectives which it shares with the ARs, each of which have direct responsibility for the day-to-day regulation of the different types of legal professionals they regulate.

The ARs and LAs (as relevant) for the professions that they regulate under the LSA, together with the reserved legal activities regulated by the respective regulator, are:

- For solicitors, the AR and LR is the SRA (regarding the exercise of right of audience, the conduct of litigation, reserved instrument activities, probate activities and the administration of oaths) (<https://www.sra.org.uk/>).
- For barristers, the AR is the BSB (regarding the exercise of right of audience, the conduct of litigation, reserved instrument activities, probate activities and the administration of oaths) (www.barstandardsboard.org.uk/).
- For legal executives, the AR is CILEx Regulation (regarding the exercise of right of audience, the conduct of litigation, reserved instrument activities, probate activities and the administration of oaths) (www.cilex.org.uk/).
- For licensed conveyancers, the AR and LA is the Council for Licensed Conveyancers (regarding reserved instrument activities, probate activities and the administration of oaths) (www.clc-uk.org/).
- For patent attorneys, the AR and LA is the Intellectual Property Regulation Board (regarding the exercise of right of audience, the conduct of litigation, reserved instrument activities and the administration of oaths) (<http://ipreg.org.uk/>).
- For trade mark attorneys, the AR and LA is the Intellectual Property Regulation Board (regarding the exercise of right of audience, the conduct of litigation, reserved instrument activities and the administration of oaths).

- For costs lawyers, the AR and LA is the Costs Lawyer Standards Board (regarding the exercise of right of audience, the conduct of litigation and the administration of oaths) (www.clsb.info/).
- For notaries, the AR is the Master of the Faculties (regarding probate activities, notarial activities and the administration of oaths) (www.facultyoffice.org.uk/).
- For chartered accountants, the AR and LA is the ICAEW (regarding probate activities) (www.icaew.com/).

The following are also ARs for probate activities only, but as at July 2016 do not currently authorise anyone to offer this service:

- Institute of Chartered Accountants of Scotland (ICAS) (<https://www.icas.com/>).
- Association of Chartered Certified Accountants (ACCA) (<https://www.accaglobal.com/>).

14. Is there a register of qualified lawyers and, if so, how can it be accessed?

Registers of qualified lawyers can be accessed via the websites of the relevant Ars (see Question 13).

15. Is membership of a national bar association, law society or similar mandatory?

The representative bodies for the legal professions that are regulated under the LSA are:

- **Solicitors:** Law Society (www.lawsociety.org.uk/).
- **Barristers:** they must be members of one of the Inns of Court, which are the professional associations for barristers. The Inns also have an educational, supervisory and disciplinary role. The four Inns of Court are the:
 - Honourable Society of Lincoln's Inn;
 - Honourable Society of the Inner Temple;
 - Honourable Society of the Middle Temple; and
 - Honourable Society of Gray's Inn.
- The Bar Council represents all barristers in England and Wales (www.barcouncil.org.uk/).
- **Legal executives:** Chartered Institute of Legal Executives (www.cilex.org.uk/).
- **Licensed conveyancers:** Council for Licensed Conveyancers (AR and LA; there is no representative body).
- **Patent attorneys:** Chartered Institute of Patent Attorneys (www.cipa.org.uk/).
- **Trade mark attorneys:** Institute of Trade Mark Attorneys (www.itma.org.uk/home).
- **Costs lawyers:** Association of Costs Lawyers (www.associationofcostslawyers.co.uk/).
- **Notaries:** Master of the Faculties (AR; there is no representative body) (www.thenotariessociety.org.uk/).
- **Chartered accountants:** ICAEW. (There is no separate regulatory body; all decisions relating to legal activities are delegated to the independently chaired Probate Committee).

16. Is there an independent disciplinary tribunal, and what disciplinary powers do the relevant regulatory bodies have? What sanctions are available?

Solicitors

The Solicitors Disciplinary Tribunal (SDT) is a statutory tribunal under section 46 of The Solicitors Act 1974. The SDT and its administration company, Solicitors Disciplinary Tribunal Administration Ltd, are wholly independent of the SRA.

The SDT adjudicates on alleged breaches of the rules and regulations applicable to solicitors and their firms, including the SRA Code of Conduct 2019 and the SRA Principles 2019. The sanctions available to the SDT include fines, the imposition of restrictions on practice and, in serious and exceptional cases, removal from the roll of solicitors. The SDT does not have the power to award compensation.

Barristers

If the BSB receives a complaint about the conduct of a barrister it investigates that complaint. If the matter is serious enough it may pass the case on to the Bar Tribunals and Adjudication Service (BTAS). BTAS is an independent organisation that arranges disciplinary tribunals. If a barrister is found guilty of professional misconduct, BTAS publishes the finding on its website.

The sanctions available include any, or a combination of, the following:

- Giving advice.
- Warnings.
- Requirements to complete further professional development training.
- Fines of up to GBP50,000 (or GBP15,000 for conduct occurring before 6 January 2014).
- Bans and suspensions from practise.

17. Is indemnity insurance mandatory for practising lawyers? If so, what is the minimum level of cover required and are there any mandatory terms?

Solicitors

The SRA requires the following to hold "adequate and appropriate insurance":

- SRA regulated firms and their managers (*rule 3.1, SRA Indemnity Insurance Rules*).
- Solicitors or RELs practising in a non-commercial body providing some reserved legal services to the public (*paragraph 5.6, Code of Conduct*).
- Solicitors or RELs practising as freelance solicitors providing reserved legal services to the public (*regulation 10.2(b), Authorisation of Individuals Regulations*).

The SRA has published guidance on what is considered "adequate and appropriate" insurance in the specific circumstances (www.sra.org.uk/solicitors/guidance/adequate-and-appropriate-indemnity-insurance/).

Barristers

All self-employed barristers are required by the BSB to take out professional indemnity insurance with Bar Mutual. Bar Mutual is a not-for-profit company owned and controlled by its members. Self-employed barristers are required to renew their professional indemnity insurance with Bar Mutual on 1 April each year.

Premiums are set in accordance with a rating schedule published each year.

Bar Mutual insures approximately 13,000 self-employed barristers. The minimum level of cover provided by Bar Mutual is GBP500,000. The maximum is GBP2.5 million. Barristers can obtain top-up cover exceeding this amount from other insurers.

18. What are the rules on conflicts of interest?

Solicitors

Paragraph 6 of the SRA Code of Conduct deals with the handling of conflicts of interests. A solicitor can never act where there is a conflict, or a significant risk of conflict, between them and their client. If there is a conflict, or a significant risk of a conflict, between two or more current clients, a solicitor must not act for all or both of them unless the matter falls within the scope of the limited exceptions set out in the guidance (www.sra.org.uk/solicitors/guidance/conflicts-interest/).

Barristers

The BSB Handbook (*rC21*) deals with the handling of conflicts of interest.

A barrister must not accept instructions to act in a particular matter if:

- There is a conflict of interest between the barrister's own personal interests and the interests of the prospective client in respect of the particular matter.
- There is a conflict of interest between the prospective client and one or more of the barrister's former or existing clients in respect of the particular matter, unless all of the clients who have an interest in the particular matter give their informed consent to the barrister acting in such circumstances.

19. What actions must a lawyer take when a conflict arises?

See *Question 16*.

20. When can a lawyer represent more than one client in a transaction? Can a lawyer act for either of the clients between whom a conflict arises?

See *Question 16*.

21. To whom should complaints about lawyers' professional conduct be made?

Complaints about lawyers should be made to the relevant AR or to the Legal Ombudsman. The Legal Ombudsman is an independent and impartial scheme set up to help resolve legal service disputes.

22. Can lawyers/law firms hold client files, money or property in the event of a dispute about their retainer or fees?

Solicitors

As a general matter, client files, money and property belong to the client and they are entitled to take possession of them unless the lawyer or firm is entitled to exercise a lien over them.

Guidance on this matter in relation to the current Code of Conduct (2019) and the accounts rules can be found on the SRA's website (www.sra.org.uk/risk/outlook/risk-outlook-2020-21/client-money/).

In all matters of professional conduct that interplay with the general law and where determination of the correct course of conduct is often fact-specific, individual lawyers should seek their own advice or ethics guidance on what is appropriate in all the circumstances of the case.

Barristers

Barristers are not entitled to hold client funds (see *Question 31*).

As a general matter, client files and property belong to the client and they are entitled to take possession of them unless the lawyer or firm is entitled to exercise a lien over them.

The BSB has not issued guidance on this matter in relation to the current version of the BSB Handbook.

In all matters of professional conduct that interplay with the general law and where determination of the correct course of conduct is often fact-specific, individual lawyers should seek their own advice or ethics guidance on what is appropriate in all the circumstances of the case.

CLIENT ENGAGEMENT

23. What do client engagement communications typically include? Are there any mandatory provisions that must be included? Are there separate provisions for litigation and non-litigation (transaction or advisory) matters?

Solicitors

Client information is governed by paragraph 8 of the Code of Conduct 2019. The requirements include (in brief):

- Ensuring clients can make informed decisions about the services they need, how their matter will be handled and the options available to them.
- Giving clients the best possible information about how their matter will be priced and the likely overall costs.
- Ensuring publicity is accurate and not misleading, including that relating to charges
- Ensuring clients understand how the services provided are regulated and any regulatory protections available to them.

The Law Society provides a summary of what information must be provided to clients on their website (www.lawsociety.org.uk/topics/client-care/client-information-requirements).

Barristers

The BSB Handbook (*rC99 to rC103*) deals with the provision of information to clients.

The nature of the engagement letter depends on whether the barrister is instructed by a professional client (for example, a solicitor) or whether they are acting on a direct access basis (see *Question 24*).

A barrister must notify clients in writing when they are instructed, or, if that is not practicable, at the next appropriate opportunity:

- Of their right to make a complaint, including their right to complain to the Legal Ombudsman (if they have such a right), how, and to whom, they can complain, and of any time limits for making a complaint (*rC99.1*).

- If they are doing referral work, that the lay client can complain directly to chambers or the BSB authorised body without going through solicitors (*rC99.2*).

(*rule C99, BSB Handbook*.)

If a barrister is doing direct or public access, or licensed access work using an intermediary, the intermediary must similarly be informed.

If the barrister is doing referral work, they do not need to give a professional client the information set out in rule C99.1 and rule C99.2, in a separate, specific letter. It is enough to provide it in the ordinary terms of reference letter (or equivalent letter), which they send when they accept instructions. Chambers' websites and literature must display information about the chambers' complaints procedure.

24. Does a legal professional have any on-going obligations in relation to the client?

Solicitors

Many of the requirements imposed on solicitors are continuing obligations.

- The duty to protect confidential information continues despite the termination of the retainer. Solicitors must keep the affairs of current and former clients confidential unless disclosure is required or permitted by law or the client consents (*paragraph 6.3 of the Code of Conduct*).
- When providing services to a member of the public, solicitors must ensure that clients receive the best possible information about how their matter will be priced and, both at the time of engagement and when appropriate as their matter progresses, about the likely overall cost of the matter and any costs incurred (*paragraph 8.7 of the Code of Conduct*).
- The SRA Accounts Rules 2019 set out detailed requirements on record keeping during and after the retainer.

Barristers

A barrister who accepts public access instructions must either retain, or take reasonable steps to ensure that the lay client will retain, for at least seven years after the date of the last item of work done:

- Copies of all instructions (including supplemental instructions).
- Copies of all advices given and documents drafted or approved.
- The originals, copies or a list of all documents enclosed with any instructions.
- Notes of all conferences and of all advice given on the telephone.

(*rule C129, BSB Handbook*.)

Confidentiality obligations reflect the general law and survive the retainer (see *Question 25* and *Question 26*).

25. Can a legal professional refuse to accept a client instruction or cease to act, and in what circumstances?

Solicitors

A solicitor is generally free to decide whether to accept instructions in any matter, provided that they do not discriminate unlawfully (*paragraph 1.1, Code of Conduct*).

Barristers

The "cab rank rule" is shorthand for the professional obligation on barristers to accept instructions via a professional client regardless of any personal dislike of the client or the case (*rule C29, BSB Handbook*).

A barrister may refuse to accept instructions where one of the exceptions to the Cab Rank Rule applies, specifically where:

- The barrister is required to refuse to accept the instructions pursuant to rC21 (in particular, conflict of interest).
- Accepting the instructions would require the barrister or the named authorised individual to do something other than in the course of their ordinary working time or to cancel a commitment already in their diary.
- The potential liability for professional negligence in respect of the particular matter could exceed the level of professional indemnity insurance which is reasonably available and likely to be available in the market for the barrister to accept.
- The barrister is a Queen's Counsel, and the acceptance of the instructions would require them to act without a junior in circumstances where they reasonably consider that the interests of the client require that a junior should also be instructed.
- Accepting the instructions would require the barrister to do foreign work.
- Accepting the instructions would require the barrister to act for a foreign lawyer (other than a European lawyer, a lawyer from a country that is a member of EFTA, a solicitor or barrister of Northern Ireland or a solicitor or advocate under the law of Scotland).
- The professional client:
 - is not accepting liability for the barrister's fees;
 - represents, in the barrister's reasonable opinion, an unacceptable credit risk; or
 - is instructing the barrister as a lay client and not in their capacity as a professional client.

(*rule C30, BSB Handbook*.)

A barrister is not required to accept instructions in direct access cases (*see Question 24*).

26. Do clients have direct access to all lawyers working on their matter?

Historically, members of the public (lay clients) did not have direct access to barristers and needed to instruct a barrister via a solicitor. Currently, any person can instruct a barrister directly without having to involve an intermediary (for example, a solicitor). This is called "direct access" or "public access". The barrister's role remains essentially the same as when they are approached by a solicitor or another intermediary. Not all barristers accept direct access work. The BSB maintains a register of barristers who are authorised as direct access barristers on its website, Direct Access Portal.

The term "Licensed Access" replaces the terms "BarDIRECT" and "Direct Professional Access". Organisations or individuals that have an identifiable area of expertise or experience can apply to the BSB to be licensed to instruct barristers directly. The licence holder can instruct any barrister for advice, and in some circumstances representation, on their own behalf or another's behalf in the specialist area.

CONFIDENTIALITY AND LEGAL PROFESSIONAL PRIVILEGE

27. Are lawyers bound by client confidentiality rules?

Solicitors

Paragraph 6 of the SRA Code of Conduct deals with the protection of clients' confidential information and the disclosure of material information to clients.

The protection of confidentiality exists as a concept both as a matter of law and of conduct.

All members of a law firm or in-house practice, including support staff, consultants and locums, owe a duty of confidentiality to their clients.

The duty of confidentiality to all clients must be reconciled with the duty of disclosure to clients. This duty of disclosure is limited to information of which a solicitor is aware which is material to the client's matter. Where the solicitor cannot reconcile these two duties, then the protection of confidential information takes priority. A solicitor should not continue to act for a client for whom they cannot disclose material information, except in very limited circumstances, where safeguards are in place.

Such situations often also give rise to a conflict of interests, which is discussed in paragraph 6 of the SRA Code of Conduct.

Guidance on the duty of confidentiality is provided by the SRA at www.sra.org.uk/solicitors/guidance/confidentiality-client-information/.

Barristers

A barrister must keep the affairs of each client confidential (*CD6, BSB Handbook*). This duty may be difficult to reconcile or be inconsistent with other duties of the barrister.

The BSB Handbook's CDs are not presented in order of precedence, save that CD1 overrides any other core duty, if and to the extent the two are inconsistent. rC3.5 and rC4 deal specifically with the relationship between CD1 (duty to the court in the administration of justice), CD2 (act in the best interests of each client) and CD6 (confidentiality).

28. Are there any exceptions to the client confidentiality rules?

Solicitors

Disclosure of confidential information is only allowed where the client consents to it or it is permitted by law, for example, to disclose the potential commission of a criminal offence by a client, such as money laundering.

Solicitors have certain powers or duties to disclose matters to the courts in relation to proceedings or to third parties where they are lawfully acting on behalf of a client, such as an attorney appointed under a power of attorney or a court appointed deputy where the disclosure falls within the scope of their authority.

They must also disclose certain information to the SRA (*see guidance on reporting and notification obligations (www.sra.org.uk/solicitors/guidance/reporting-notification-obligations/)*).

Barristers

The barrister's duty of confidentiality is subject to an exception if disclosure is required or permitted by law (*rC15.5, BSB Handbook*). For example, the barrister may be obliged to disclose certain matters by the Proceeds of Crime Act 2002.

Disclosure in those circumstances would not amount to a breach of CD6 of the BSB Handbook. In other circumstances, a barrister can only make disclosure of confidential information where the client gives informed consent to the disclosure.

There may be circumstances when the barrister's duty of confidentiality to the client conflicts with their duty to the court (CD7). rC4 and Guidance C8 and C11 to C13 of the BSB Handbook provide further information.

For example, if a barrister's client were to tell them that he or she had committed the crime with which he or she was charged, to be able to ensure compliance with rC4 of the BSB Handbook, as well as rC3 and rC6:

- The barrister would not be entitled to disclose that information to the court without the client's consent.
- The client would not be misleading the court if, after the client had entered a plea of "not guilty", the barrister were to test in cross-examination the reliability of the evidence of the prosecution witnesses and then address the jury to the effect that the prosecution had not succeeded in making them sure of the client's guilt.

Similarly, there may be circumstances when the barrister's duty of confidentiality to the client conflicts with their duty to the regulator. rC64 and Guidance C92 to C93 of the BSB Handbook provide further information. In addition, rC66 may also apply (that is, dealings with clerks and other employees or agents).

29. Are communications with lawyers protected from disclosure (that is, privileged) in judicial or other proceedings?

Under English law, privilege operates as an exclusionary rule of evidence. It permits the owner of the privilege to refuse to produce documents or answer questions in relation to the privileged communications in legal or regulatory proceedings.

Privilege belongs to the client and not to their lawyer or other third party (*R v Derby Magistrates Court, ex parte B* [1995] UKHL 18).

Legal advice privilege

Legal advice privilege concerns confidential communications between a lawyer acting in his or her professional capacity and the lawyer's client, which have come into existence for the purpose of giving or obtaining advice or assistance as to what sensibly and prudently should be done in a relevant legal context. Legal advice privilege may apply in both a litigation and non-litigation context and generally only applies in relation to communications between the lawyer and client.

Litigation privilege

Litigation privilege concerns confidential oral or written communications between the client or the lawyer and third parties or other documents created by or on behalf of the client or the lawyer, which:

- Come into existence once adversarial litigation is in reasonable prospect or has commenced.
- Were created for the sole or dominant purpose of obtaining information or advice in connection with, for the conducting of, or to aid in the conduct of, litigation.

Joint privilege

Joint privilege is a secondary privilege in that it relies on the existence of a primary privilege. It can arise in two situations:

- Under a joint retainer where two or more parties instruct the same lawyer.

- Under a joint interest where two or more parties share a joint interest in the subject-matter of the communication, even if they are not instructing the same lawyer.

Common interest privilege

As with joint privilege, common interest is a secondary privilege that relies on the existence of a primary privilege. Common interest privilege arises where a communication that is privileged in the hands of the sender is sent to another party who has a community of interest with the sender in the subject-matter or in the litigation in connection with which it is produced.

30. Do in-house lawyers have the same legal professional privilege protection as lawyers in private practice?

Under English law, in-house lawyers have the same legal professional privilege protection as lawyers in private practice.

However, it may be necessary to consider the implications of the privilege rules of other countries in appropriate cases.

The UK formally joined the EU (formerly the European Community) on 1 January 1973. European law was incorporated into UK law by the European Communities Act 1972 (ECA). Until 31 January 2020 (exit day), EU law applied in the UK under the provisions of the ECA.

The ECA was repealed with effect from 31 January 2020. The EU (Withdrawal) Act 2018 (Withdrawal Act) provided that EU law would continue to apply in and to the UK (as if it were still a member state) during the transition period (transition period) which ended on 31 December 2020. At the end of the transition period, EU law in force at that moment become part of the UK's domestic legal framework as a new category of retained EU law, under the Withdrawal Act. Readers are advised to take legal advice in relation to the application of retained EU law in specific areas, particularly where it may be necessary to consider the situation before and after 1 January 2021 as this position may change over time.

In particular, in an investigation or dawn raid by the European Commission under EU law, EU privilege rules apply which differ from those under English law. The Court of Justice has confirmed the principles underlying the scope of privilege under EU law, which does not generally apply to in-house counsel (or non-EEA qualified counsel).

Accordingly, written communications are protected by EU legal privilege if they:

- Are between an EEA qualified external lawyer and his or her client and are made for the purpose and in the interests of the client's right of defence.
- Report the text or content of an EEA qualified external lawyer's advice and do not contain any additional internal opinion, comment or amendment.
- Have been prepared exclusively for the purpose of seeking legal advice from an EEA-qualified external lawyer.

(*Case T-253/3 - Akzo Nobel Chemicals and Akcros Chemicals Ltd v Commission*; and *Case C- 550/07P - Akzo Nobel Chemicals Ltd and Akcros Chemicals Ltd v European Commission*.)

FEES

31. How are legal fees regulated? Is there a tariff system?

There is no regulation of the fees that lawyers can charge. However, in litigation even a successful party does not typically recover all their costs from the opposing (losing) party.

32. What types of fee agreements are most commonly used for litigation and non-litigation matters? What formal requirements exist for fee agreements?

Hourly rates are the most common fee arrangements but there are also fixed or capped fee arrangements.

Conditional Fee Agreements (CFAs) and Damages Based Agreements (DBAs) offer an alternative way to fund commercial claims and litigation.

A CFA is an agreement allowing a solicitor and a client to share the risk of the litigation through a financial arrangement under which part or all of the solicitor's fees are only payable by the client in the event of success. In commercial cases (not personal injury CFAs entered into from 1 April 2013), the success fee can be up to 100% of normal fees.

For some matters, barristers may be willing to enter into a CFA for payment of part or all of their fees being subject to achieving defined success criteria. Individual counsel may be reluctant to enter into CFAs for commercial dispute resolution work, or may only be willing to put a relatively small percentage of their fees at risk.

A DBA is an agreement allowing a solicitor and a client to share the risk of litigation. Payment of solicitors' fees, counsel fees and VAT by a client under a DBA is dependent on achieving defined success criteria agreed when the DBA is entered into, and is based on a percentage of the sum recovered from the losing party or opponent.

From 1 April 2013, where parties fund their litigation via CFAs and/or after-the-event (ATE) insurance, the CFA success fee and ATE premium are no longer recoverable from the losing opponent if the case is successful. Parties can still enter into CFAs and take out ATE insurance to fund their litigation, but must bear the additional costs.

CLIENT MONEY

33. How is the holding of client funds regulated?

Solicitors

Solicitors can hold client funds. There are detailed regulatory requirements set by the SRA on how solicitors handle such funds. The purpose of the SRA Accounts Rules 2019 is to keep client money safe.

Solicitors must comply with the principles set out in the SRA Standards and Regulations and the requirements of the Code of Conduct, paragraph 4, as follows:

- Properly accounting to clients for any financial benefit received as a result of their instructions, except where they have agreed otherwise.
- Safeguarding money and assets entrusted to them by clients and others.
- Solicitors do not personally hold client money (except as permitted under regulation 10.2(b)(vii) of the Authorisation of Individuals Regulations) unless they work in an authorised body or in an organisation prescribed under the rule.

Barristers

Except where a barrister is acting in their capacity as a manager of an authorised (non-BSB) body, they must not receive, control or handle client money apart from that which the client pays them for their services (rC73, *BSB Handbook*).

BARCO is a third party company, owned and operated by the Bar Council, which manages the funds required to facilitate ongoing legal services provided by lawyers in England and Wales. BARCO preserves the position in rC73 by operating an escrow service to receive funds from clients, which are required in relation to ongoing legal services for legal fees, alternative dispute resolution costs, disbursements and settlements.

34. Are there rules on money laundering affecting the legal profession? Is there any overriding body in your jurisdiction that provides anti-money laundering (AML) supervision in the legal sector?

The Financial Action Taskforce (FATF) has highlighted that criminals may want to use legal professionals precisely because they need expert advice to devise complicated schemes to launder vast amounts of money.

Regulated law firms are required by law, under the Money Laundering Regulations 2007 (MLR 2007), the Proceeds of Crime Act 2002 and the Terrorism Act 2000, to:

- Have a nominated money laundering reporting officer (MLRO).
- Report suspicious activity that they think may indicate money laundering both internally and to the MLRO and externally to the National Crime Agency.
- Have a system clearly setting out the requirements for making a disclosure of suspicious activity under the Proceeds of Crime Act and the Terrorism Act.
- Undertake customer due diligence to verify the identity of clients, source of funds, beneficial owners and the nature of business transactions.
- Keep records of customer due diligence undertaken.
- Ensure staff are properly trained.

In February 2016, the Bar Council issued new guidance to draw barristers' attention to their obligations in relation to countering money laundering and terrorist financing.

Following *Bowman v Fels* [2005] 1 W.L.R. 3083, lawyers acting in the regulated sector are not bound by money laundering regulations in the course of contentious litigation or the consensual resolution of litigation. However, much transactional work remains subject to the regulations, and the Bar Council suggests that barristers should be cautious in deciding whether a particular piece of work falls within the boundaries of those areas that are caught by money laundering regulation.

The Office for Professional Body Anti-Money Laundering Supervision (OPBAS) is a new regulator set up by the government to strengthen the UK's anti-money laundering (AML) supervisory regime and ensure the professional body AML supervisors provide consistently high standards of AML supervision. The OPBAS Regulations 2018 came into effect on 18 January 2018 and give OPBAS duties and powers to ensure that the professional body AML supervisors meet the standards required by the MLR 2007. The professional body AML supervisors overseen by OPBAS are listed in Schedule 1 to the MLR. Of relevance to the legal profession are the:

- Chartered Institute of Legal Executives/CILEx Regulation.
- Council for Licensed Conveyancers.
- Faculty of Advocates.
- General Council of the Bar / BSB.
- General Council of the Bar of Northern Ireland.
- ICAEW.

- Institute of Chartered Accountants in Ireland.
- Institute of Chartered Accountants of Scotland.
- Law Society / SRA.
- Law Society of Northern Ireland.
- Law Society of Scotland.

NOTARIES

35. Are notaries required for share purchases or transfers, real estate purchases or leases, or company formation?

The most common activities of notaries include:

- Preparing and authenticating powers of attorney for use overseas.
- Dealing with purchase or sale of land and property abroad.
- Authenticating foreign wills and providing documents to deal with the administration of the estates of people who are abroad, or who own property abroad.
- Authenticating personal documents and information for immigration or emigration purposes, or to apply to marry or to work abroad.
- Authenticating company and business documents and transactions or providing certificates as to the status of a company or the identity of its directors.

36. Are notary fees fixed or a percentage of the transaction value?

Notaries advise on the fees for their services. These may comprise a fixed fee per document or as a percentage of the transaction value and they may also charge an additional fee for their services.

37. Can notaries work within law firms?

Notaries can work within law firms. About half of notaries are also solicitors and do their general legal work in that capacity. Others (including the Scrivener Notaries) practise only as notaries undertaking commercial and property work (including conveyancing) and family and private client work (including wills, probate and the administration of estates).

38. Is there a national regulatory body for notaries?

The Master of the Faculties is the AR for notaries in respect of probate activities, notarial activities and the administration of oaths. It has also been approved as an LA for ABS (see *Question 8*). There is no separate representative body for the purposes of the regulatory framework of the LSA.

The Notaries Society and the Society of Scrivener Notaries are representative bodies for notaries outside the LSA regulatory framework.

Practical Law Contributor profile

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