

## **STOUT STREET CHAMBERS - CONFIDENTIALITY POLICY 2021**

### **General**

1. These rules are to be read in conjunction with the UK Bar Council's Guidelines which are attached. They are intended as a set of procedures which will ensure that the objects of those guidelines are met. These rules are to be observed and enforced by all members of chambers.

### **Rooms**

2. All barristers in Stout Street Chambers have their own rooms with lockable doors. They are locked if occupants are not present and do not wish other chambers members to enter their rooms.
3. Barristers are not to enter other chambers members' rooms without their consent, and nor shall they do so in circumstances where confidential information is visible to the visitor. If urgent access is required in the barrister's absence (e.g. to retrieve a book), that will be undertaken by a secretary.

### **Sound proofing**

4. All barristers' rooms are sound proofed to STC 50 (a standard one or two steps above most commercial offices).

### **Separation of phones and computer facilities**

5. All barristers have separate phones, email addresses, and computer equipment. It is not possible for one barrister to access another's phone, emails or computer.

The patch panel is kept separately locked with a key (available to servicing personnel only). The same procedure is to be adopted for the chambers' server.

### **Printing**

6. Where shared printers are used for confidential client matters these are to be used under direct supervision by the barrister or his/her secretary, to preserve confidentiality. Client confidential matters are not to be left on the common printer.

### **Where members of chambers are acting for more than one party**

7. The solicitors on each side are to be informed immediately this is known unless the client or solicitor wishes the barrister's involvement to remain confidential.
8. No barrister may carry out any work (including research by juniors) for use on more than one side of a matter where counsel are acting on both sides of the matter in chambers. Any barrister must be engaged solely on one side of any matter. Secretarial and administrative support staff will apply strict protocols to preserve the confidentiality of all work and printed documents.

## APPENDIX

### The Bar Council (UK): Acting on Opposite Sides within Chambers (July 2007)

#### (a) Introduction

1. Self-employed barristers regularly appear on opposite sides in the same case, or act as arbitrators or judges in cases where members of their chambers are involved as counsel for one or other of the parties. As has been judicially recognised on many occasions<sup>1</sup>, this usually gives rise to no conflict of interest<sup>2</sup>, and creates no problems.
2. However, it does require each barrister involved to be vigilant to ensure that their own methods of working, and the systems in place in their chambers, are adequate to prevent any breach of the duty of confidentiality which barristers owe to their clients, both under the general law and under paragraph 702 of the *Code of Conduct*.
3. The primary responsibility for observing this duty rests with each individual barrister. However, as the *Practice Management Guidelines*<sup>3</sup> make clear, each set of Chambers should have in place, and should operate, a system of policies and practices sufficient to avoid any breach of confidence.
4. The following Guidelines are intended to assist sets of Chambers in formulating systems that are appropriate in the context of their own structures and methods of operation. They are merely guidelines, not rules of practice, and will need to be adapted to the circumstances of each individual set. They are not exhaustive: and they do not deal with the circumstances in which a barrister must, for reasons of professional embarrassment (such as a conflict of interest or risk of disclosure or misuse of confidential information), refuse to accept a brief or instructions<sup>4</sup>.

#### (b) Accepting Instructions

5. Chambers may already have in place a system for screening new instructions for possible conflicts of interest. Whether such a system is in place or not, Chambers should consider putting in place a system for identifying instructions where another member of chambers is already involved in the case, so as to ensure that those instructions are handled appropriately.
6. At the outset of litigation there may be a time when rival parties will not want the fact that they have taken legal advice to be known otherwise than to their advisers. In any event,

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<sup>1</sup> See eg *Nye Saunders and Partners (a firm) v Alan E Bristow* (1987) 37 BLR 92; *Laker Airways Inc v FLS Aerospace Ltd* [2000] 1 WLR 113; *Taylor v Lawrence and Yardley v Birmingham City Council* [2004] EWCA Civ 1756; *Smith v Kvaerner Cementation Foundations Ltd* [2006] EWCA Civ 242, [2006] 3 All ER 593.

<sup>2</sup> Except, possibly, in cases where the combined effect of a conditional fee agreement entered into by counsel and the arrangements within chambers for sharing expenses has the effect (or may give the appearance) of giving the judge or arbitrator a financial interest in the result that is more than *de minimis*: see *Smith* (supra) at [17].

<sup>3</sup> 2006 revision, Section 6 para 13.

<sup>4</sup> See paras 603(d) to (f) of the *Code of Conduct*.

counsel are probably under a duty to keep confidential the fact that they have received instructions from a particular client<sup>5</sup>, unless:

- The client agrees otherwise;
- The client expressly or impliedly (for example, by authorising service of a Statement of Case bearing counsel's name, or by giving instructions for counsel to do something - eg to appear in open court or at a hearing on notice - that will necessarily involve disclosure) authorises disclosure; or
- The fact ceases to be confidential (eg because it becomes known to the other side from another source).

7. Maintaining the confidentiality of that fact may cause practical difficulties when the second set of instructions is received. So it may be prudent:

- For chambers
  - to adopt and publicise on its website the policy that, in such circumstances, it will inform both sets of barristers and both sets of solicitors of the facts, unless specifically requested not to do so by one side or the other;
  - to include a suitable reference to the policy in all letters sent out acknowledging receipt of instructions.
- For practice managers:
  - When discussing all new instructions, to ask whether, in the event that instructions for another party are also received in chambers, the instructing solicitor wishes the fact of his instructions to remain confidential in the first instance;
  - when acknowledging all new instructions, to confirm the position with regard to confidentiality of the fact of instructions in writing; and
  - To ensure that counsel is promptly informed of the instructing solicitor's wishes, as soon as they are known.
- For barristers:
  - Where confidentiality may be an issue, to discuss the position with their instructing solicitors personally, in order to ensure that the issues are understood, that they have given any necessary advice, and that they have clear instructions on the point; and
  - To ensure that they pass on to their practice manager promptly and unambiguously any instructions that they may receive.

8. Where it is necessary for the fact of instructions to remain confidential, it may be sensible for practice managers to arrange at the outset for the instructions to be sent down under a suitably anonymous project name (as is common in M&A and similar cases), so that the names of the client and of the intended opponent(s) do not appear on the face of any document or in any chambers record or diary. It is better to use a project name than just to have a blank backsheet. With a blank backsheet, but no project name, there is a risk

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<sup>5</sup> Counsel must also bear this obligation in mind when including client names in their cvs or on chambers' websites.

that the case will be referred to in the clerks' room, or in a diary or other record that may be seen, by the client's name.

**(c) Practice Management**

9. Consideration should be given to providing separate practice management where members of a set of chambers appear against each other. Solicitors should be informed, so that they deal only with the relevant practice manager.
10. If separate clerking is provided, systems will need to be set up to preserve confidentiality as between the two practice managers. This may require some significant changes in normal working routines, particularly if both work together in an open-plan room and so can hear each other's conversations and telephone calls, and see each other's papers.

**(d) Papers**

11. Care must be taken to ensure papers are kept confidential to the barrister working on the case.
12. Even where the fact that another counsel in the same chambers has been instructed is no longer confidential, consideration should be given in all cases where counsel from the same set are on opposite sides to suggesting to instructing solicitors that they either use a project name or a blank backsheet, in order to remove any indication on the outside of papers as to what matter they relate to.
13. When papers are received for a particular barrister, they should never be left freely available in the clerks' room or in any other common area in chambers for other members of chambers or visitors to see. Wherever practicable, papers should be delivered to the barrister in question, placed in his room in an envelope, or otherwise inconspicuously in a pigeonhole. Where particularly sensitive documents are to be delivered, practice managers should make arrangements with solicitors to ensure security.

**(e) Diaries**

14. Many chambers now use secure electronic diaries, which prevent one member of chambers from seeing the engagements of another. However, such diaries usually permit chambers' staff to see the diaries of all members. Where separate clerking has been put in place, steps need to be taken to ensure that this common access does not lead to any breach of confidence.
15. At the stage where the fact of instructions has not been disclosed, the use of a project name may be sufficient to preserve confidentiality. But that may not be sufficient, once both sides are aware that both have been instructed. In a few cases, it may be necessary to bar each side's practice manager from access to the other side's barrister's diary.
16. Similarly, where a print out of chambers' computerised diary is made available to all members, steps need to be taken to ensure that this common access does not lead to any breach of confidence. Use of a project name may sometimes be sufficient. In a few cases, it may be necessary to discontinue the practice, or to remove the barristers concerned from the print out for a period.
17. Where written diaries are used, consideration should be given to the need to maintain them in a way which ensures that individual diaries are not freely available for inspection by other barristers.

(f) **Faxes**

18. Arrangements need to be made to ensure that incoming and outgoing faxes are handled in a way that preserves confidentiality. In cases where counsel in the same set are on opposite side (and that fact is known) solicitors should be informed of the arrangements for receiving faxes.
19. Where one or both of the barristers has a fax in his or her room, the barrister or the practice manager should suggest to the solicitor that all faxes be sent direct to the barrister on that number.
20. Where faxes are dealt with by receptionists, away from the clerks room, it may be that confidentiality can be sufficiently preserved by suitable instructions to them, eg always to put particular faxes immediately into an envelope and to give them only to the barrister concerned or to the assigned practice manager.
21. Otherwise, solicitors should be informed that all incoming faxes are received in the clerks' room, and so may be seen by any of the practice managers, and should be encouraged to consider whether any confidential document can safely be sent by fax.
22. Barristers should be informed that they should not personally retrieve faxes and that clerks will ensure that all faxes are removed promptly from the fax machine and delivered to the barrister in the same way as other documents.

(g) **Emails**

23. As a general matter, all barristers who use email should already have in place systems for ensuring the confidentiality of all email communications<sup>6</sup>: and where chambers has a common email system, that system must be set up in a way that ensures that that obligation is performed.
24. Where individual barristers do not have their own email facility and emails are received centrally by practice managers, solicitors should be informed. Consideration should be given to a password system for receipt of emails or for one member of staff to be responsible for downloading emails and distributing hardcopies to the relevant practice manager.

(h) **Barristers' Rooms**

25. Where practicable, barristers should always lock their rooms when they have confidential papers in their custody. However, where rooms are shared, this may not be practicable: and, in any event, other members of chambers and staff will often have the key.
26. It must therefore remain the duty of any barrister not to leave sensitive documents in a position where they might be viewed by another person entering the room. Though this is of general application, it is of particular relevance when counsel in the same set are on opposite sides. In a few cases, it may be necessary for special precautions – such as the installation of a safe, or the designation of a particular room to which an additional lock is fitted – to be taken.
27. Care must also be taken to ensure that confidentiality is not breached by things thrown away. Chambers may have central facilities for disposal of confidential waste.

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<sup>6</sup> See para 15.1.3 of the Practice Management Guidelines.

Otherwise, individual barristers should either send back to their instructing solicitors, or should shred, confidential documents, and should not simply put them into the general waste basket, where others may see them.

(i) **Computers and Networks**

28. Chambers' networks must be set up so as to ensure that no barrister or practice manager has access to another barrister's files or other client data without specific consent. Similarly, the computer(s) of each individual barrister should be set up (for example, by being protected by a firewall and by being password protected) to preserve confidentiality. Care needs to be taken about leaving documents visible on screen, and suitable password protected screensavers used with appropriate settings.
29. These are all matters of general importance: but each has a particular relevance in circumstances where barristers in the same set are on opposite sides of a case.

(j) **Discussion among Members of Chambers and Pupils**

30. Barristers on opposite sides of a case should not discuss the case with each other, except on a formal basis.
31. They should also exercise discretion in discussing the matter with any other member of chambers or with Practice Managers.
32. Pupils often move from supervisor to supervisor during their pupillage. Where barristers in the same set are on opposite sides in a case, it will usually be inappropriate for a pupil to move from one such barrister to the other as supervisor. Chambers should have a system for avoiding this, for example by ensuring that the Pupillage Committee is notified of all potential conflicts of this kind. Care also needs to be taken in such circumstances when pupils supervised by others are asked to work on or research points on such a case.

(k) **Breaches**

32. In the event of a possible breach of confidence being identified, chambers should:
- Take all necessary steps to ensure that damage arising from the breach is minimised;
  - Ensure that the barrister in question considers his position under the Code of Conduct
  - Consider the breach so that the chambers procedure can be reviewed, with a view to avoiding repetition.