The Solicitors Regulation Authority Code of Conduct

April 2013
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INTRODUCTION TO THIS GUIDE

The implementation of the Legal Services Act changed the face of the legal services market, with the licensing of the first of a new type of law firm, Alternative Business Structures (ABS). To facilitate these changes, the Solicitors Regulation Authority (SRA) introduced a new handbook, which became effective from 6 October 2011.

The SRA Handbook introduced the concept of "outcomes-focused regulation" (OFR). OFR allows Solicitors greater freedom to decide how they interact with their clients to give them the best possible help in achieving their objectives. OFR is a risk-based regulatory approach designed to place much greater emphasis on governance and management and will lead to a much closer relationship between Solicitors and the SRA.

The Handbook incorporates a Code of Conduct (the Code) which sets out ten mandatory Principles which are the professional standards expected of Solicitors. These are supported by mandatory “outcomes” (which Solicitors are expected to achieve in order to comply with the Principles), and non-mandatory "indicative behaviours" (IBs), (which are indications of whether or not an outcome is being achieved).

The Code includes powerful tools for the SRA to regulate and ensure compliance.

About this Guide
This Guide is part of a set making up a toolkit for Law Centres and will provide overview of:

- The SRA’s new approach to regulation – OFR
- The SRA and Risk and Relationship Management
- The SRA’s Supervision function
- Key areas of the new Code of Conduct, and
- Practical tips and guidance to evidence compliance with the Code and effectively manage your obligations and enhance your relationship with the SRA

It is important to understand that the Code of Conduct presently applies to Solicitors working in a Law Centre but it does not apply to the Law Centre itself. This is
because, unlike solicitor firms, Law Centres are not currently authorised and regulated by the Solicitors Regulation Authority. Law Centres are currently regulated by the Law Centres Federation. Therefore, the Code of Conduct was not written with Law Centres in mind and some of the areas covered in the Code will not be relevant to Law Centres. Nevertheless, it is important for all solicitors in the Law Centre to have an understanding of the elements of the Code of Conduct which apply to them and also because the SRA will be regulating Law Centres in the future. This is due to start from September 2013. Moreover, if a Law Centre decides to open a subsidiary company in the form of an ABS, then the Code of Conduct will apply to the ABS.

In many cases, we acknowledge that this Guide uses terminology, such as ‘the firm’, which is more appropriate to private practice than Law Centres. For completeness sake, however, we have chosen to retain the original wording of the Code.

The references to the Code of Conduct in this Guide relate to version 7 published on 1 April 2013.
OUTCOMES FOCUSED REGULATION

Why move to OFR?
In recent years, the way in which legal service providers (and the way in which individuals within them work) has changed. Providers have become more innovative in the way in which they attract clients, deliver products and services and structure their businesses in order to improve efficiency, business delivery and embrace new technologies. Therefore, applying prescriptive rules to evolving working practices has become increasingly difficult with a focus on amending rules rather than considering the best outcomes for the client. This has also led to a focus on low-risk regulatory issues instead of those risks which most affect the public interest and consumers.

The SRA takes the view that in such an evolving market (taking into account the onset of ABS), its approach to regulation should not remain static and that a rules-based approach to regulation would be inappropriate. Therefore, the SRA has changed its approach with the introduction of OFR. OFR centres on achieving the required outcomes for clients underpinned by a strong ethical framework. Primary responsibility for achieving these outcomes, and for operating ethical and effective systems and processes, now more clearly lies with individuals and providers. The new approach by the SRA is designed to provide a greater emphasis on seeking to work with authorised bodies to ensure positive outcomes for clients, including constructive engagement with bodies seeking to put things right where those outcomes have not been achieved.

Risk based regulation
The SRA has moved towards becoming a “Risk Based” regulator and risk features across all of its operations and functions, including its approach to regulation.

A “risk based” approach means that the SRA will seek to identify the risks in meeting its regulatory objectives. This approach will inform:

- Its internal policy development to enable the regulatory framework to be proactive in managing risks to the consumer
- The authorisation of new bodies to ensure that those applications that pose the highest risk receive proportionate attention; and
• The allocation of resources to individuals and bodies is in accordance to the risk posed by them and therefore determines the approach to supervision

Additionally, the approach and response the SRA will take to any particular breach will be informed by the relative risk that any breach presents. Therefore, it is proposed that proportionate responses will be taken to breaches based upon the risk that they pose.

To enable effective “risk based” regulation, a new organisational model is being developed focusing on three operational functions which tie in with risk:

• **Authorisation** - Authorisation will assess the risks that applicant bodies and individuals present, minimising the extent to which unsuitable bodies and individuals are able to enter the regulated community
• **Supervision** - Supervision will monitor, anticipate and manage down the unacceptable risks that bodies and individuals present to our regulatory objectives
• **Enforcement** - Enforcement will use various tools to deal with cases where a deterrent is needed, and for bodies who cannot or will not deal appropriately with risks. In the worst cases bodies and/or individuals will be removed from the regulated community

**Risk Centre**
The risk assessments undertaken by the SRA will be carried out by its Risk Centre. It will consider “thematic risks” (these may be risks caused by the behaviour of groups of bodies, bodies delivering a particular category of service, or emerging external risks), systemic risks or individual/body risks. When analysing these risks the following formula will be applied to determine the appropriate action:

\[
\text{Probability} \times \text{Impact} = \text{Level of supervision}
\]

In order to analyse and assess risk, the Risk Centre (and the core operational functions) will use information received from:

• All stakeholders
• Bodies through reporting and notification and continuing contact
• Intelligence gathering activities, including liaison with law enforcement agencies; and
• Other regulators
The risk assessment is designed to ultimately enable the SRA to target its resources on both prospective and realised higher-level risks and allow it to make intelligent decisions about the intensity of supervision of categories of organisations and individuals.

Where bodies actively manage risk by achieving relevant accreditation or by demonstrating effective risk management, the SRA has indicated that they will experience a less intrusive relationship.

**Supervision**
The main objective of the supervision function is to encourage and support bodies to deal with their own risks, help improve standards, and provide the required outcomes for clients. This will be achieved by means of risk-based supervision and constructive engagement with all authorised bodies.

The supervision function will:

- Undertake desk based supervision or visits of authorised bodies, maintain close and continuous involvement, or any combination of these, depending on events, themes and the risk rating of the body
- Conduct detailed assessments of the body’s systems, controls and governance arrangements; and
- Deliver constructive engagement to encourage bodies to find and implement their own solutions to problems

**Approaches to Supervision**
It is envisaged that the SRA will take the following approach to Supervision:

- **Low intensity supervision** - The SRA will contact the body as required. For example, contact or visit may be made as a result of an event, such as a senior solicitor/manager leaving, or as part of a thematic review designed to examine or improve standards in a particular area. It is not envisaged that low risk bodies will be subject to periodic inspections
- **Medium intensity supervision**– The SRA will supervise using desk based or visit based supervision. The use of a periodic inspection regime on a frequency
of around three to seven years is being explored and this approach will be informed by the results of supervision pilots carried out by the SRA during 2011 and from a baselining exercise it has undertaken

- **High intensity supervision** - The body will have a closer and in some cases continuous experience of supervision. Bodies may be subject to regular periodic inspection

Authorised bodies may receive a visit as a result of:

- The periodic visit programme
- Event driven reports
- Thematic reviews; or
- Random (control group) visits

**Content of a Supervisory Visit**

The scope of a visit under close and continuous supervision is likely to consist of:

- The environmental risks affecting the body
- The business model, for example the spread of the body’s business, how it is financed, and what services it offers
- The business processes, for example:
  - The structure and ownership
  - The extent of any risks posed by staff, including managers
  - Controls over its financial position
  - IT systems
  - Exposure to legal / litigation risk
  - Conflict and client care procedures
  - Quality control and management of client matters;
- The control functions, for example the work done by the Compliance Office for Legal Practice (COLP) and Compliance Officer for Finance and Administration (COFA) (see later in this Guide for further details on these roles), together with internal audit. Additionally, consideration will be given to governance arrangements, the strength of the relationship with the SRA (and its other regulators, if any), together with the strength of its management and its internal culture
Relationship Management
The stated aim of the SRA’s supervisory activity is to help bodies improve standards, reduce risk for consumers and enhance the reputation of legal service providers. Its supervisory focus will be on the outcomes achieved rather than on the processes used to deliver them. The form of supervision that the SRA will use for a particular body will be tailored to take account of the risk it poses, its management of risk, its size and approach to and history of compliance. Relationship Management is one of a range of supervisory approaches that the SRA is developing and trialling.

The Relationship Management (RM) model has recently been tested in a pilot. The multi-stage pilot model is outlined below:

- **Stage 0** – initial contact with firms to discuss possible inclusion in the RM pilot and, in certain cases, specific systems and approaches relating to chosen high-risk issues
- **Stage 1** – obtain/confirm basic information about potential participant firms using desk-based review; selection of a representative sample of approximately 15 firms, i.e. firms of a variety of sizes, business types and geographic locations; allocate relationship managers to pilot firms
- **Stage 2** – obtaining more detailed information from pilot firms about their business model, governance and arrangements for compliance and risk-management etc
- **Stage 3** – pilot firms to provide information to the SRA relationship managers about the risks they face and their plans to deal with the implementation of OFR. Although there will be no prescribed form for this information, they are generally referred to as a risk register (RR) and regulatory compliance plan (RCP)
- **Stage 4** – the SRA’s internal assessment of each pilot firm's RR and RCP
- **Stage 5** – use of RRs and RCPs to inform/provide the framework for a programme of regular RM meetings or telephone calls with pilot firms
- **Stage 6** – review of the pilot

Risk Registers and Regulatory Compliance Plans
As part of the pilot, to assess the regulatory risk a particular firm poses, the SRA received information from the firms in the pilot about their own perception of the risks they face, including the extent to which other risks for example operational, strategic, business and financial risks might impact on regulatory risk and to understand the arrangements it is making to mitigate these risks.
In preparation for OFR, Law Centres should be looking to devise a risk register and regulatory compliance plan.

- A risk register needs to record all the risks that are identified within your Law Centre;
- A regulatory compliance plan need not be complicated. It should use the information from your risk register and outline what you will do to avoid, transfer or mitigate those risks, by whom and when (this could be a section of your business (or service) plan). Further guidance can be found here: [http://www.sra.org.uk/Solicitors/handbook/authorisationrules/content.page](http://www.sra.org.uk/Solicitors/handbook/authorisationrules/content.page). Also see information on the role of the COLP, at the end of these notes.
SRA HANDBOOK

All individuals and entities regulated by the SRA must comply with the new Handbook. The aim of the Handbook is to consolidate, in one place, all of the regulatory requirements that are applicable to those regulated by the SRA.

The Handbook is made up of the following sections:

- **SRA Principles** – 10 Mandatory Principles, applicable to those regulated by the SRA and relate to all aspects of practice
- **SRA Code of Conduct** – Outlines the mandatory “Outcomes” which ensure compliance with the “Principles”, and which ultimately benefit the users of legal services. Supplementary non-mandatory “Indicative Behaviours” are also outlined to assist compliance
- **Accounts** – Contains the SRA Accounts Rules
- **Authorisation and Practising requirements** – Specifies requirements for the training and entry of Solicitors, exercising higher rights of audience, new organisations setting up in practice and for holding certain roles in a practice
- **Client Protection** – Contains requirements for the financial protection of clients.
- **Discipline and Costs Recovery** – Outlines the SRA’s disciplinary and costs recovery powers
- **Specialist Services** – Provisions applicable when certain services are provided i.e. financial services
- **Glossary** – Defines terms used in the Handbook

This Guide is not intended to provide a detailed run though of the whole Handbook. Instead, it will highlight key parts of the Handbook and the new Code of Conduct and give guidance on how Law Centres and individual Solicitors can demonstrate compliance.

SRA PRINCIPLES

There are 10 Mandatory Principles which are applicable to everyone. The Principles are ethical requirements which underpin the way in which Law Centres and individuals should practice.

The Principles state that you must:

1. **Uphold the rule of law and the proper administration of justice** - You have obligations not only to clients but also to the court and to third parties with whom you have dealings on your clients' behalf.

2. **Act with integrity** – Personal integrity is central to your role as the client's trusted adviser and should characterise all your professional dealings with clients, the court, other lawyers and the public.

3. **Not allow your independence to be compromised** - "Independence" means your own and your organisation's independence, and not merely your ability to give independent advice to a client. You should avoid situations which might put your independence at risk.

4. **Act in the best interests of each client** - You should always act in good faith and do your best for each of your clients. Most importantly, you should observe (a) your duty of confidentiality to the client and (b) your obligations with regard to conflicts of interests.

5. **Provide a proper standard of service to your clients** - You should, for example, provide a proper standard of client care and of work. This would include exercising competence, skill and diligence, and taking into account the individual needs and circumstances of each client.

6. **Behave in a way that maintains the trust the public places in you and in the provision of legal services** - Members of the public should be able to place their trust in you. Any behaviour either within or outside your professional practice...
which undermines this trust damages not only you, but also the ability of the legal profession as a whole to serve society

7. **Comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and co-operative manner** - You should, for example, ensure that you comply with all the reporting and notification requirements and respond promptly and substantively to communications

8. **Run your organisation or carry out your role in the organisation effectively and in accordance with proper governance and sound financial and risk management principles** - Whether you are a manager or an employee, you have a part to play in helping to ensure that your organisation is well run for the benefit of your clients

9. **Run your organisation or carry out your role in the business in a way that encourages equality of opportunity and respect for diversity** - Whether you are a manager or an employee, you have a role to play in achieving the outcomes in Chapter 2 (Your clients and equality and diversity) of the Code. Note that a finding of unlawful discrimination could also amount to a breach of Principles 1 and 6

10. **Protect client money and assets** - This Principle goes to the heart of the duty to act in the best interests of your clients. You should play your part in, for example protecting money, documents or other property belonging to your clients which has been entrusted to you or your organisation

**SRA Principles – notes**
The notes state that the Principles encapsulate ethical requirements on regulated bodies and individuals who are involved in the provision of legal services. It is intended that the Principles apply to all individuals and are used as the starting point when faced with an ethical dilemma. The Principles must be complied with at all times.

In the notes, it is stated that, where a conflict arises between any of the Principles, the Principle which best serves the public’s interest should take precedence.

Compliance with the Principles is subject to any overriding legal obligations.

**Application of the Principles**
The Principles:

1. Apply to individuals and organisations regulated by the SRA, whether traditional firms of Solicitors or ABS, in-house or overseas practices;
2. The principles will be breached if you permit another person to do anything on your behalf which if done by you would breach the Principles; and
3. Apply to the fullest extent to the manager(s) in a body. They still apply if you work within an authorised body or in-house and have no management responsibility (for example, even if you are not a manager you may have an opportunity to influence, adopt and implement measures to comply with Principles 8 and 9).

Manager

References are made throughout the Code to the ‘Manager’ of the body. In the context of the Code, a ‘Manager’ is currently defined in the Code as “a member of its governing body”. By strict definition, this would imply the Management Committee. However, in reality, the day to day management of Law Centres is designated to the senior managers and not the Management Committee. This will be an area which will require some further discussion with the SRA in the future.

Breach of the Principles

The SRA say that its approach to enforcement will be proportionate, outcomes-focused and risk-based. Therefore, how failure to comply with the Principles is dealt with will depend on all the particular circumstances of each case. The SRA states that its primary aim will be to achieve the right outcomes for clients.

In practice all individuals within Law Centre must be aware of the Principles and use them to govern their professional behaviour and measure their conduct against them.

Any findings that are made in relation to one of the specific mandatory Outcomes will also be linked to compliance with the relevant Principle. Therefore, it is important that systems and procedures that ensure compliance with the Outcomes are evidenced. This will assist in demonstrating that the Principles are being adhered to.

If evidence is found that an Outcome has not been achieved, a link will also be made to the relevant Principle and will form the basis for any Conduct or Regulatory investigations/disciplinary action carried out by the SRA.
THE SRA CODE OF CONDUCT 2011

The Code underpins the framework to allow the SRA to move towards OFR. It specifies the conduct requirements to enable those regulated by the SRA to consider how best to achieve the right outcomes for their clients.

The Code is made up of mandatory and non-mandatory provisions.

Mandatory Provisions:

• Outcomes
• Applications and Waivers (Chapter 13)
• Interpretations
• Transitional provisions (Chapter 15)

The Code states that the outcomes describe what bodies and individuals are expected to achieve in order to comply with the relevant Principles and that the Outcomes listed are not exhaustive.

Non-Mandatory Provisions:

• Indicative behaviours (IBs)
• Notes

IBs supplement the Outcomes, but are not mandatory. Instead, they act as indicators in determining if an Outcome has been achieved and therefore establish compliance with the Principles.

If a Law Centre chooses to use a different method to the IBs in achieving a particular Outcome, they may be required to demonstrate to the SRA how an Outcome has been achieved. When considering how best to achieve an Outcome, bodies are encouraged to take into account the body, the circumstances of the matter and the needs of the particular client.
Structure of the Code

The Code has been divided into 5 Sections, each sub-divided into Chapters:

1st Section: You and Your Clients
   1. Chapter 1 – Client Care
   2. Chapter 2 – Equality and Diversity
   3. Chapter 3 – Conflicts of Interests
   4. Chapter 4 – Confidentiality and Disclosure
   5. Chapter 5 – Your Client and the Court
   6. Chapter 6 – Your Client and Introduction to Third Parties

2nd Section: You and Your Business
   7. Chapter 7 – Management of your Business
   8. Chapter 8 – Publicity
   9. Chapter 9 – Fee Sharing and Referrals

3rd Section: You and Your Regulator
   10. Chapter 10 – You and Your Regulator

4th Section: You and Others
   11. Chapter 11 – Relations with Third Parties
   12. Chapter 12 – Separate Business

5th Section: Application, Waivers and Interpretation
   13. Chapter 13 – Applications, Waivers provisions
   14. Chapter 14 – Interpretation

In this Guide, we have made reference to the Outcomes and IBs and, where appropriate, retained the precise wording as used in the Code.
YOU AND YOUR CLIENT

Chapter 1 – Client Care

This Chapter of the Code focuses on the standard of service you provide for your clients, taking into account the individual needs and circumstances of each client. The essence of the Chapter is to ensure that you and your clients understand the expectations and responsibilities of each other.

The content of this Chapter aligns itself with the previous requirements of Rule 2 of the 2007 Code of Conduct. However, it should be noted that although some of the previous Rule 2 requirements are now listed as mandatory Outcomes some are stated to be non-mandatory IBs. Therefore, allowing Law Centres a level of flexibility in relation to client care.

The mandatory Outcomes specified within this Chapter demonstrate how the Principles are to be applied in relation to Client Care.

Accepting and refusing instructions

Law Centres are generally free to decide whether or not to accept instructions in any matter, provided they do not discriminate unlawfully. It is important to note the provisions within Chapter 2 in relation to Equality and Diversity.

Outcomes

The following outcomes are identified as mandatory in relation to accepting and refusing instructions:

- **O(1.3)** - when deciding whether to act, or terminate your instructions, you comply with the law and the Code;
- **O(1.4)** - you have the resources, skills and procedures to carry out your clients' instructions.

Indicative Behaviours
If any of the following IBs are observed, it will provide evidence that the Outcomes have not been achieved:

- **IB(1.25)** - acting for a client when instructions are given by someone else, or by only one client when you act jointly for others unless you are satisfied that the person providing the instructions has the authority to do so on behalf of all of the clients;
- **IB(1.26)** - ceasing to act for a client without good reason and without providing reasonable notice;
- **IB(1.27)** - entering into unlawful fee arrangements such as an unlawful contingency fee;
- **IB(1.28)** - acting for a client when there are reasonable grounds for believing that the instructions are affected by duress or undue influence without satisfying yourself that they represent the client's wishes.

**Accepting and refusing instructions - compliance tips**

In order to demonstrate that all staff are aware of the Law Centre’s approach to accepting and refusing instructions, it is recommended that Law Centres consider:

- Devising a client care policy - The policy should contain the relevant Outcomes and IBs within it and any other procedures pertinent to the Law Centre’s approach to accepting and refusing instructions
- Ensuring proper implementation of an Equality and Diversity policy which incorporates the Law Centre’s approach to equality and diversity and clients
- Drafting clear procedures for acceptance and refusal of instructions
- Implementing clear case allocation and signposting and referral procedures
- Communicating the policies and procedures to all staff either through formal training, meetings or in writing; and
- Ensuring that the policies and procedures are held centrally so that all members of staff can access them

**Dealing with the client’s matter**

There are a number of considerations to take into account when dealing with a client’s matter. The Outcomes identified in this Chapter allow Law Centres a greater level of flexibility in dealing with their clients matters as they are not prescriptive, in comparison to the 2007 Code of Conduct.
However, please note that the Code does not state whether information should be communicated in writing or not. Best practice is to always communicate with the client in writing. Where this is deemed not to be in the client’s best interest (due to their mental capacity), caseworkers should ensure that they maintain detailed attendance notes recording all pertinent information.

Outcomes
The following mandatory Outcomes have been identified in relation to dealing with client matters:

- **O(1.1)** - you treat your clients fairly;
- **O(1.2)** - you provide services to your clients in a manner which protects their interests in their matter, subject to the proper administration of justice;
- **O(1.4)** - you have the resources, skills and procedures to carry out your clients’ instructions;
- **O(1.12)** - clients are in a position to make informed decisions about the services they need, how their matter will be handled and the options available to them;
- **O(1.5)** - the service you provide to clients is competent, delivered in a timely manner and takes account of your clients' needs and circumstances;
- **O(1.7)** - you inform clients whether and how the services you provide are regulated and how this affects the protections available to the client;
- **O(1.8)** - clients have the benefit of your compulsory professional indemnity insurance and you do not exclude or attempt to exclude liability below the minimum level of cover required by the SRA Indemnity Insurance Rules;
- **O (1.16)** - you inform clients if you discover any act or omission which could give rise to a claim by them against you.

Indicative Behaviours
The following IBs provide evidence that the Outcomes have been achieved:

- **IB(1.1)** - agreeing an appropriate level of service with your client, for example the type and frequency of communications;
- **IB(1.2)** - explaining your responsibilities and those of the client;
- **IB(1.3)** - ensuring that the client is told, in writing, the name and status of the person(s) dealing with the matter and the name and status of the person responsible for its overall supervision;
- **IB(1.4)** - explaining any arrangements, such as fee sharing or referral arrangements, which are relevant to the client's instructions;
• IB(1.5) - explaining any limitations or conditions on what you can do for the client, for example, because of the way the client's matter is funded;
• IB(1.6) - in taking instructions and during the course of the retainer, having proper regard to your client's mental capacity or other vulnerability, such as incapacity or duress;
• IB(1.7) - considering whether you should decline to act or cease to act because you cannot act in the client's best interests;
• IB(1.8) - if you seek to limit your liability to your client to a level above the minimum required by the SRA Indemnity Insurance Rules, ensuring that this limitation is in writing and is brought to the client's attention;
• IB(1.9) - refusing to act where your client proposes to make a gift of significant value to you or a member of your family, or a member of your organisation or their family, unless the client takes independent legal advice;
• IB(1.10) - if you have to cease acting for a client, explaining to the client their possible options for pursuing their matter;
• IB(1.11) - you inform clients if they are not entitled to the protections of the SRA Compensation Fund;
• IB(1.12) - considering whether a conflict of interests has arisen or whether the client should be advised to obtain independent advice where the client notifies you of their intention to make a claim or if you discover an act or omission which might give rise to a claim.

Dealing with the client’s matter – compliance tips

• It is recommended that Law Centres consider reviewing any procedures that are followed across the Law Centre in relation to dealing with client matters to ensure that they address the Outcomes specified within the Chapter. Where possible, it is always advisable to document procedures and hold them centrally so that they can be accessed by all staff
• If procedures are changed in light of the review, the Law Centre should ensure that any changes are communicated to all staff
• The evidence of achieving a number of the Outcomes and meeting the IBs may be judged through the communication to the client. This could be in the form of a client care letter or initial advice letter. It is advisable that Law Centres review template documentation in light of the Outcomes and IBs. As the Code is not prescriptive, Law Centres may find that they are able to simplify some documentation whilst still being able to achieve the relevant Outcomes. If
documentation is amended, it is recommended that procedures are also amended to reflect this and a note of the reasons why maintained

- If it is deemed inappropriate to communicate with the client in writing, consider drafting a template attendance note which prompts individuals to record certain key information
- The Law Centre should ensure the proper implementation of a complaints handling policy and ensure, once the documentation has been reviewed, that all staff are aware of the correct documents to use going forward and remove any non-compliant copies

Complaints handling

Complaints handling remains a key area of focus for the SRA. This is one area that sets some fairly defined outcomes to be achieved, with little scope for flexibility in terms of how these can be met.

One point to highlight is that the Code requires that clients are informed in writing ‘at the time of engagement and at the conclusion of your [i.e. internal] complaints procedure’ of their right to complain to the Legal Ombudsman, the timescales and how to contact the Ombudsman.

Outcomes
The following mandatory Outcomes have been identified in relation to complaints handling:

- **O(1.9)** - clients are informed in writing at the outset of their matter of their right to complain and how complaints can be made;
- **O(1.10)** - clients are informed in writing, both at the time of engagement and at the conclusion of your complaints procedure, of their right to complain to the Legal Ombudsman, the time frame for doing so and full details of how to contact the Legal Ombudsman;
- **O(1.11)** - clients’ complaints are dealt with promptly, fairly, openly and effectively;

Indicative Behaviours
The following IBs provide evidence that the Outcomes have been achieved:

- **IB(1.22)** - having a written complaints procedure which:
(a) is brought to clients’ attention at the outset of the matter;
(b) is easy for clients to use and understand, allowing for complaints to be made by any reasonable means;
(c) is responsive to the needs of individual clients, especially those who are vulnerable;
(d) enables complaints to be dealt with promptly and fairly, with decisions based on a sufficient investigation of the circumstances;
(e) provides for appropriate remedies; and
(f) does not involve any charges to clients for handling their complaints;

- **IB(1.23)** - providing the client with a copy of the organisation's complaints procedure on request;
- **IB(1.24)** - in the event that a client makes a complaint, providing them with all necessary information concerning the handling of the complaint.

**Complaints handling – compliance tips**

It is recommended that Law Centres consider:

- Ensuring proper implementation of a complaints handling policy and procedure within the Law Centre
- Ensuring that the initial documentation to the client informs them of the Law Centre’s complaints procedure, the client’s right to complain to the Legal Ombudsman, the timescales and how to contact the Ombudsman
- Making available the Law Centre’s complaints procedure on request (the procedure need not be outlined in the client care letter)
- Once a complaint has been made, ensuring the complainant is informed, in writing, how the complaint will be handled and within what timescales they will be given an initial/substantive response
- Putting in place a complaints management system which is in line with the Law Centre’s complaints procedures
- Setting up a central record of complaints which will evidence all correspondence and how complaints are being resolved. This will greatly assist in demonstrating how adequately the Law Centre manages complaints on audit
- Ensuring that, after the Law Centre has exhausted its own internal complaints procedure, the Law Centre inform the client of their right to complain to the Legal Ombudsman, the timescales and how to contact the Ombudsman; and
- Reviewing complaints regularly and make any necessary amendment to the Law Centre’s systems and procedures
Fee arrangements with your clients

This will section will be relevant for Law Centres that move into the provision of fee paying services.

The Outcomes and IBs identified within the Code in relation to fee arrangements are broadly similar to the rules under the 2007 Code of Conduct. However, as the Outcomes are less prescriptive and the focus of the Code is to consider the client’s best interest, Law Centres may be offered a little more flexibility on the amount of information that has to be communicated to certain clients i.e. Legal Aid clients where there is no financial liability for the client.

However, please note that the Code does not state whether information on fees should be confirmed in writing or not. Best practice is to always communicate information in relation to fee arrangements with the client in writing. Where this is deemed not to be in the client’s best interest (i.e. where the client will not be liable for their public funding), Law Centres should ensure that they maintain detailed attendance notes recording all pertinent information.

Outcomes
The following mandatory Outcomes have been identified in relation to fee arrangements:

- \(O(1.6)\) - you only enter into fee agreements with your clients that are legal, and which you consider are suitable for the client's needs and take account of the client's best interests;
- \(O(1.13)\) - clients receive the best possible information, both at the time of engagement and when appropriate as their matter progresses, about the likely overall cost of their matter;
- \(O(1.14)\) - clients are informed of their right to challenge or complain about your bill and the circumstances in which they may be liable to pay interest on an unpaid bill;
- \(O(1.15)\) - you properly account to clients for any financial benefit you receive as a result of your instructions.

Indicative Behaviours
The following IBs provide evidence that the Outcomes have been achieved:
• IB(1.13) - discussing whether the potential outcomes of the client's matter are likely to justify the expense or risk involved, including any risk of having to pay someone else's legal fees;

• IB(1.14) - clearly explaining your fees and if and when they are likely to change;

• IB(1.15) - warning about any other payments for which the client may be responsible;

• IB(1.16) - discussing how the client will pay, including whether public funding may be available, whether the client has insurance that might cover the fees, and whether the fees may be paid by someone else such as a trade union;

• IB(1.17) - where you are acting for a client under a fee arrangement governed by statute, such as a conditional fee agreement, giving the client all relevant information relating to that arrangement;

• IB(1.18) - where you are acting for a publicly funded client, explaining how their publicly funded status affects the costs;

• IB(1.19) - providing the information in a clear and accessible form which is appropriate to the needs and circumstances of the client;

• IB(1.20) - where you receive a financial benefit as a result of acting for a client, either:
  
  (a) paying it to the client;
  
  (b) offsetting it against your fees; or
  
  (c) keeping it only where you can justify keeping it, you have told the client the amount of the benefit (or an approximation if you do not know the exact amount) and the client has agreed that you can keep it;

• IB(1.21) - ensuring that disbursements included in your bill reflect the actual amount spent or to be spent on behalf of the client.

Fee arrangements – compliance tips

Law Centres providing fee paying services should consider:

• Drafting all initial correspondence to the client in accordance with the Outcomes, IBs and taking into consideration the client’s best interests. It may be justifiable to streamline the information given in relation to fee arrangements for certain clients or types of cases.

• Conveying cost information to the client at the outset, where appropriate, in a clear format. All initial client documentation should be reviewed to ensure that it allows for a cost estimate to be given at the outset. In relation to costs, it is important to remember that:
  
  – where it is not possible to give an estimate at the outset, the client should be informed of this and provided with information about the
next stage (what it is, how long it will take to get there and how much it will cost to get to that stage) or given the opportunity to set a ceiling on the amount of work to be done

– all cost estimates should be clear. Therefore, if time is a factor in determining the cost, an estimate of the number of hours in addition to the relevant hourly rates should be communicated to the client. It is also advisable to do the relevant sums i.e. hourly rate x number of hours = cost estimate, and explicitly state what the estimate is (inc/exc VAT)

– if charging rates are likely to increase, the Law Centre must inform the client of this

– the cost estimate should also include a list of the likely disbursements (inc/exc VAT). It is advisable to add the total cost of the disbursements to the cost estimate and give the client an overall estimate of the full likely costs

– you are required to provide your client with the best information possible about the likely overall cost of a matter both at the outset and, where appropriate, as the matter progresses. In terms of updating clients, please note that the Specialist Quality Mark (SQM) (and the Law Society’s Lexcel Standard) also require regular cost updates (and for the SQM, not less than every six months)

– to ensure clarity, it may be helpful to have a separate heading – “Funding”, in which the Law Centres outlines that the relevant funding arrangements have been discussed with the client. This will assist in demonstrating that possible funding routes have been discussed. A template letter could provide standard wording to assist caseworkers; and

– similarly, a clear heading – “Liability”, where the client’s potential liability is discussed would also be helpful. Standard wording within a template will ensure that this is communicated to the client, and if not appropriate can be deleted by the caseworker
Chapter 2 – Equality and Diversity

This Chapter in the Code focuses on encouraging equality of opportunity, respect for diversity and preventing unlawful discrimination in relationships with clients and others.

The requirements within the Chapter are applicable to the following grounds:

- Age
- Disability
- Gender re-assignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race, religion or belief
- Sex and sexual orientation.

However, Law Centres should be aware that the requirements set out in this Chapter are in addition to, and not a substitution for the Law Centre’s obligations to comply with relevant Equality and Diversity legislation.

It is the responsibility of all members of staff to comply with these requirements. However, the level of responsibility will be dependant of the role of the individual.

The mandatory Outcomes specified within this Chapter demonstrate how the Principles are to be applied in relation to Equality and Diversity.

Outcomes
The following mandatory Outcomes have been identified in relation to Equality and Diversity:

- O(2.1) - you do not discriminate unlawfully, or victimise or harass anyone, in the course of your professional dealings;
- O(2.2) - you provide services to clients in a way that respects diversity;
- O(2.3) - you make reasonable adjustments to ensure that disabled clients, employees or managers are not placed at a substantial disadvantage compared to those who are not disabled, and you do not pass on the costs of these adjustments to these disabled clients, employees or managers;
• O(2.4) - your approach to recruitment and employment encourages equality of opportunity and respect for diversity;
• O(2.5) - complaints of discrimination are dealt with promptly, fairly, openly, and effectively.

Indicative behaviours
The following IBs provide evidence that the Outcomes have been achieved:

• IB(2.1) - having a written equality and diversity policy which is appropriate to the size and nature of the firm and includes the following features:
  (a) a commitment to the principles of equality and diversity and legislative requirements;
  (b) a requirement that all employees and managers comply with the outcomes;
  (c) provisions to encompass your recruitment and interview processes;
  (d) details of how the firm will implement, monitor, evaluate and update the policy;
  (e) details of how the firm will ensure equality in relation to the treatment of employees, managers, clients and third parties instructed in connection with client matters;
  (f) details of how complaints and disciplinary issues are to be dealt with;
  (g) details of the firm's arrangements for workforce diversity monitoring; and
  (h) details of how the firm will communicate the policy to employees, managers and clients;
• IB(2.2) - providing employees and managers with training and information about complying with equality and diversity requirements;
• IB(2.3) - monitoring and responding to issues identified by your policy and reviewing and updating your policy.

The following IBs may demonstrate that the Outcome has not been achieved:

• IB(2.4) - being subject to any decision of a court or tribunal of the UK, that you have committed, or are to be treated as having committed, an unlawful act of discrimination;
• IB(2.5) - discriminating unlawfully when accepting or refusing instructions to act for a client.

Equality and Diversity – compliance tips
It is recommended that Law Centres consider:

- Ensuring it has in place an equality and diversity policy which promotes equality, respects diversity and prevents discrimination
- Giving consideration to any reasonable adjustments to ensure that disabled clients or staff are not placed at a substantial disadvantage. Where possible keeping a record of these considerations would be advised as best practice
- Reviewing recruitment and employment policies and procedures to ensure that they promote equality and diversity and prevent discrimination. Open and fair recruitment and employment procedures should be followed
- Ensuring that any complaints of discrimination are dealt with in accordance to your complaints handling procedure and that accurate records are maintained
- Providing training to all new members of staff on the equality and diversity policy. This could be carried out during the induction process. Consider providing refresher training to all staff, as appropriate (considering obligations imposed by the Legal Services Commission (LSC)
- Monitoring and reviewing the appropriateness of the policy and make any changes that are necessary to your systems and procedures. Law Centres should also ensure that records of the review are maintained and where appropriate training is provided to staff

Further information on the Law Centre’s legal obligations can be obtained from the Equality and Human Rights Commission - www.equalityhumanrights.com.

Please note that Chapter 7 of the Code – “Management of Your Business” has further obligations for appropriate systems and controls in relation to the Outcomes in this Chapter.

**Chapter 3 – Conflicts of Interests**

This Chapter outlines the provisions for handling conflicts of interests and places importance on having systems in place which allow for the identification of potential conflicts and how they are to be dealt with.

There are two types of conflict situations identified:
(a) “Own interest Conflict” – between you and current clients. Where such a situation arises, or there is a significant risk of the conflict, you can never act.

Some examples of where this rule might apply include:

- Where you sell property or another asset to a client
- Where you become involved in a sexual relationship with the client
- Where you discover an act or omission that would justify the client making a claim against you or the Law Centre.

(b) “Client Conflict” – between two or more current clients. Where such a situation arises, or there is a significant risk of the conflict, you must not act for both or all of the clients. However, there are limited exceptions which are outlined below. When considering whether to act, the client’s best interest should be considered and in particular, whether the benefits of you acting outweigh the risks.

Some examples of occasions where a client conflict could arise include:

- Acting for two parties on opposite sides of a potentially litigious situation. Even if the parties have reached a settlement, it may still not be appropriate to act as that settlement may not be a fair settlement or one party may be taking unfair advantage or exercising undue influence over the other
- Acting for two or more parties (i.e. in a joint action against a third party) particularly where there is a risk that one client may need to give evidence against the other

In essence, these obligations remain unaltered from the 2007 Code of Conduct.

It should also be noted that conflicts of interests may affect your duties of confidentiality and disclosure (dealt with in Chapter 4).

Although not expressly mentioned within the Code, it is important to remind all staff that conflicts of interests should remain an on-going consideration throughout a matter. Whenever a new issue arises, new evidence comes to light or when a new party is joined to the action or becomes an interested party and/or witness, further checks must be made. It is important that any systems that are implemented for undertaking conflict checks can also facilitate on-going checks.
The mandatory Outcomes specified within this Chapter demonstrate how the Principles are to be applied in relation to conflicts of interests.

**Outcomes**
The following mandatory Outcomes have been identified in relation to conflicts of interests:

**Systems**
- O(3.1) - you have effective systems and controls in place to enable you to identify and assess potential conflicts of interests
- O(3.2) - your systems and controls for identifying own interest conflicts are appropriate to the size and complexity of the firm and the nature of the work undertaken, and enable you to assess all the relevant circumstances, including whether your ability as an individual, or that of anyone within your firm, to act in the best interests of the client(s), is impaired by:
  - (a) any financial interest;
  - (b) a personal relationship;
  - (c) the appointment of you, or a member of your firm or family, to public office;
  - (d) commercial relationships; or
  - (e) your employment;
- O(3.3) your systems and controls for identifying client conflicts are appropriate to the size and complexity of the firm and the nature of the work undertaken, and enable you to assess all relevant circumstances, including whether:
  - (a) the clients' interests are different;
  - (b) your ability to give independent advice to the clients may be fettered;
  - (c) there is a need to negotiate between the clients;
  - (d) there is an imbalance in bargaining power between the clients; or
  - (e) any client is vulnerable.

**Prohibition on acting in conflict situations**
- O(3.4) - you do not act if there is an own interest conflict or a significant risk of an own interest conflict;
- O(3.5) - you do not act if there is a client conflict, or a significant risk of a client conflict, unless the circumstances set out in Outcomes 3.6 or 3.7 apply.
Exceptions where you may act, with appropriate safeguards, where there is a client conflict

- O(3.6) - where there is a client conflict and the clients have a substantially common interest in relation to a matter or a particular aspect of it, you only act if:
  - (a) you have explained the relevant issues and risks to the clients and you have a reasonable belief that they understand those issues and risks;
  - (b) all the clients have given informed consent in writing to you acting;
  - (c) you are satisfied that it is reasonable for you to act for all the clients and that it is in their best interests; and
  - (d) you are satisfied that the benefits to the clients of you doing so outweigh the risks;

- O(3.7) - where there is a client conflict and the clients are competing for the same objective, you only act if:
  - (a) you have explained the relevant issues and risks to the clients and you have a reasonable belief that they understand those issues and risks;
  - (b) the clients have confirmed in writing that they want you to act, in the knowledge that you act, or may act, for one or more other clients who are competing for the same objective;
  - (c) there is no other client conflict in relation to that matter;
  - (d) unless the clients specifically agree, no individual acts for, or is responsible for the supervision of work done for, more than one of the clients in that matter; and
  - (e) you are satisfied that it is reasonable for you to act for all the clients and that the benefits to the clients of you doing so outweigh the risks.

Indicative Behaviours
The following IBs provide evidence that the Outcomes have been achieved:

- IB(3.1) - training employees and managers to identify and assess potential conflicts of interests;
- IB(3.2) - declining to act for clients whose interests are in direct conflict, for example claimant and defendant in litigation;
- IB(3.3) - declining to act for clients where you may need to negotiate on matters of substance on their behalf, for example negotiating on price between a buyer and seller of a property;
- IB(3.4) - declining to act where there is unequal bargaining power between the clients, for example acting for a seller and buyer where a builder is selling to a non-commercial client;
• **IB(3.5)** - declining to act for clients under Outcome 3.6 (substantially common interest) or Outcome 3.7 (competing for the same objective) where the clients cannot be represented even-handedly, or will be prejudiced by lack of separate representation;

• **IB(3.6)** - acting for clients under Outcome 3.7 (competing for the same objective) only where the clients are sophisticated users of legal services;

• **IB(3.7)** - acting for clients who are the lender and borrower on the grant of a mortgage of land only where:
  
  (a) the mortgage is a standard mortgage (i.e. one provided in the normal course of the lender’s activities, where a significant part of the lender’s activities consists of lending and the mortgage is on standard terms) of property to be used as the borrower’s private residence;

  (b) you are satisfied that it is reasonable and in the clients’ best interests for you to act; and

  (c) the certificate of title required by the lender is in the form approved by the Society and the Council of Mortgage Lenders.

  (d) Acting in the following way(s) may tend to show that you have not achieved these outcomes and therefore not complied with the Principles:

• **IB(3.8)** - in a personal capacity, selling to or buying from, lending to or borrowing from a client, unless the client has obtained independent legal advice;

• **IB(3.9)** - advising a client to invest in a business, in which you have an interest which affects your ability to provide impartial advice;

• **IB(3.10)** - where you hold a power of attorney for a client, using that power to gain a benefit for yourself which in your professional capacity you would not have been prepared to allow to a third party;

• **IB(3.11)** - acting for two or more clients in a conflict of interests under Outcome 3.6 (substantially common interest) where the clients’ interests in the end result are not the same, for example one partner buying out the interest of the other partner in their joint business or a seller transferring a property to a buyer;

• **IB(3.12)** - acting for two or more clients in a conflict of interests under Outcome 3.6 (substantially common interest) where it is unreasonable to act because there is unequal bargaining power;

• **IB(3.13)** - acting for two buyers where there is a conflict of interests under Outcome 3.7 (competing for the same objective), for example where two buyers are competing for a residential property;

• **IB(3.14)** - acting for a buyer (including a lessee) and seller (including a lessor) in a transaction relating to the transfer of land for value, the grant or assignment of a lease or some other interest in land for value.
Conflicts of Interest – compliance tips
It is recommended that Law Centres consider:

- Having a systematic approach to identifying and avoiding conflicts of interest. It would be helpful to have a documented policy and procedure in relation to conflicts of interest. The policy would outline the importance of undertaking the checks, and the procedure would outline how the checks are undertaken within the Law Centre. The policy and procedure should be held centrally i.e. in a Office Manual or Intranet.
- Maintaining a “Register of Interests” – to record any outside interests members of staff maintain. This will assist in systematically checking for “Own Interest Conflict”.
- Providing relevant training to all staff in relation to the Law Centre’s approach to identifying and dealing with potential conflicts of interests.
- Ensuring that a conflict of interest check is undertaken as soon as the Law Centre is instructed. Conflict should be considered throughout the matter especially when new evidence/information comes to light; and
- Ensuring that evidence of a conflict check, at the outset and any further checks, that has been carried out is evidenced on the file. It is not a requirement of the Code (although is acknowledged to be best practice) but it is a requirement in the SQM. Consider where conflict checks should be evidenced in line with your systems and procedures and ensure that they are being followed. It would be advisable to check this as part of file reviews.

Chapter 4 – Confidentiality and Disclosure

This Chapter relates to the protection of clients’ confidential information and the disclosure of material information to clients. The provisions underpinning the Outcomes of this Chapter remain unchanged from the obligations under the 2007 Code of Conduct.

Confidentiality is key feature of a client relationship, both in law and conduct. The duty of confidentiality is owed to clients by all members of staff, regardless of their role and permanency.

The duty of disclosure is limited to information which is material to your clients matter. Where the duty of confidentiality conflicts with the duty of disclosure, the duty of confidentiality will prevail.
The mandatory Outcomes specified within this Chapter demonstrate how the Principles are to be applied in relation to Confidentiality and Disclosure.

**Outcomes**

The following mandatory Outcomes have been identified in relation to confidentiality and disclosure:

(a) O(4.1) - you keep the affairs of clients confidential unless disclosure is required or permitted by law or the client consents;
(b) O(4.2) - any individual who is advising a client makes that client aware of all information material to that retainer of which the individual has personal knowledge;
(c) O(4.3) - you ensure that where your duty of confidentiality to one client comes into conflict with your duty of disclosure to another client, your duty of confidentiality takes precedence;
(d) O(4.4) - you do not act for A in a matter where A has an interest adverse to B, and B is a client for whom you hold confidential information which is material to A in that matter, unless the confidential information can be protected by the use of safeguards, and:
   (a) you reasonably believe that A is aware of, and understands, the relevant issues and gives informed consent;
   (b) either:
      i. B gives informed consent and you agree with B the safeguards to protect B’s information; or
      ii. where this is not possible, you put in place effective safeguards including information barriers which comply with the common law; and
   (c) it is reasonable in all the circumstances to act for A with such safeguards in place;

O(4.5) - you have effective systems and controls in place to enable you to identify risks to client confidentiality and to mitigate those risks.

**Indicative Behaviours**

The following IBs provide evidence that the Outcomes have been achieved:

- IB(4.1) - your systems and controls for identifying risks to client confidentiality are appropriate to the size and complexity of the firm or in-house practice and
the nature of the work undertaken, and enable you to assess all the relevant circumstances;

- **IB(4.2)** - you comply with the law in respect of your fiduciary duties in relation to confidentiality and disclosure;

- **IB(4.3)** - you only outsource services when you are satisfied that the provider has taken all appropriate steps to ensure that your clients' confidential information will be protected;

- **IB(4.4)** - where you are an individual who has responsibility for acting for a client or supervising a client's matter, you disclose to the client all information material to the client's matter of which you are personally aware, except when:
  
  (a) the client gives specific informed consent to non-disclosure or a different standard of disclosure arises;

  (b) there is evidence that serious physical or mental injury will be caused to a person(s) if the information is disclosed to the client;

  (c) legal restrictions effectively prohibit you from passing the information to the client, such as the provisions in the money-laundering and anti-terrorism legislation;

  (d) it is obvious that privileged documents have been mistakenly disclosed to you;

  (e) you come into possession of information relating to state security or intelligence matters to which the Official Secrets Act 1989 applies;

- **IB(4.5)** - not acting for A where B is a client for whom you hold confidential information which is material to A unless the confidential information can be protected.

The following IBs may show that you have not achieved these outcomes:

- **IB(4.6)** - disclosing the content of a will on the death of a client unless consent has been provided by the personal representatives for the content to be released;

- **IB(4.7)** - disclosing details of bills sent to clients to third parties, such as debt factoring companies in relation to the collection of book debts, unless the client has consented.

**Confidentiality and Disclosure – compliance tips**

It is recommended that Law Centres consider:

- Devising a policy on Confidentiality and Disclosure, outlining the rules and the consequences of any breaches. The policy should be communicated to all staff and located centrally so that it can be accessed by all. The policy should give consideration to the risk to confidentiality and outline any specific measure the Law Centre has put in place to mitigate these risks for example providing
training. The policy should be subject to regular review, and any systems and procedures updated in accordance with the outcomes of reviews. Sample policies to assist Law centres with this area of compliance are available as part of the Quality Manual section of the toolkit.

- Providing training to all staff members, making sure they are aware of the overriding duty of confidentiality, the possible conflict between confidentiality and disclosure, and how to resolve them. The duties must be explained to all new members of staff during the induction process.
- Adopting a systematic approach to dealing with conflict between the duties of confidentiality and disclosure and maintaining client confidentiality.
- Requiring all new employees to sign confidentiality agreements. The protection of confidentiality should be considered where individual staff members leave the Law Centre and move to new employers.

If the Law Centre outsource services to agencies, for example word processing, call handling etc. it must ensure the agencies are aware of the duty of confidentiality and provide confidentiality undertakings. Clients should be informed of this in the client care letter.

**Chapter 5 – Your Client and the Court**

This Chapter relates to advocacy and the conduct of litigations and outlines the duties to the client and to the court. This Chapter overlaps with the requirements of Rule 11 of the 2007 Code of Conduct.

The notes to this Chapter state:

“If you are a litigator or an advocate there may be occasions when your obligation to act in the best interests of a client may conflict with your duty to the court. In such situations you may need to consider whether the public interest is best served by the proper administration of justice and should take precedence over the interests of your client.”

The mandatory Outcomes specified within this Chapter demonstrate how the Principles are to be applied in relation to your client and the court.

**Outcomes**
The following mandatory Outcomes have been identified in relation to your clients and the court:

- **O(5.1)** - you do not attempt to deceive or knowingly or recklessly mislead the court;
- **O(5.2)** - you are not complicit in another person deceiving or misleading the court;
- **O(5.3)** - you comply with court orders which place obligations on you;
- **O(5.4)** - you do not place yourself in contempt of court;
- **O(5.5)** - where relevant, clients are informed of the circumstances in which your duties to the court outweigh your obligations to your client;
- **O(5.6)** - you comply with your duties to the court;
- **O(5.7)** - you ensure that evidence relating to sensitive issues is not misused;
- **O(5.8)** - you do not make or offer to make payments to witnesses dependent upon their evidence or the outcome of the case.

**Indicative Behaviours**

The following IBs provide evidence that the Outcomes have been achieved:

- **IB(5.1)** - advising your clients to comply with court orders made against them, and advising them of the consequences of failing to comply;
- **IB(5.2)** - drawing the court’s attention to relevant cases and statutory provisions, and any material procedural irregularity;
- **IB(5.3)** - ensuring child witness evidence is kept securely and not released to clients or third parties;
- **IB(5.4)** - immediately informing the court, with your client’s consent, if during the course of proceedings you become aware that you have inadvertently misled the court, or ceasing to act if the client does not consent to you informing the court;
- **IB(5.5)** - refusing to continue acting for a client if you become aware they have committed perjury or misled the court, or attempted to mislead the court, in any material matter unless the client agrees to disclose the truth to the court;
- **IB(5.6)** - not appearing as an advocate, or acting in litigation, if it is clear that you, or anyone within your firm, will be called as a witness in the matter unless you are satisfied that this will not prejudice your independence as an advocate, or litigator, or the interests of your clients or the interests of justice.

The following IBs may provide evidence that the Outcomes have not been achieved:
• **IB(5.7)** - constructing facts supporting your client's case or drafting any documents relating to any proceedings containing:
  (a) any contention which you do not consider to be properly arguable; or
  (b) any allegation of fraud, unless you are instructed to do so and you have material which you reasonably believe shows, on the face of it, a case of fraud;

• **IB(5.8)** - suggesting that any person is guilty of a crime, fraud or misconduct unless such allegations:
  (a) go to a matter in issue which is material to your own client's case; and
  (b) appear to you to be supported by reasonable grounds;

• **IB(5.9)** - calling a witness whose evidence you know is untrue;

• **IB(5.10)** - attempting to influence a witness, when taking a statement from that witness, with regard to the contents of their statement;

• **IB(5.11)** - tampering with evidence or seeking to persuade a witness to change their evidence;

• **IB(5.12)** - when acting as an advocate, 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;

• **IB(5.13)** - when acting as an advocate, calling 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.

### Advocacy and Litigation – Compliance Tips

- Although it is an individual Solicitor’s responsibility to meet these Outcomes, it is advisable for the Law Centre to draft a policy and/or a personal agreement in relation to an individual’s responsibility to the client and the court.
- All newly qualified advocates/litigators and new advocates/litigators working for the Law Centre should be made aware of the policy or agreement. It is recommended that the policy is stored centrally and therefore easily accessible by all.
- The Law Centre should have an effective key dates diary ensuring that court are complied with.
- The Law Centre should have an effective system for giving, control and discharge of undertakings to ensure undertakings to the court are complied with.
Chapter 6 – Your clients and the introduction to third parties

This Chapter governs the duties in instances where the Law Centre may want to refer clients to third parties. When making such introductions, it is important that the Law Centre maintains its independence and ensures that it acts in the best interests of clients.

The mandatory Outcomes specified within this Chapter demonstrate how the Principles are to be applied in relation to clients and the introduction to third parties.

From 1st April 2013, provisions in part two of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) make it a regulatory offence to pay or receive referral fees in personal injury cases (referred to in the Code as a prohibited referral fee).

Outcomes
The following mandatory Outcomes have been identified in relation to this Chapter:

- **O(6.1)** - whenever you recommend that a client uses a particular person or business, your recommendation is in the best interests of the client and does not compromise your independence;
- **O(6.2)** - clients are fully informed of any financial or other interest which you have in referring the client to another person or business;
- **O(6.3)** - clients are in a position to make informed decisions about how to pursue their matter.
- **O(6.4)** - you are not paid a prohibited referral fee.

Indicative Behaviours
The following IBs provide evidence that the Outcomes have been achieved:

- **IB(6.1)** - any arrangement you enter into in respect of regulated mortgage contracts, general insurance contracts (including after the event insurance) or pure protection contracts, provides that referrals will only be made where this is in the best interests of the particular client and the contract is suitable for the needs of that client;
- **IB(6.2)** - any referral to a third party that can only offer products from one source is made only after the client has been informed of this limitation.
• **IB(6.3)** - having effective systems in place for assessing whether any arrangement complies with the statutory and regulatory requirements;

• **IB(6.4)** - retaining records and management information to enable you to demonstrate that any payments you receive are not prohibited referral fees.

The following IBs may show that the Outcome has not been achieved:

• **IB(6.5)** - entering into any arrangement which restricts your freedom to recommend any particular business, except in respect of regulated mortgage contracts, general insurance contracts or pure protection contracts;

• **IB(6.6)** - being an appointed representative.

**Introductions to third parties – compliance tips**

• In line with the Outcomes specified within Chapter 1 of the Code, it is important where the Law Centre is referring a client to a third party that, it is transparent in informing the client about the Law Centre’s relationship with the third party

• The Law centre should ensure its independence is not compromised

• It is advisable that a clear signposting and referral procedure is implemented and followed by all members of staff. Having an appropriate signposting and referral procedure is also required by the SQM

• The Law Centre should implement a procedure for the use of approved suppliers and ensure that this is followed by all members of staff
You and your business

Chapter 7 – Management of your business

This Chapter outlines the provisions necessary for supervision and management. It is widely acknowledged that effective management and supervision will result in better client care and reduce claims, poor service and breaches of the Code. It is clear that all staff have a responsibility in ensuring that a business runs efficiently, however, the overarching responsibility for the management of a business lies with the managers.

In meeting the stated Outcomes of this Chapter, it is essential to ensure that appropriate arrangements and systems are put in place to manage and supervise the authorised body. These will be determined by taking into consideration the size of the body, the number and experience of employees and the types of work undertaken.

The Outcomes and IBs of this Chapter overlap with requirements of Rule 5 of the 2007 Code of Conduct. However, there is a greater degree of flexibility within this Code to allow Law Centres to demonstrate appropriate systems and procedures.

The mandatory Outcomes specified within this Chapter demonstrate how the Principles are to be applied in relation to the management of your business.

Outcomes

The following mandatory Outcomes have been identified in relation to this Chapter:

- **O(7.1)** - you have a clear and effective governance structure and reporting lines;
- **O(7.2)** - you have effective systems and controls in place to achieve and comply with all the Principles, rules and outcomes and other requirements of the Handbook, where applicable;
- **O(7.3)** - you identify, monitor and manage risks to compliance with all the Principles, rules and outcomes and other requirements of the Handbook, if applicable to you, and take steps to address issues identified;
- **O(7.4)** - you maintain systems and controls for monitoring the financial stability of your firm and risks to money and assets entrusted to you by clients and others, and you take steps to address issues identified;
• **O(7.5)** - you comply with legislation applicable to your business, including anti-money laundering and data protection legislation;

• **O(7.6)** - you train individuals working in the firm to maintain a level of competence appropriate to their work and level of responsibility;

• **O(7.7)** - you comply with the statutory requirements for the direction and supervision of reserved legal activities and immigration work;

• **O(7.8)** - you have a system for supervising clients' matters, to include the regular checking of the quality of work by suitably competent and experienced people;

• **O(7.9)** - you do not outsource reserved legal activities to a person who is not authorised to conduct such activities;

• **O(7.10)** - subject to Outcome 7.9, where you outsource legal activities or any operational functions that are critical to the delivery of any legal activities, you ensure such outsourcing:
  (a) does not adversely affect your ability to comply with, or the SRA's ability to monitor your compliance with, your obligations in the Handbook;
  (b) is subject to contractual arrangements that enable the SRA or its agent to obtain information from, inspect the records (including electronic records) of, or enter the premises of, the third party, in relation to the outsourced activities or functions;
  (c) does not alter your obligations towards your clients; and
  (d) does not cause you to breach the conditions with which you must comply in order to be authorised and to remain so.

**Indicative Behaviours**
The following IBs provide evidence that the Outcomes have been achieved:

• **IB(7.1)** - safekeeping of documents and assets entrusted to the firm;

• **IB(7.2)** - controlling budgets, expenditure and cash flow;

• **IB(7.3)** - identifying and monitoring financial, operational and business continuity risks including complaints, credit risks and exposure, claims under legislation relating to matters such as data protection, IT failures and abuses, and damage to offices;

• **IB(7.4)** - making arrangements for the continuation of your firm in the event of absences and emergencies, for example holiday or sick leave, with the minimum interruption to clients' business.

**Management – compliance tips**
It is recommended that Law Centres consider:
• Clearly documenting and communicating the Governance and Management Structure of the Law Centre. This may be within an Office Manual. A Law Centre should ensure that it is stored somewhere centrally and accessible by all
• Ensuring that the Law Centre has given consideration to all the systems and procedures required by the Handbook to ensure compliance with the Principles, and that it has implemented them as appropriate within the Law Centre. Best practice would be to document them
• Regularly reviewing the systems and procedures implemented to ensure that they remain effective. If appropriate, the Law Centre should make necessary changes to ensure that it manages the risks in complying with the Principles and Handbook
• Ensuring the production and review of key financial management reports to monitor the financial stability of the business. As a minimum, the Law Centre should be able to demonstrate control of budgets, expenditure and cashflow
• Reviewing the systems and controls the Law Centre has in place to monitor money and assets entrusted to the Centre by clients and others. Best practice would be to document these procedures, communicate them to all staff and regularly review them to ensure they are effective and where appropriate taking remedial action
• Ensuring that the Law Centre continues to comply with all legislation which effects the Law Centre i.e. Data Protection
• Monitoring the competence of all staff and, where appropriate, ensuring that training is provided for the level of work and responsibility. It is up to the Law Centre to determine how competence is assessed. However, best practice would be to ensure that regular appraisals take place and that the Law Centre also assesses the training needs of all staff – activities which are required by the SQM and Lexcel in any event
• Implementing a system of supervising client matters which 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 i.e. file reviews activities which are required by the SQM and Lexcel in any event
• Making sure that any contracts for work outsourced have provisions that enable the SRA, or their agent, to obtain information, inspect records or enter the premises of a third party
• Having clear risk management policies and procedures which identify, as a minimum, financial and operational risks. Keep these policies and procedures under regular review and implement necessary remedial action as appropriate
• Devising a Business Continuity Plan and regularly reviewing it, to ensure that it remains effective; and
• Ensuring that the roles of the Compliance Officer for Finance and Administration (COFA) and Compliance Officer for Legal Practice (COLP) are operating effectively

Chapter 8 – Publicity

This Chapter defines how you publicise the Law Centre.

In general you should ensure that your publicity is not misleading and that it has sufficient detail to allow clients and others to make informed choices. You must have regard to statutory provisions and any relevant voluntary codes.

The mandatory Outcomes specified within this Chapter demonstrate how the Principles are to be applied in relation to publicity.

Outcomes
The following mandatory Outcomes have been identified in relation to this Chapter:

• **O(8.1)** - your publicity in relation to your firm or in-house practice or for any other business is accurate and not misleading, and is not likely to diminish the trust the public places in you and in the provision of legal services;
• **O(8.2)** - your publicity relating to charges is clearly expressed and identifies whether VAT and disbursements are included;
• **O(8.3)** - you do not make unsolicited approaches in person or by telephone to members of the public in order to publicise your firm or in-house practice or another business;
• **O(8.4)** - clients and the public have appropriate information about you, your firm and how you are regulated;
• **O(8.5)** - your letterhead, website and e-mails show the words “authorised and regulated by the Solicitors Regulation Authority” and either the firm’s registered name and number if it is an LLP or company or, if the firm is a partnership or sole practitioner, the name under which it is licensed/authorised by the SRA and the number allocated to it by the SRA.

Indicative Behaviours
The following IBs provide evidence that the Outcomes have been achieved:

- **IB(8.1)** - where you conduct other regulated activities your publicity discloses the manner in which you are regulated in relation to those activities;
- **IB(8.2)** - where your firm is a MDP (multi-disciplinary practice), any publicity in relation to that practice makes clear which services are regulated legal services and which are not;
- **IB(8.3)** - any publicity intended for a jurisdiction outside England and Wales complies with the Principles, voluntary codes and the rules in force in that jurisdiction concerning publicity;
- **IB(8.4)** - where you and another business jointly market services, the nature of the services provided by each business is clear.

The following IBs may show that you have not achieved the Outcomes:

- **IB(8.5)** - approaching people in the street, at ports of entry, in hospital or at the scene of an accident; including approaching people to conduct a survey which involves collecting contact details of potential clients, or otherwise promotes your firm or in-house practice;
- **IB(8.6)** - allowing any other person to conduct publicity for your firm or in-house practice in a way that would breach the Principles;
- **IB(8.7)** - advertising an estimated fee which is pitched at an unrealistically low level;
- **IB(8.8)** - describing overheads of your firm (such as normal postage, telephone calls and charges arising in respect of client due diligence under the Money Laundering Regulations 2007) as disbursements in your advertisements;
- **IB(8.9)** - advertising an estimated or fixed fee without making it clear that additional charges may be payable, if that is the case;
- **IB(8.10)** - using a name or description of your firm or in-house practice that includes the word "Solicitor(s)" if none of the managers are Solicitors;
- **IB(8.11)** - advertising your firm or in-house practice in a way that suggests that services provided by another business are provided by your firm or in-house practice;
- **IB(8.12)** - producing misleading information concerning the professional status of any manager or employee of your firm or in-house practice.

**Publicity – compliance tips**

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It is recommended that Law Centres consider:

- Reviewing publicity materials to ensure they achieve the Outcomes stated in this Chapter. This should be done in relation to all of your business activities
- Continuing to bear in mind that unsolicited approaches should not be made to members of the public in person or by phone, in relation to Law Centre’s services

Once a Law Centre is authorised and by the SRA it should ensure that its letterhead, website and emails state "authorised and regulated by the Solicitors Regulation Authority" and provides the registered name and SRA number.

Chapter 9 – Fee sharing and referrals

This Chapter governs the relationship the Law Centre has with third parties who refer client to you and any potential fee sharing arrangements.

The mandatory Outcomes specified within this Chapter demonstrate how the Principles are to be applied in relation to Fee Sharing and Referrals.

Outcomes
The following mandatory Outcomes have been identified in relation to this Chapter:

- O(9.1) - your independence and your professional judgement are not prejudiced by virtue of any arrangement with another person;
- O(9.2) - your clients’ interests are protected regardless of the interests of an introducer or fee sharer or your interest in receiving referrals;
- O(9.3) - clients are in a position to make informed decisions about how to pursue their matter;
- O(9.4) - clients are informed of any financial or other interest which an introducer has in referring the client to you;
- O(9.5) - clients are informed of any fee sharing arrangement that is relevant to their matter;
- O(9.6) - you do not make payments to an introducer in respect of clients who are the subject of criminal proceedings or who have the benefit of public funding;
• **O(9.7)** - *where you enter into a financial arrangement with an introducer you ensure that the agreement is in writing.*

• **O(9.8)** - *you do not pay a prohibited referral fee.*

**Indicative Behaviours**

The following IBs provide evidence that the Outcomes have been achieved:

• **IB(9.1)** - *only entering into arrangements with reputable third parties and monitoring the outcome of those arrangements to ensure that clients are treated fairly;*

• **IB(9.2)** - *in any case where a client has entered into, or is proposing to enter into, an arrangement with an introducer in connection with their matter, which is not in their best interests, advising the client that this is the case;*

• **IB(9.3)** - *terminating any arrangement with an introducer or fee sharer which is causing you to breach the Principles or any requirements of the Code;*

• **IB(9.4)** - *being satisfied that any client referred by an introducer has not been acquired as a result of marketing or other activities which, if done by a person regulated by the SRA, would be contrary to the Principles or any requirements of the Code;*

• **IB(9.5)** - *drawing the client’s attention to any payments you make, or other consideration you provide, in connection with any referral;*

• **IB(9.6)** - *where information needs to be given to a client, ensuring the information is clear and in writing or in a form appropriate to the client’s needs*

• **IB(97)** - *having effective systems in place for assessing whether any arrangement complies with statutory and regulatory requirements;*

• **IB(9.8)** - *ensuring that any payments you make for services, such as marketing, do not amount to the payment of prohibited referral fees;*

• **IB(9.9)** - *retaining records and management information to enable you to demonstrate that any payments you make are not prohibited referral fees.*

The following IBs may show that you have not achieved the:

• **IB(9.10)** - *entering into any type of business relationship with a third party, such as an unauthorised partnership, which places you in breach of the SRA Authorisation Rules or any other regulatory requirements in the Handbook;*

• **IB(9.11)** - *allowing an introducer or fee sharer to influence the advice you give to clients;*
• IB(9.12) - accepting referrals where you have reason to believe that clients have been pressurised or misled into instructing you.

Fee sharing and referrals – compliance tips
If relevant, Law Centres should consider:

• Reviewing their client documentation to ensure that the Law Centre informs clients of all relevant information in accordance with these outcomes
• Where a Law Centre enters into a financial agreement with a referrer, ensuring that there is a written referral agreement in place (including those between legal advice agencies and with Solicitors), and that it meets the specified outcomes
• Where a Law Centre has entered into a referral arrangement, setting up a central folder of all referral agreements as it allows for ease of monitoring. Periodically, the Law Centre should verify with clients that the method used to attract them to the Law Centre did not flout the publicity code. The Law Centre should keep a record of this survey
• Periodically reviewing the agreements to ensure they remain appropriate and if necessary amend
Chapter 10 – You and your regulator

This Chapter defines the co-operation in the relationship between the Law Centre and it’s regulators (primarily the SRA and Legal Ombudsman).

The mandatory Outcomes specified within this Chapter demonstrate how the Principles are to be applied in relation to you and your regulator.

Outcomes

The following mandatory Outcomes have been identified in relation to this Chapter:

- **O(10.1)** - you ensure that you comply with all the reporting and notification requirements in the Handbook that apply to you;
- **O(10.2)** - you provide the SRA with information to enable the SRA to decide upon any application you make, such as for a practising certificate, registration, recognition or a licence and whether any conditions should apply;
- **O(10.3)** - you notify the SRA promptly of any material changes to relevant information about you including serious financial difficulty, action taken against you by another regulator and serious failure to comply with or achieve the Principles, rules, outcomes and other requirements of the Handbook;
- **O(10.4)** - you report to the SRA promptly, serious misconduct by any person or firm authorised by the SRA, or any employee, manager or owner of any such firm (taking into account, where necessary, your duty of confidentiality to your client);
- **O(10.5)** - you ensure that the SRA is in a position to assess whether any persons requiring prior approval are fit and proper at the point of approval and remain so;
- **O(10.6)** - you co-operate fully with the SRA and the Legal Ombudsman at all times including in relation to any investigation about a claim for redress against you;
- **O(10.7)** - you do not attempt to prevent anyone from providing information to the SRA or the Legal Ombudsman;
- **O(10.8)** - you comply promptly with any written notice from the SRA;
- **O(10.9)** - pursuant to a notice under Outcome 10.8, you:
(a) produce for inspection by the SRA documents held by you, or held under your control;
(b) provide all information and explanations requested; and
(c) comply with all requests from the SRA as to the form in which you produce any documents you hold electronically, and for photocopies of any documents to take away;

in connection with your practice or in connection with any trust of which you are, or formerly were, a trustee;

• O(10.10) - you provide any necessary permissions for information to be given, so as to enable the SRA to:
  (a) prepare a report on any documents produced; and
  (b) seek verification from clients, staff and the banks, building societies or other financial institutions used by you;

• O(10.11) - when required by the SRA in relation to a matter specified by the SRA, you:
  (a) act promptly to investigate whether any person may have a claim for redress against you;
  (b) provide the SRA with a report on the outcome of such an investigation, identifying persons who may have such a claim;
  (c) notify persons that they may have a right of redress against you, providing them with information as to the nature of the possible claim, about the firm's complaints procedure and about the Legal Ombudsman; and
  (d) ensure, where you have identified a person who may have a claim for redress, that the matter is dealt with under the firm's complaints procedure as if that person had made a complaint;

• O(10.12) - you do not attempt to abrogate to any third party your regulatory responsibilities in the Handbook, including the role of Compliance Officer for Legal Practice (COLP) or Compliance Officer for Finance and Administration (COFA);

• O(10.13) - once you are aware that your firm will cease to practise, you effect the orderly and transparent wind-down of activities, including informing the SRA before the firm closes.

Indicative Behaviours
The following IBs provide evidence that the Outcomes have been achieved:

• IB(10.1) - actively monitoring your achievement of the outcomes in order to improve standards and identify non-achievement of the outcomes;
• IB(10.2) - actively monitoring your financial stability and viability in order to identify and mitigate any risks to the public;
• IB(10.3) - notifying the SRA promptly of any indicators of serious financial difficulty, such as inability to pay your professional indemnity insurance premium, or rent or salaries, or breach of bank covenants;
• IB(10.4) - notifying the SRA promptly when you become aware that your business may not be financially viable to continue trading as a going concern, for example because of difficult trading conditions, poor cash flow, increasing overheads, loss of managers or employees and/or loss of sources of revenue;
• IB(10.5) - notifying the SRA of any serious issues identified as a result of monitoring referred to in IB10.1 and IB10.2 above, and producing a plan for remedying issues that have been identified;
• IB(10.6) - responding appropriately to any serious issues identified concerning competence and fitness and propriety of your employees, managers and owners;
• IB(10.7) - reporting disciplinary action taken against you by another regulator;
• IB(10.8) - informing the SRA promptly when you become aware of a significant change to your firm, for example:
  (a) key personnel, such as a manager, COLP or COFA, joining or leaving the firm;
  (b) a merger with, or an acquisition by or of, another firm;
• IB(10.9) - having appropriate arrangements for the orderly transfer of clients' property to another authorised body if your firm closes;
• IB(10.10) - having a "whistle-blowing" policy.
  Acting in the following way(s) may tend to show that you have not achieved these outcomes and therefore not complied with the Principles:
• IB(10.11) - entering into an agreement which would attempt to preclude the SRA or the Legal Ombudsman from investigating any actual or potential complaint or allegation of professional misconduct;
• IB(10.12) - unless you can properly allege malice, issuing defamation proceedings in respect of a complaint to the SRA.

**Regulation – compliance tips**
Once authorised by the SRA, the Law Centre should:

- Implement systems to actively monitor compliance with the Outcomes of this Chapter. This could include financial stability, achievements of the Outcomes within the Code and compliance with the Handbook. These systems need not
be complex and could involve a regular review of how the Law Centre is complying against the provisions. Where appropriate, it would be advised to amend any systems and procedures as a result of the review. Best practice would be to maintain documentary evidence of these reviews

- Give consideration to arrangements for the transfer of client property to another authorised body, if the Law Centre closes. Best practice would be to document these arrangements, perhaps within your Business Continuity plan
- Draft a “whistle blowing” policy. The policy should be communicated to all staff within the Law Centre and be held centrally so that it is easily accessible
- Appoint an effective COLP and COFA.
Chapter 11 – Relations with third parties

This Chapter outlines provisions for the way in which you deal with others, and in particular ensuring that the Law Centre acts in a way which promotes the proper operation of the legal system.

The requirements in this Chapter extend beyond professional and business matters and are applicable in circumstances where the Law Centre or its individual staff members may use their title to advance personal interests.

The mandatory Outcomes specified within this Chapter demonstrate how the Principles are to be applied in relations with third parties.

Outcomes
The following mandatory Outcomes have been identified in relation to this Chapter:

• O(11.1) - you do not take unfair advantage of third parties in either your professional or personal capacity;
• O(11.2) - you perform all undertakings given by you within an agreed timescale or within a reasonable amount of time;
• O(11.3) - where you act for a seller of land, you inform all buyers immediately of the seller's intention to deal with more than one buyer;
• O(11.4) - you properly administer oaths, affirmations or declarations where you are authorised to do so.

Indicative Behaviours
The following IBs provide evidence that the Outcomes have been achieved:

• IB(11.1) - providing sufficient time and information to enable the costs in any matter to be agreed;
• IB(11.2) - returning documents or money sent subject to an express condition if you are unable to comply with that condition;
• IB(11.3) - returning documents or money on demand if they are sent on condition that they are held to the sender's order;

• IB(11.4) - ensuring that you do not communicate with another party when you are aware that the other party has retained a lawyer in a matter, except:
  (a) to request the name and address of the other party's lawyer; or
  (b) the other party's lawyer consents to you communicating with the client;
or
  (c) where there are exceptional circumstances;

• IB(11.5) - maintaining an effective system which records when undertakings have been given and when they have been discharged;

• IB(11.6) - where an undertaking is given which is dependent upon the happening of a future event and it becomes apparent the future event will not occur, notifying the recipient of this.

The following IBs may show that the outcomes have not been met:

• IB(11.7) - taking unfair advantage of an opposing party's lack of legal knowledge where they have not instructed a lawyer;

• IB(11.8) - demanding anything for yourself or on behalf of your client, that is not legally recoverable, such as when you are instructed to collect a simple debt, demanding from the debtor the cost of the letter of claim since it cannot be said at that stage that such a cost is legally recoverable;

• IB(11.9) - using your professional status or qualification to take unfair advantage of another person in order to advance your personal interests;

• IB(11.10) - taking unfair advantage of a public office held by you, or a member of your family, or a member of your firm or their family.

Third parties – compliance tips
It is recommended that Law Centres consider:

• Devising an undertakings procedure which outlines the process for how the Law Centre deals with them. The Law Centre should ensure the procedure is located centrally so that all staff can access it

• Ensuring all undertakings are recorded on the files. In addition, maintain a central undertakings register. The register should be monitored regularly by a nominated individual to ensure that they are being discharged
Chapter 13 – Applications and waivers

This Chapter sets out to who the Code applies and the power of the SRA to waive the application of the Code in exceptional circumstances.

For further information, the full Chapter should be referred to.

Chapter 14 – Interpretation

This contains interpretations of all the main terms used within the code.

Chapter 15 – Transitional provisions

This contains detail of the transitional provisions between the 2007 Code and the 2011 Code and further changes to come into force as a result of the Legal Services Act.
The Legal Services Act 2007 requires that a head of legal practice and head of finance and administration are appointed within each ABS. The SRA have decided that all practices, including those which are not ABS should appoint someone to these positions.

The SRA’s requirements for the roles of the Compliance Officer for Legal Practice (COLP) and Compliance Officer for Finance and Administration (COFA) are outlined under the Authorisation Rules of the Handbook.

According to the rules, ABSs were required to have individuals nominated to these roles by 6 October 2011. For other practices, they were required to nominate their prospective COLPs and COFAs and ensure that those individuals’ details are provided to the SRA for approval by 31 March 2012. The nominated COLP and COFA were required to be authorised and to start to fulfil their obligations from 1 January 2013.

Although the SRA have highlighted that responsibility for compliance ultimately rests with the managers of a practice, compliance officers may also find regulatory action is taken against them where they fail to meet their responsibilities.

**Compliance Officer for Legal Practice (COLP)**

A COLP must be an individual who:

- Is a lawyer of England or Wales; registered European lawyer (REL) or European lawyer regulated by the Bar Standards Board
- Is an employee or manager of the Law Centre
- Is of sufficient seniority and in a position of sufficient responsibility to fulfil the role
- Is approved by the SRA for that role
- Has consented to undertake the role and;
- Is authorised to do one or more of the reserved activities specified in the Law Centre's certificate of authorisation
A COLP has the following responsibilities:

- To ensure compliance with the terms and conditions of their Law Centre's authorisation
- To ensure compliance with any statutory obligations for example, the duties imposed by the Legal Services Act 2007, the Solicitors Act 1974 and the Administration of Justice Act 1985
- To take all reasonable steps to record all failures to comply. Law Centres should also report any such failures to comply to the SRA as soon as reasonably practicable, although in the case of non-material breaches, the organisation will still be deemed compliant if they are reported as part of the Information Report required under Rule 8.7 of the Authorisation Rules.

In addition, the Handbook states that it is the COLP’s responsibility to ensure that there are systems in place for compliance. The guidance to the Rule states:

“Rule 8.2 deals with the need for firms to have suitable arrangements for compliance (see also Chapter 7 of the SRA Code of Conduct (Management of your business)). What needs to be covered by a firm's compliance plan will depend on factors such as the size and nature of the firm, its work and its areas of risk. Firms will need to analyse the effectiveness of their compliance arrangements before applying for authorisation and monitor effectiveness on an on-going basis once authorised. Common areas for consideration will include:

(a) clearly defined governance arrangements providing a transparent framework for responsibilities within the firm
(b) appropriate accounting procedures
(c) a system for ensuring that only the appropriate people authorise payments from client account
(d) a system for ensuring that undertakings are given only when intended, and compliance with them is monitored and enforced
(e) appropriate checks on new staff or contractors
(f) a system for ensuring that basic regulatory deadlines are not missed for example submission of the firm's accountant's report, arranging indemnity
cover, renewal of practising certificates and registrations, renewal of all lawyers’ licences to practise and provision of regulatory information.

(g) a system for monitoring, reviewing and managing risks

(h) ensuring that issues of conduct are given appropriate weight in decisions the firm takes, whether on client matters or firm-based issues such as funding

(i) file reviews

(j) appropriate systems for supporting the development and training of staff

(k) obtaining the necessary approvals of managers, owners and COLP/COFA

(l) arrangements to ensure that any duties to clients and others are fully met even when staff are absent.”

**Compliance Officer for Finance and Administration (COFA)**

A COFA must an individual who:

- Is an employee or manager of the Law Centre
- Is of sufficient seniority and in a position of sufficient responsibility to fulfil the role
- Is approved by the SRA for that role, and
- Has consented to undertake the role

Unlike a COLP, the COFA does not need to be a lawyer.

A COFA has two key responsibilities:

- To ensure compliance with the SRA’s accounts rules
- To record all failures to comply and to report any such failures to the SRA as soon as reasonably practicable.

Therefore, to be able to undertake their role effectively, the COFA will need to:

- Have access to all accounting records
- Carry out regular checks on the accounting systems
- Carry out file and ledger reviews
- Ensure that the reporting accountant has prompt access to all the information needed to complete the accountant's report
• Take steps to ensure that breaches of the SRA Accounts Rules are remedied promptly
• Report all breaches, which are material either on their own or as part of a pattern, to the SRA and
• Monitor, review and manage risks to compliance with the SRA Accounts Rules.

In addition, the Handbook states that it is the COFA’s responsibility to ensure that there are systems in place for compliance. The guidance to the rule suggests the following:

• A system for ensuring that only the appropriate people authorise payments from client account
• A system for ensuring that undertakings are given only when intended, and that compliance with them is monitored and enforced
• A system for ensuring appropriate checks on new staff or contractors
• A system for ensuring that basic regulatory deadlines are not missed for example submission of the organisation’s accountant's report, arranging indemnity cover, renewal of practising certificates and registrations, renewal of all lawyers’ licences to practise and provision of regulatory information
• A system for monitoring, reviewing and managing risks
• Ensuring that issues of conduct are given appropriate weight in decisions the organisation takes, whether on client matters or organisation-based issues such as funding
• File reviews
• Appropriate systems for supporting the development and training of staff
• Obtaining the necessary approvals of management and/or the COLP/COFA
• Arrangements to ensure that any duties to clients and others are fully met even when staff are absent.

**Maintaining Records**

COLPs and COFAs are required to maintain records of breaches in compliance. To ensure that the systems that have been implemented are effective, the COLP and COFA should review these records periodically and ensure that any necessary remedial action is implemented.

Law Centres will need to appoint these compliance officers if they are authorised by the SRA in the future. Therefore, Law Centres should start to consider:
• Who has the necessary skills and experience to take on each role?
• Do they understand their role, responsibilities and accountabilities?
• Do they have sufficient resources and authority to do their job properly?
• Does your management structure and reporting lines facilitate their roles?
• What will they be monitoring and how will we ensure that the arrangements are in effective operation?
• How will their performance be reviewed regularly by management?
• Are other staff appropriately trained in compliance issues, including the role of the COLP and COFA?