SRA Handbook 2011: in-house lawyer guide

SLAUGHTER AND MAY

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Who should read this guide?

This guide has been written for “in-house lawyers”, that is to say:

• solicitors admitted in England and Wales; or

• lawyers qualified in other European jurisdictions and practising under their home title,

who are employed to work as lawyers within commerce and industry and who practise in England and Wales or other jurisdictions.

The concept of “in-house practice” is widely defined within the SRA Handbook. However, for the purposes of this guide, it refers primarily to work carried out by in-house lawyers for their employer or members of their employer’s group (or, on occasion, for work colleagues or for members of the public on a pro bono basis).

Although this guide is directed at all in-house lawyers, some of the obligations in the Handbook relating to practice in England and Wales (but not to practice elsewhere) apply only to those with “management responsibilities”. The Handbook does not define this term, but it is understood to include those who have the ability to influence how an in-house department is run. The Next steps sections in each paragraph of Section B of the guide set out practical considerations for in-house lawyers with management responsibilities.

AIM OF THIS GUIDE

This guide aims to help in-house lawyers navigate the requirements of the Handbook. It adopts a practical approach to determining what are the obligations that apply to in-house lawyers but does not seek to promote any particular approach or best practice.

This material is for general information only and is not intended to provide legal advice.

ACKNOWLEDGEMENTS

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QUESTIONS

If you have any queries about any aspect of this guide, please contact its authors, Julia Adams (Senior Compliance Lawyer) or Sarah de Gay (Head of Compliance) of Slaughter and May, or your usual Slaughter and May contact.
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A. Introduction to the SRA Handbook 2011

1. THE SRA HANDBOOK 2011

1.1 The SRA Handbook (the “Handbook”) – in force since 6 October 2011 – gathers in one place all the Solicitors Regulation Authority (“SRA”) rules that apply to regulated individuals and entities.

1.2 The rules accommodate Alternative Business Structures (“ABSs”) – which enable lawyers to form partnerships with non-lawyers, seek outside investment and/or operate under external ownership.

1.3 The Handbook includes:
   - ten mandatory Principles;
   - an “outcomes-focused” Code of Conduct;
   - bright-line rules governing a wide range of areas, including solicitors’ accounts, authorisation requirements, practising requirements and the framework of practice; and
   - separate Overseas Rules governing practice outside England and Wales.

1.4 The Handbook applies to all in-house lawyers. The areas of most relevance to solicitors admitted and practising in England and Wales are the SRA Principles 2011 (the “Principles”), the SRA Code of Conduct 2011 (the "Code of Conduct") and the SRA Practice Framework Rules 2011 (the "Practice Framework Rules"). Other rules may also apply – for example, the SRA Training Regulations 2011 will be relevant to in-house departments if they are “training establishments” – but they are not considered in any detail in this guide. These rules will also apply to Registered European Lawyers (“RELs”), registered with the SRA under regulation 17, European Communities (Lawyer’s Practice) Regulations 2000 (SI 2000/1119) (the “REL Regulations”).

1.5 For those solicitors admitted in England and Wales but practising elsewhere, the starting point is Chapter 13A of the Code of Conduct. Depending on the nature of their practice, in-house lawyers practising elsewhere (or RELs practising in Scotland or Northern Ireland) may be subject to the SRA Overseas Rules 2013 (“Overseas Rules”) or to the Principles and a modified version of the Code of Conduct. In addition, in-house lawyers practising outside England and Wales are subject to other SRA rules (such as the Practice Framework Rules).

2. WHAT IS OUTCOMES-FOCUSED REGULATION?

2.1 The SRA’s move to outcomes-focused regulation (“OFR”) signified a change in the relationship between it and those it regulates. A box-ticking approach to compliance has been replaced by greater freedom to decide how best to safeguard the interests of clients. This in turn requires solicitors to be more attuned to, and actively engaged in, the ethical dilemmas they face in practice.
2.2 The Handbook favours high-level Principles and Outcomes over bright-line rules.

2.3 In-house lawyers need to decide for themselves how best to achieve the standards set by the Principles and Outcomes within the Code of Conduct or the Overseas Principles set by the Overseas Rules. Provided these standards are achieved, the SRA should not be concerned how in-house lawyers go about meeting them.

2.4 That said, in respect of lawyers practising in England and Wales, the Code of Conduct places great emphasis on the need for in-house lawyers, in particular those who have management responsibilities within in-house departments, to have effective systems and controls in place to ensure compliance with the Handbook. To implement such systems, in-house lawyers with management responsibilities need to identify and address the vulnerabilities within their departments. In-house lawyers practising overseas do not have the same obligations regarding the implementation of effective systems and controls. The Overseas Rules focus solely on the activities and practice of the individual in-house lawyer who is largely left to determine for himself or herself how best to comply.

2.5 In general, both the Code of Conduct and the Overseas Rules are less detailed than previous rules contained in the Solicitors' Code of Conduct 2007 (the "2007 Code") and much of the guidance contained within the 2007 Code has not been transposed into the Code of Conduct or Overseas Rules. There are also many areas where the application of the Handbook to in-house practice is not clear. This suggests that the burden of deciding whether and how the standards required by a particular Outcome or Overseas Principle apply in a particular circumstance falls on the in-house lawyer.

3. **THE SRA PRINCIPLES**

3.1 The Principles apply most directly to in-house lawyers practising in England and Wales but also in certain circumstances to those practising elsewhere.

3.2 The Principles are mandatory and set out the fundamental ethical and professional standards to which all solicitors, including those who are in-house lawyers, must adhere. They stand alone, separate from the Code of Conduct, and so assume a greater importance.

3.3 The Principles are all-pervasive and underpin all the regulatory requirements applicable to in-house lawyers, whether they relate to their relationship with their employers or the SRA itself. Each time a regulatory issue is considered, the first point of reference should be the Principles. For the full list of the Principles, see Appendix 1, The Principles.

3.4 In some circumstances the Principles will apply outside practice, particularly Principle 6 that requires a solicitor to behave in a way that maintains the trust the public places in him or her and in the provision of legal services. Further, where two or more Principles come into conflict, the Principle that best serves the public interest in the particular circumstances will take precedence.

4. **THE CODE OF CONDUCT**

4.1 The Code of Conduct applies most directly to in-house lawyers practising in England and Wales but also in certain circumstances to those practising overseas.

4.2 The Code of Conduct is divided into five sections: You and your client; You and your business; You and your regulator; You and others; Application,
waivers and interpretation. Each section is divided into chapters. For example, You and your client has chapters on: Client care; Equality and diversity; Conflicts of interests; Confidentiality and disclosure; Your client and the court; Your client and introductions to third parties. These chapters show how the Principles apply in certain contexts through mandatory Outcomes and non-mandatory Indicative Behaviours, but with limited guidance.

4.3 The purpose of the Outcomes is to set out mandatory conduct requirements in a way that allows practitioners to take into account the way in which they practise and the needs of their clients. They are not, however, an exhaustive list and so, even where there is no specific Outcome covering a particular ethical issue, in-house lawyers should always have regard to the Principles.

4.4 Not all the Outcomes apply to in-house practice and different Outcomes may apply depending on whether in-house lawyers are acting for their employer or another client (as permitted by the Practice Framework Rules). At the end of each chapter of the Code of Conduct, the SRA has specifically stated which Outcomes apply to in-house practice and to what extent.

4.5 The Outcomes are supplemented by non-mandatory Indicative Behaviours that specify, again in a non-exhaustive list, the kinds of behaviour that may easily establish compliance with, or contravention of, the Principles and the Outcomes.

5. THE OVERSEAS RULES

5.1 The areas of the Handbook of most relevance to in-house lawyers practising outside England and Wales are the Overseas Rules – consisting of ten mandatory Overseas Principles that came into force on 1 October 2013, and a mandatory reporting regime that came into force on 1 October 2014 – as well as the Practice Framework Rules.

5.2 The Overseas Rules are drafted to operate alongside local law and regulation and are applied instead of the Principles and Code of Conduct. Their purpose is to enable the SRA to take a proportionate approach to the regulation of those practising outside England and Wales. They are less prescriptive than the domestic Principles and Code of Conduct but do not allow for a lower standard of ethical behaviour. For a full list of the Overseas Principles, see Appendix 2, The Overseas Principles.

5.3 Not all overseas practice will be governed by the Overseas Rules. In particular, a hybrid regime incorporating parts of the Code of Conduct, as far as local rules allow, will apply to in-house lawyers who engage in "temporary practice overseas". See Section C, paragraph 1, When do the Overseas Rules apply to my work in other jurisdictions?.

6. THE LIMITS ON PRACTICE

6.1 Fundamental to any consideration of how in-house lawyers are regulated is an understanding of the limits imposed on in-house practice. These limits are set out in the Legal Services Act 2007 ("LSA 2007") and the Practice Framework Rules.

6.2 Under the LSA 2007, a person must be authorised (or exempt) to carry out an activity that is a "reserved legal activity" (see Appendix 3, Meaning of "reserved legal activities"). In the context of in-house practice, an individual solicitor admitted in England and Wales and holding a practising certificate is authorised to advise on reserved legal activities but only within
the permitted framework of practice set out in the Practice Framework Rules. The LSA 2007 does not permit the employer of an in-house lawyer to provide reserved legal services to its own clients.

6.3 Under the Practice Framework Rules, in-house lawyers practising in England and Wales may only advise:

− their employer;
− a related body of their employer;
− a work colleague; and
− subject to certain restrictions, members of the public on a pro bono basis.

For further details of who an in-house lawyer may advise, see Section B, paragraph 1, Who is my client? below.

6.4 In-house lawyers practising elsewhere may only advise:

− their employer;
− a company or organisation controlled by their employer or in which their employer has a substantial measure of control;
− a company in the same group as their employer;
− a company which controls their employer;
− an employee, director or company secretary of a company or organisation mentioned in one of the four preceding bullets; and
− subject to certain restrictions, members of the public on a pro bono basis.

In addition, if the in-house lawyer has registered in another EU member state under the Establishment of Lawyers Directive 98/5/EC ("Establishment Directive") with the professional body for the local legal profession, the in-house lawyer may practise in-house to the extent that a member of that legal profession is permitted to do so.

For further details of who an in-house lawyer practising outside England and Wales may advise, see Section C, paragraph 2, Who is my client?.

7. SUPERVISION AND ENFORCEMENT

7.1 The SRA seeks to adopt a model of regulation of the profession based on constructive relationships and targeted enforcement. Its main objective is to embed outcomes focussed regulation, and to deliver positive outcomes in the public interest.

7.2 The SRA’s focus on both supervision and enforcement seems to be directed at firms rather than individual solicitors. Relevant factors the SRA says it will take into account in deciding how to pursue enforcement include:

− the number of clients or others affected and the impact on them;
− the impact or risk to public confidence in the administration of justice arising from the conduct; and
− whether the behaviour:
  − formed or forms part of a pattern of misconduct or other regulatory failure;
  − continued for an unreasonable period taking into account its seriousness;
Section C of this guide considers what the regulatory position is for in-house lawyers practising outside England and Wales and RELs employed in-house in Scotland and Northern Ireland. In doing so it follows a similar format to Section B. Unlike the Code of Conduct, the Overseas Rules do not place additional requirements on those with management responsibilities and therefore we have not included a Next Steps section in Section C.

8.4 This guide assumes that, for the most part, in-house lawyers do not charge their clients fees, pay fees for referrals or introductions, advertise their services, or handle client money. The rules applying to these areas are therefore not considered in much detail even though they are stated within the Handbook to apply to in-house practice.

FURTHER READING

SRA Handbook 2011
(http://www.sra.org.uk/handbook)

SRA Guidance: Outcomes-focused regulation at a glance

SRA Guidance: Supervision, 21 August 2014
(http://www.sra.org.uk/supervision)

SRA enforcement strategy, 13 January 2011
(http://www.sra.org.uk/sra/strategy/sub-strategies/sra-enforcement-strategy.page)

In-house practice: regulatory requirements – The Law Society, 28 February 2013
(http://www.lawsociety.org.uk/advice/practice-notes/in-house-practice-regulatory-requirements/).

8. THE SCOPE OF THIS GUIDE

Section B of this guide considers what the main implications of the Handbook are for in-house lawyers practising in England and Wales from a practical perspective. In doing so it focuses on the obligations set out in the Principles, the Code of Conduct and the Practice Framework Rules by reference to a series of questions. There are, however, other rules that may apply to in-house lawyers, which are not covered in the guide. These include the SRA Practising Regulations, the SRA Training Regulations and the Qualified Lawyer Transfer Scheme Regulations. For further information on these rules, please speak to your usual Slaughter and May contact.

Within Section B, we have considered what steps in-house departments might wish to consider taking to ensure they are Handbook-compliant. Particular emphasis has been placed on the requirements of those with management responsibilities to adopt effective systems and controls to comply with the Principles and the Code of Conduct. These suggestions are set out in each Next steps section of each paragraph in Section B as well as in Section B, paragraph 6, What systems and controls are in place?

8.3 Section C of this guide considers what the regulatory position is for in-house lawyers practising outside England and Wales and RELs employed in-house in Scotland and Northern Ireland. In doing so it follows a similar format to Section B. Unlike the Code of Conduct, the Overseas Rules do not place additional requirements on those with management responsibilities and therefore we have not included a Next Steps section in Section C.

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SRA Guidance: Outcomes-focused regulation at a glance

SRA Guidance: Supervision, 21 August 2014
(http://www.sra.org.uk/supervision)

SRA enforcement strategy, 13 January 2011
(http://www.sra.org.uk/sra/strategy/sub-strategies/sra-enforcement-strategy.page)

In-house practice: regulatory requirements – The Law Society, 28 February 2013
(http://www.lawsociety.org.uk/advice/practice-notes/in-house-practice-regulatory-requirements/).
B. The in-house lawyer guide – practising in England and Wales

This section applies to in-house solicitors and RELs practising in England and Wales. Certain parts of this section may also apply to in-house lawyers practising elsewhere (as further explained in Section C).

1. WHO IS MY CLIENT?

Key issues:

• In-house lawyers practising in England and Wales are subject to restrictions on who they can act for.

• When acting for more than one client, you must act in the best interests of each client and ensure that there are no conflicts of interests or confidentiality conflicts.

• The extent to which the Outcomes in the Code of Conduct might apply to you will vary depending on who your client is.

• Understanding who your client is in each instance will assist with complying with all the requirements of the Handbook.

1.1 Within any organisation and, in particular, in larger corporate structures, in-house lawyers may be advising or receiving instructions from a wide range of separate legal entities. On occasion they may be advising individuals in their capacity as work colleagues or on a pro bono basis. However, the general perception among in-house lawyers is that they are only advising one client, their employer (but see paragraph 1.15 below), who in turn will instruct them to act on matters that may involve other entities or individuals within the employer group. While this will certainly be right in the vast majority of cases, the Handbook nevertheless seems to require in-house lawyers to consider who their client is in each particular situation.

1.2 There appear to be several reasons for this. First, in-house lawyers must comply with the restrictions on who they may act for under the Practice Framework Rules. Secondly, it is only by knowing who their client is that in-house lawyers can fulfil their duties to their client (principally to act in its best interests). Finally, it will ensure that in-house lawyers can observe the different client care requirements, which apply to employer and non-employer clients as set out in the Code of Conduct.

1.3 Failing to establish who your client is in any particular situation could give rise to uncertainty over the scope of legal professional privilege. For example, where your client is your employer entity, communications on legal matters with employees and/or members of the board of directors of the employer may only enjoy the protection of privilege where they are acting as representatives of the employer and the individuals concerned are expressly charged with seeking and receiving legal advice on behalf of the employer but not where they are acting in their personal capacity. There may also be
issues in relation to your duties of confidentiality and disclosure and these are discussed further in paragraph 5, Do I have a confidentiality conflict? below.

1.4 Rule 4 (In-house practice), Practice Framework Rules states that in-house lawyers may act only for:

- their employer;
- a related body of their employer;
- a work colleague; and
- subject to certain restrictions, members of the public on a pro bono basis.

1.5 When advising someone other than your employer, you must have professional indemnity insurance cover or consider whether your employer has appropriate indemnity insurance or funds to meet any award made as a result of a claim in professional negligence against you. If no such funds are in place, you must inform the client in writing that you are not covered by the compulsory insurance scheme. This requirement is unlikely to be of relevance to in-house lawyers working within a solvent and well-managed organisation.

1.6 The term “related body” is very broad and is defined in the Practice Framework Rules as including:

- any holding, associated or subsidiary company of your employer;
- a partnership, syndicate, LLP or company by way of joint venture in which your employer and others have an interest;
- a trade association of which your employer is a member; or
- a club, association, pension fund or other scheme operated for the benefit of employees of your employer.

1.7 The term “work colleague” is defined in the Practice Framework Rules as including a person who is, or was formerly:

- an employee, a manager, the company secretary, a board member or a trustee of your employer;
- an employee, a manager, the company secretary, a board member or a trustee of a related body of your employer; or
- a contributor to a programme or a periodical publication, broadcast or published by your employer or by a related body, but only where the contributor is a defendant or potential defendant in a defamation case.

1.8 When advising a work colleague, you must ensure that:

- the matter arises out of the work colleague’s work for your employer/related body;
- the matter does not relate to a claim arising out of a personal injury to the work colleague;
- the work colleague does not wish to instruct another (i.e. independent) lawyer; and
- no charge is made for your work, unless those costs are recoverable from another source.
1.9 According to Guidance note (ix) to Rule 4, Practice Framework Rules, an in-house lawyer contemplating advising a work colleague will need to consider whether they can do so on a case-by-case basis. Although it would appear that an in-house lawyer may advise a director of a related body on his or her duties, the Guidance note makes it clear that you should not advise a work colleague in relation to their own personal interests – this includes personal interests which are work related, such as their rights under their benefits package.

1.10 Guidance note (ix) also suggests that extra caution should be exercised where advising work colleagues on reserved legal matters (see Appendix 3, Meaning of “reserved legal activities”) and that in-house lawyers should in each case consider the extent to which there is a direct relationship between the work colleague’s employment and the reserved legal activity. Notwithstanding this, Rule 4.6, Practice Framework Rules does allow in-house lawyers to advise work colleagues (and anyone they wish to purchase or sell a property with) on conveyancing matters. In reality, whether or not in-house lawyers may advise work colleagues will be determined by their employers, and the circumstances in which they will be entering into a separate client/solicitor relationship are likely to be limited (see Practical example 2 below).

1.11 Rules governing the provision of advice on a pro bono basis are discussed further in paragraph 9, Can I advise on a pro bono basis? below. In addition, Rule 10.2, Practice Framework Rules allows any solicitor holding a valid practising certificate to advise friends, relatives, companies wholly-owned by them or their families or registered UK charities, without remuneration, on legal matters including reserved legal activities. In these circumstances, there is an exclusion from the requirement to carry indemnity insurance. However, clients should still be informed that you do not carry any insurance and you should consider limiting your liability to them.

1.12 In-house solicitors owe a number of general duties to their clients under the Handbook (as well as the common law). For example, Principle 4 requires them to act in the best interests of each client by ensuring there are no conflicts of interests or confidentiality conflicts. It is therefore important to understand when you may be acting for more than one person to ensure that their interests are in fact aligned – although this is as likely to be of concern to your employer as it is to you. For further discussion on the duties applying to in-house lawyers, see paragraph 2, What duties do I owe my client?, paragraph 4, Do I have a conflict of interest? and paragraph 5, Do I have a confidentiality conflict?.

1.13 Guidance note (viii) states that, if you work in-house as a senior legal adviser of a company, you should have direct access to the board and its committees, and you should try to ensure that your terms of employment provide for such access. “Direct access” does not mean that all instructions and advice must pass directly to and from the board or committees but that you must have direct access where necessary. This note highlights the importance of in-house lawyers ensuring that the instructions they receive are those of the corporate entity they are representing and not of the senior management with whom they often liaise.

1.14 The extent to which the Outcomes in the Code of Conduct might apply to you will vary depending on whom you are advising. For example, Outcomes relating to a client’s right to complain, how complaints may be made, details of any complaints procedure and whether clients may be entitled to complain to the Legal Ombudsman will not apply where you
are advising your employer. However, they may apply where you are advising a related body or a work colleague, unless you are able to determine that the Outcome "is not relevant to your particular circumstances". Deciding on whether this information will need to be given in any particular case will depend on establishing who the client is, and then whether this is information they would expect to receive. For further details on what information should be given to each type of client, see paragraph 3, What client care information do I need to provide?, Appendix 4, Client care checklist and Appendix 7, Precedent terms and conditions for instructing X PLC’s legal team below.

1.15 Determining in each instance who your client is may be counter-intuitive. In general, in-house lawyers are conditioned to consider the different parts of an organisation as being part of a single business. To establish who you are acting for, the Outcomes seem to encourage you to consider the following:

– are you acting for your employer or any of its employees (for example its directors), or both?

– where the matter concerns a wholly-owned entity within your employer group, are you advising your employer or the related body, or both?

– where advising a related body within your employer group, is this entity wholly-owned by your employer, or is the advice being given to a joint venture entity or partnership in which your employer only holds a stake?

1.16 This approach is not without difficulty. For example, in larger organisations, the in-house lawyer (together with most other employees) may be employed by a group services company and not the main operating company. In these circumstances, most of the work done by the in-house lawyer (except in relation to employment contracts) will be for the main operating company who will devise any policies relating to who within the group can instruct in-house lawyers and what the remit of the legal department is. In this context, the requirement to provide transparency information to the main operating company, or to any of the group companies subject to the policies concerning instructing the in-house legal team, seems excessive and it is unlikely you would need to do so.

PRACTICAL EXAMPLES

1. You act for your employer, X PLC, a financial services company. Part of your role is to devise standard form loan documentation used for agreements between X PLC and its customers. In time, X PLC outsources the administration of some of these loans to a third party provider. Shortly after the arrangement is put in place, the third party provider has a number of queries in relation to the administration agreement. Your employer is keen to assist the third party provider and suggests that you call their contract team direct to talk them through the relevant clauses. Are you able to help?

Under the Practice Framework Rules, you may only advise your employer, a related body and, in limited circumstances, colleagues or, on a pro bono basis, members of the public. As a consequence, you are unable to advise the third party provider on their obligations under the administration agreement but you should be able to explain in general terms what the clauses mean and the background to them without creating a solicitor/client relationship.
2. You are asked to help a German work colleague who has recently joined the UK business. Although he has the use of a company car, he would like to import his own personal car and needs advice on what import duties might need paying. Can you help?

A key question here is who is instructing you, and who in this scenario is your client? If it is the German colleague and not your employer who has asked you to assist him, you will need to consider whether you (through your employer) are insured to do so (and if not, you must inform your colleague of this in writing). You will also need to consider whether the matter relates to and arises out of the work of the employee. The importing of a personal car is unlikely to relate to the work your colleague does for your employer and therefore you would be restricted from acting under Rule 4, Practice Framework Rules. However, where your employer has agreed with the German work colleague that, as part of his relocation to the UK, the company will assist him with any legalities relating to the importing of the car, any advice you give in relation to what this may involve is unlikely to create a client/solicitor relationship with your German work colleague. You will be acting on the instructions and for the benefit of your employer in order that it may fulfil its promise under the relocation package to the German work colleague. This analysis may be different where there is no obvious benefit to your employer.

NEXT STEPS

In-house lawyers with management responsibilities should consider (to the extent this does not already exist) adopting a “Who is my client?” policy which covers the following:

- who in-house lawyers advise within the employer group? For example, your policy might say that in-house lawyers should be free to advise all wholly-owned and majority-owned subsidiaries of the employer but requests for advice from entities in which the employer only has a minority stake and no management control should be referred to the General Counsel;

- what restrictions are there on advising work colleagues? Should any requests to advise particular potential clients require authorisation? For example, in-house lawyers may advise directors of wholly-owned subsidiaries of the employer on their fiduciary duties, but any requests to advise on personal matters should be referred to a supervisor (or declined). In practice, many in-house teams restrict an in-house lawyer’s ability to act for work colleagues on personal matters;

- when can an in-house lawyer advise friends and family under Rule 10.2, Practice Framework Rules? Any such policy should emphasise the need for an in-house lawyer to make it clear that they are advising in a personal capacity (and are therefore not insured nor seeking remuneration); and

- who can in-house lawyers talk to if they are unsure who their client is in any particular case?
2. WHAT DUTIES DO I OWE MY CLIENT?

Key issues:

- In-house lawyers practising in England and Wales are subject to a number of duties in contract, tort and under professional conduct rules.

- There are times when duties to your client may need to be overridden by public interest considerations.

- There are a number of Outcomes which relate to the standard of service that in-house lawyers provide to clients and there are also requirements to supervise such work.

2.1 In-house lawyers owe contractual and tortious duties to their client. In addition, there are a number of regulatory duties that apply to in-house lawyers which arise out of the Principles and the Code of Conduct. Finally, in-house lawyers are subject to a number of separate, but largely overlapping, common law fiduciary duties.

2.2 Under the Handbook a solicitor must:

- act in the best interests of each client (Principle 4);
- act with integrity (Principle 2);
- not act where there is a conflict of interest (Chapter 3, Code of Conduct); and
- keep client information confidential and disclose any material relevant information of which they are personally aware (Chapter 4, Code of Conduct).

2.3 The Principles and the Outcomes in the Code of Conduct also set out more specific standards relating to the service you provide to clients. For example, you must:

- provide a proper standard of service to your clients (Principle 5);
- treat your clients fairly (Outcome 1.1);
- provide services to your clients in a manner which protects their interests in their matter, subject to the proper administration of justice (Outcome 1.2);
- when deciding whether to act, or terminate your instructions, comply with the law and the Code of Conduct (Outcome 1.3);
- have the resources, skills and procedures to carry out your clients' instructions (Outcome 1.4);
- provide a service that is competent, delivered in a timely manner and takes account of your clients' needs and circumstances (Outcome 1.5); and
- deal with clients' complaints promptly, fairly, openly and effectively (Outcome 1.11).

2.4 The Handbook also requires in-house lawyers to provide their non-employer clients with certain information unless it is clear that this is not relevant to the particular circumstances. For further details, see paragraph 3, What client care information do I need to provide? below.

2.5 Chapter 7 (Management of your business), Code of Conduct, requires those with management responsibilities to have "a system for supervising
clients’ matters, to include the regular checking of the quality of work by suitably competent and experienced people” (Outcome 7.8). This Outcome seems to suggest that the work of in-house lawyers needs to be reviewed on an ongoing basis. See Next steps below for suggestions on how to comply with this requirement.

2.6 There are times when duties to your client may be overridden by other rules of professional conduct. The SRA notes on the Principles state that where two or more Principles come into conflict, the Principle which takes precedence is the one which best serves the public interest in the particular circumstances, particularly the public interest in the proper administration of justice.

2.7 Given their proximity to the business, in-house lawyers have a natural advantage when it comes to acting in their client’s best interests. However, this is not a duty without limits and so in-house lawyers should be aware of when they may need to say they cannot, or can no longer, advise. In this regard, in-house lawyers may find it helpful to consider:

- the circumstances in which conflicts may arise either between the in-house lawyer and the client or between the individual interests of clients, to ensure potential problems are avoided (see further paragraph 4, Do I have a conflict of interest? below); and

- whether what they are being asked to do infringes their duty to act with integrity, to uphold the rule of law and the proper administration of justice or affects the reputation of the profession.

PRACTICAL EXAMPLE

You are a property lawyer for a large corporation. A friend of yours asks if you can help her in a dispute she is having with her builders. She would like to tell the builders that they had better watch out because you are a “top lawyer”.

As an in-house lawyer you may only advise your friend outside your practice as an in-house lawyer provided that you do not charge any fees (Rule 10.2, Practice Framework Rules). Although you will be advising outside the scope of your employment, you must still act in your client’s best interests (Principle 4) as well as behaving in a way that maintains the trust the public places in you and the provision of legal services (Principle 6). To the extent that your friend is seeking to intimidate her builders by mentioning that you are a “top lawyer”, you should not consent to her doing so. This is especially the case if you are aware that the builders are not represented.

See also Practical example 2, paragraph 3, What client care information do I need to provide? below.

NEXT STEPS

To assist in-house lawyers to comply with the duties listed above, those with “management responsibilities” should consider the following:

- in order to determine how duties may apply in practice, it is important to establish who you are acting for. See the Next steps section in paragraph 1, Who is my client? for suggestions relating to the adoption of a policy;

- providing transparency or client care information is an important aspect of the Code of Conduct. See paragraph 3, What client care information do I need to provide? below for further suggestions on how best to comply with these requirements;
implementing effective systems and controls to ensure that there are no conflicts of interests is crucial to complying with the Outcomes in Chapters 3 (Conflicts of interest) and 4 (Confidentiality and disclosure), Code of Conduct. See paragraph 4, Do I have a conflict of interest? and paragraph 5, Do I have a confidentiality conflict? below for further suggestions; and

reviewing existing quality control and supervision procedures to ensure that the service you provide is of a “proper” standard. For example:

- does your department have a correspondence policy which sets out when in-house lawyers should clear any outgoing work (whether letters, documents or emails) with their supervisors, or when they should copy their work to their supervisors? Are final drafts of documents always signed off by supervisors?

- do supervisors review files at, or towards, the end of a transaction or project? Are there particular circumstances where this may be advisable?

- are your lawyers regularly appraised? Are your appraisals documented?

- are your training programmes for in-house lawyers sufficient to ensure they are up-to-date with relevant law and practice in their areas?
3. WHAT CLIENT CARE INFORMATION DO I NEED TO PROVIDE?

Key issues:

- The Code of Conduct requires in-house lawyers practising in England and Wales to provide clients with certain information. (This is often referred to as “transparency” or “client care” information.)

- Some of these requirements, notably those relating to complaints procedures, only need to be provided where in-house lawyers are advising someone other than their employer. In addition, where advising another entity within the employer group, this information will only need to be given where the client is unfamiliar with the way in which the in-house legal department is run.

- A summary of the main information-giving requirements and who the information should be given to is set out in Appendix 4, Client care checklist below.

3.1 The Code of Conduct requires in-house lawyers to provide certain information to clients. These requirements are generally set out in Chapter 1 (Client care), although there are further requirements in Chapter 4 (Confidentiality and disclosure), Chapter 5 (Your client and the court), Chapter 6 (Your client and introductions to third parties), Chapter 8 (Publicity), Chapter 9 (Fee sharing and referrals) and Chapter 11 (Relations with third parties).

3.2 Appendix 4, Client care checklist sets out a summary of the main information-giving requirements applicable to in-house lawyers. This summary does not include the obligations set out in Chapter 9 (Fee sharing and referrals) on the assumption that in-house lawyers do not generally have clients referred to them by introducers. In general terms, the information you need to provide relates to:

- information about how you are regulated;
- information about claims (if any) clients may have against you;
- information relating to the services provided;
- information about your duties to the court;
- information about referrals;
- information about complaints;
- information about insurance; and
- information about contract races in the conveyancing context.

3.3 A number of the specified Outcomes only apply where you act for someone other than your employer. Even then, they will not apply if “it is clear that the Outcome is not relevant to your particular circumstances”. These Outcomes require that:

- clients are informed in writing at the outset of the matter of their right to complain and how complaints can be made (Outcome 1.9);
- 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 (Outcome 1.10);
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 (Outcome 1.12); and

− 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 (Outcome 1.13).

3.4 The circumstances in which any of these Outcomes are likely to be relevant for an in-house lawyer advising within a corporate context are fairly limited. The purpose of the Outcomes is to ensure that clients are in a position to make informed decisions about the services they are provided with (including identifying what services they need) and where necessary are able to make a complaint. These are unlikely to be issues of concern to those using in-house legal services as an in-house department is a captive resource and the procedures relating to making a complaint will be familiar to users of their services. Therefore, before providing any client care information, consider the following:

− how familiar is the person instructing you with the way in which the in-house legal department is structured and who they can contact if they are unhappy with the service received?

− are you advising a wholly-owned member of your employer group or an entity in which your employer only holds an interest? (The latter is less likely to be familiar with your internal procedures);

− are you being instructed by an individual on their own account (for example, a director of a related body)? Only members of the public, very small businesses, clubs, trusts or UK registered charities are able to complain to the Legal Ombudsman;

− are you being instructed by a member of the public for whom you are providing services on a pro bono basis?

3.5 Precisely when the information needs to be provided varies. For example, the information relating to complaints should be provided when first instructed (Outcome 1.10) but the information which would allow a client to make an informed decision about what services they need, how their matter will be handled and the options available to them (Outcome 1.12) should be provided throughout the course of your acting for them.

3.6 If in-house lawyers are advising someone other than their employer (under Rule 4, Practice Framework Rules) and do not have the benefit of any indemnity insurance or other funds to meet any award made as a result of a claim in professional negligence against them, they must inform their client in writing that they are not covered by the compulsory insurance scheme. Similarly, where acting for friends, relatives, companies wholly-owned by them or for their families or a UK registered charity (under Rule 10.2, Practice Framework Rules), in-house lawyers should consider informing these clients that they do not carry any insurance.

PRACTICAL EXAMPLES

1. You are advising your employer, X PLC, on an acquisition. One of your work colleagues will be appointed as director of the newly acquired business. As this is his first time as a director,
you are asked to prepare a note on his fiduciary duties. What client care information, if any, needs to be given?

Once again, it is worth considering to whom you are providing services. To the extent that X PLC is requiring you to provide this note to ensure they are able to satisfy their own corporate governance arrangements and obligations, and this is evident to the director, you will not be acting for the director at all and therefore no client care information needs to be given to him. Even where the request has come to you from the director himself and it is clear he is seeking advice in respect of his own personal exposure as a director, you would only need to provide the information where it was apparent that the director was unfamiliar with the way in which the in-house department is run, the level of insurance you carry and who he could contact if he is unhappy with the service provided.

2. You are advising your employer, X PLC, in relation to a dispute. X PLC is anxious that the disclosure process may reveal information damaging to its position. You are asked to see what you can do.

You will be able to withhold from the other side the contents of privileged communications. However, where privilege is not available, the Civil Procedure Rules on disclosure require parties in a dispute to disclose not only the documents which support their case but also those which adversely affect their case or which support another party’s case. These documents must be disclosed even if they are confidential. As a solicitor, you are subject to duties to the court. If you consider your employer is required to disclose certain documents, you must advise it of its legal obligation to do so. If you are being asked to withhold documents on behalf of your employer that you consider must be disclosed, you should decline. This is one of the circumstances in which your duties to the court outweigh your obligations to the client and Outcome 5.5 requires you to inform X PLC of this fact.

NEXT STEPS

The need to provide transparency information to your employer, or a member of its group or individuals working within the group, will depend on how familiar those seeking assistance from the in-house legal team are with the structure of the department and how they may be able to raise concerns about your services. In the limited circumstances where such information might need to be provided, the fact that the requirements for information-giving may arise at different points in the relationship with a client creates difficulties when trying to devise an effective system. In-house lawyers with management responsibilities may wish to consider:

- documenting the (limited) circumstances in which transparency information may need to be provided to clients (see Appendix 4, Client care checklist); and

- how best to notify those users of the in-house legal team’s services to whom such information should be given. One way may be to incorporate language into a set of “terms and conditions” which could be given to non-employer clients, if appropriate, when you first advise them (and possibly again if you act for them in the future and there has been a gap of, say, a couple of years or more) (see Appendix 7, Precedent terms and conditions for instructing X PLC’s legal team).
4. **DO I HAVE A CONFLICT OF INTEREST?**

**Key issues:**

- In-house lawyers practising in England and Wales must not act for more than one client in circumstances where there is an actual or potential conflict in their duty to act in the best interests of each client in relation to the same or related matters.

- In-house lawyers are also prohibited from acting where they have a personal or "own interest conflict".

- As employees, in-house lawyers owe duties of good faith to their employer and these may create own interest conflicts whenever they are advising someone other than their employer.

- Those with management responsibilities must ensure that the in-house department has effective systems and controls in place to identify and assess potential conflicts of interest.

### 4.1 Under the Code of Conduct, a "conflict of interests" is any situation where:

(A) you owe separate duties to act in the best interests of two or more clients in relation to the same or related matters, and those duties conflict, or there is a significant risk that those duties may conflict (a "client conflict"); or

(B) your duty to act in the best interests of any client in relation to a matter conflicts, or there is a significant risk that it may conflict, with your own interests in relation to that or a related matter (an "own interest conflict").

### 4.2 Outcome 3.5 states that you must not act where there is a client conflict, or a significant risk of one, unless you can establish that your clients have a substantially common interest, or that they are competing for the same objective. In the context of in-house practice, the "substantially common interest" exception is the one most likely to apply because it would be very unusual for different parts of the same entity to be competing for the same objective (for example, by bidding to buy the same target by way of auction process).

### 4.3 A "substantially common interest" is defined as a situation where there is a clear common purpose in relation to any matter, or a particular aspect of it, between the clients and a strong consensus on how it is to be achieved, and the client conflict is peripheral to this common purpose. Before you can rely on this exception, you must ensure that:

- you have explained the relevant issues and risks to the clients and you have a reasonable belief that they understand those issues and risks;

- all clients have given informed consent in writing to you acting for them. (In practice, it is unlikely that you would need to obtain such consent from your employer as conflicts are likely to be avoided by other mechanisms, see paragraph 4.8 below);

- you are satisfied that it is reasonable for you to act for all the clients and that it is in their best interests; and

- you are satisfied that the benefits to the clients of your doing so outweigh the risks.

### 4.4 The rules relating to acting for more than one party when providing conveyancing, property selling or mortgage related services as set
4.5 Outcome 3.4 prohibits you from acting where there is an own interest conflict, or a significant risk of one. As in private practice, an own interest conflict may arise whenever a lawyer is asked to advise on a course of action that could be detrimental to him or her personally – for example, because it affects his or her financial position. However, in the in-house context, the scope for own interest conflicts is much greater because in-house lawyers are invariably acting for their employers (or, if not, in their employer’s interests). The implied duty of good faith owed by in-house lawyers to their employer in their capacity as employees and the fact that in-house lawyers are financially dependent on their employer mean that it is hard for them to be completely independent advisers in any work-related context.

4.6 Although the rules on client conflicts of interests do apply to in-house practice in the same way as they do in private practice, in reality the scope for client conflicts arising is more limited. In-house lawyers do frequently advise on transactions or projects which concern a number of entities or individuals within the employer group. However, in most circumstances no conflicts of interests arise. This is because the likelihood of employers allowing in-house lawyers to advise a related body or a work colleague in circumstances where their duty to their employer is likely to conflict with their duties to the other entity or individual is remote.

4.7 Despite this, it is worth considering when conflicts of interests may arise in the in-house context. For example:

(A) You act for a wholly-owned subsidiary of your employer on a purchase which is guaranteed by your employer (and both entities are solvent).

In these circumstances, where there seems to be an agreed course of action between the two parties which is in the best interests of both, it is unlikely that a client conflict or an own interest conflict would exist. However, should there be any change in circumstances (for example, because the wholly-owned subsidiary becomes financially unstable), a client conflict may arise.

(B) You act for your employer on the disposal of a wholly-owned subsidiary. You are also assisting the management of the wholly-owned subsidiary in compiling the disclosures against the warranties set out in the share purchase agreement. One of the directors of the subsidiary company asks you to prepare a memo on any personal exposure he may have in respect of any failings in the disclosure process.

Often it will be in the interests of both your employer and the director to have full and adequate disclosure. However, should you become aware that the director is seeking advice directly from you on how best to protect himself against claims by your employer, you may wish to explain that the director may wish to seek independent legal advice on any proposal you might put forward to deal with this (as you would be doing so in your capacity as your employer’s adviser).
4.8 Conflicts, including own interest conflicts, may be avoided by limiting the scope of a retainer to ensure you are not advising on aspects of a matter which may give rise to a conflict of interests. This may be better than seeking to establish that, despite the existence of a prima facie conflict, a substantially common interest between the different parties exists. This is because acting in reliance on the substantially common interest will require you to comply with all the conditions set out in paragraph 4.3 above and these include obtaining written consent from your employer.

4.9 Closely related to the issue of conflicts of interests are the duties in-house lawyers owe to their clients in relation to confidentiality and disclosure. These topics are discussed further in paragraph 5, Do I have a confidentiality conflict? below.

4.10 Where a client conflict of interests arises, you will need to cease acting for one, or even all, of the parties concerned. In practical terms, you will not wish nor be able to cease acting for your employer. Although this will generally be understood within the group context, it may be worth explaining this to other clients from the outset to avoid any embarrassment later. In the limited circumstances where you are acting on the basis of a substantially common interest and have the consent of the parties, you should be able to include wording in your initial letter which sets out the consequences of a conflict arising (see Appendix 6, Precedent substantially common interest consent letter).

4.11 Although client conflicts of interests are unlikely to arise in circumstances where an in-house lawyer does not act for anyone other than the employer and its group companies, it may not always be clear at the outset whether a conflict of interest is likely to arise (see paragraph 4.7 above). Chapter 3 requires those with "management responsibilities" to ensure that their legal department has effective systems and controls in place to enable you to identify and assess potential conflicts of interests in relation to both clients and personally. The relevant Outcomes state:

- you must have effective systems and controls in place to identify and assess potential conflicts of interests (Outcome 3.1);
- you must ensure your systems and controls for identifying own interest conflicts are appropriate to the size and complexity of the nature of the work you undertake and enable you to assess all the relevant circumstances, including whether your ability as an individual, or that of anyone within your firm (references to a "firm" in this context are explained below), to act in the best interests of the clients is impaired by:
  - any financial interest;
  - a personal relationship;
  - the appointment of you, or a member of your firm or family, to public office;
  - commercial relationships; or
  - your employment (Outcome 3.2);
- you must ensure 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:

- the clients’ interests are different;
- your ability to give independent advice to the clients may be fettered;
- there is a need to negotiate between the clients;
- there is an imbalance in bargaining power between the clients; and
- any client is vulnerable (Outcome 3.3).

4.12 Despite the references to “firm” in Outcomes 3.2 and 3.3, the SRA has made it clear that these Outcomes apply to in-house practice. In this way, the SRA seems to be indirectly exercising some regulatory control over in-house departments. However, this control can only be imposed on those in-house lawyers with management responsibilities and therefore the scope of this control is difficult to determine. See further paragraph 6, What systems and controls are in place? below.

4.13 There is no guidance as to what form systems and controls should take, although the emphasis within Outcomes 3.2 and 3.3 on such systems and controls being “appropriate to the size and complexity of the firm and the nature of the work undertaken” do seem to suggest that a proportionate and practical approach is encouraged. In the context of in-house practice it will not, in many cases, be practicable for in-house teams to maintain searchable records of every new instruction which would enable them to carry out definitive conflict checks. Moreover, this approach is unlikely to be necessary given that client conflicts would in most cases be readily identified by the employer itself at the outset of any matter.

4.14 A more meaningful approach might therefore be one in which individual solicitors are encouraged to assess the risks and potentials for any conflict (and in particular own interest conflicts) at the outset of the matter and to discuss any concerns with their supervisor. This could be done by referring to a “conflict checklist” which sets out a series of questions to assist such analysis.

PRACTICAL EXAMPLES

1. You are employed by X PLC, part of a large retail group. You are asked to advise Packingco, a wholly-owned subsidiary of your employer, on a long-term supply agreement with Cardboardco, a third party customer.

Packingco produces all the packaging for X PLC, but also for a growing number of third party customers.

Packingco’s obligations under the contract will be guaranteed by X PLC. Once the contract with Cardboardco is finalised, Packingco would also like you to help renegotiate a number of contracts with its own customers including the one with X PLC.

This scenario raises a number of issues. First, who is your client? In relation to the supply agreement, you are clearly acting for Packingco, but what about in relation to the guarantee? Will you be able to act for both parties? Will you be able to act on the renegotiation of Packingco’s other customer contracts? Will there be a conflict of interests?
In relation to the supply agreement with Cardboardco and the guarantee, assuming both entities are solvent, you should be able to advise your employer, X PLC, and its subsidiary, Packingco, even though the matters are closely related. From these facts, it would seem that the interests of both are aligned and so there is no significant risk of a conflict.

In relation to the renegotiation of the contracts with Packingco’s customers (including the contract with X PLC), the potential for conflict is more obvious. Although Packingco is a wholly-owned subsidiary of X PLC, its interests would be best served by negotiating terms with its customers that ensure a high price for the goods etc., something that is not necessarily in the best interests of X PLC. However, if both clients have already substantially agreed the commercial terms and your role is to document an arm’s length agreement, for example, to justify transfer pricing under applicable tax rules on OECD models or to protect intellectual property rights, then you are likely to be able to act for both clients on a limited retainer basis without the risk of a conflict.

2. Your employer, X PLC, asks you to advise on the acquisition of a private company. Your aunt is a member of the board of directors of that private company. What do you do?

The presence of a family member on the “other side” of a transaction on which you are advising will not automatically mean you have an own interest conflict. In order to determine whether you should act in these circumstances, it may be helpful to consider whether you have anything to gain or lose as a result of the proposed transaction. For example, are you likely to benefit financially from any gain your aunt makes as a result of the sale to X PLC?

You should also consider whether you are in possession of any information about the target, through your relationship with your aunt, which might be material to your client but which you feel you cannot disclose because you feel a sense of loyalty to your aunt. In any event, you should disclose your connection with the target company to your employer before agreeing to take on the work.

**NEXT STEPS**

In-house lawyers with management responsibilities could consider:

- adopting or reviewing your policy on who in-house lawyers may advise at any point in time (see paragraph 1, Who is my client? above), which might include a restriction or ban on acting for non-employer clients;

- creating a checklist of questions designed to help solicitors identify and assess any potential conflict issues at the start of a new matter, allowing them to consider any potential conflict issues and flag appropriate queries with their supervisor. Examples of the questions that might be included on a conflict check questionnaire are set out in Appendix 5, Conflicts and confidentiality checklist below;

- whether to document the circumstances in which a piece of work was taken on. For example, in the limited circumstances where there is the potential for a conflict of interests to arise (but that risk is not a significant one) and you act on the basis of the substantially common interest exception with consent from both parties, it is important that this is clearly recorded. Any letter seeking to do this should not only cover the issue of consent, but should also set out what the likely consequences...
are should any conflict subsequently arise. There should also be an explanation of how information is to be shared during the course of the matter and an agreement that information relating to the in-house lawyer’s employer (but not relating to the matter) need not be disclosed to the other party. See Appendix 6, Precedent substantially common interests consent letter. Note that written consent to act for the other party will also need to be sought from your employer; and

• where you regularly advise a non-employer client jointly with your employer, consider whether you wish to put some general terms and conditions in place which set out the basis on which your in-house department would act for that entity. Precedent terms and conditions are set out in Appendix 7, Precedent terms and conditions for instructing X PLC’s legal team below.
5. DO I HAVE A CONFIDENTIALITY CONFLICT?

Key issues:

- In-house lawyers practising in England and Wales have a duty to keep the affairs of clients (and former clients) confidential. This is a continuing duty, which does not end when your relationship with the client does.

- You also have a duty to disclose to your client relevant information of which you are aware and which is material to your client’s matter. This duty may be varied by agreement with your client.

- In cases where your duty to keep information confidential conflicts with your duty to disclose that same information to another client, the duty of confidentiality takes precedence. However, this does not negate your duty of disclosure, it simply means you cannot decide which duty you are going to breach.

- In general, you should not continue to act for a client to whom you cannot disclose material information which is relevant to the matter you are advising them on.

5.1 You have a duty to keep the affairs of clients (and former clients) confidential (unless disclosure is required or permitted by law or the client). This obligation extends beyond your relationship with the client and so continues after you cease to be employed by your client group. Under the common law, all members of your in-house practice including support staff, consultants and locums will have a similar obligation to keep confidential information confidential. In reality, therefore, the whole of your in-house function in England and Wales will have an obligation of confidentiality – and the provisions of confidentiality clauses in employment contracts etc. are likely to cast the obligation further afield.

5.2 Generally, you also have a duty, as an individual, to disclose to a client all information of which you are personally aware and which is material to the matter you are acting on regardless of the source of that information. This may include information relating to a previous employer (to whom you will owe a continuing duty of confidentiality).

5.3 Indicative Behaviour 4.4 states that there are a number of circumstances where the duty of disclosure does not apply. These include:

- the client gives specific informed consent to non-disclosure or a different standard of disclosure arises;

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

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

- it is obvious that privileged documents have been mistakenly disclosed to you; and

- you come into possession of information relating to state security or intelligence matters to which the Official Secrets Act 1989 applies.

5.4 If the duty of confidentiality owed to one client conflicts with a duty of disclosure owed to another client, the duty of confidentiality takes precedence. However, that does not excuse any breach of your duty of disclosure. This may be problematic in circumstances where you
are advising a number of clients in relation to the same matter but they do not wish their confidential information to be shared. In these circumstances the duty to disclose could be modified by agreement but, before doing this, you would need to consider whether there is any other reason why you should not act. For example, does withholding information in this case nevertheless call into question your ability to act with integrity (Principle 2) and would you be allowing your independence to be compromised (Principle 3)? This is likely to turn on the nature and materiality of the information in question.

5.5 As a general rule, where acting for your employer and another party on the same matter, you will need to ensure that, while the information relating to the specific matter may and should be freely shared between the parties, other information relating to your employer need and will not be. (See paragraph 4, Do I have a conflict of interest? above and Appendix 6, Precedent substantially common interest consent letter.)

5.6 Outcome 4.4 does not allow an in-house lawyer to act for his or her employer or a related body (“A”) in respect of a matter where A has an “interest adverse” to another party (“B”) if he or she has previously acted for B and holds confidential information which is material to A’s matter, unless the confidential information can be protected by the use of safeguards and:

- the in-house lawyer reasonably believes that A is aware of, and understands, the relevant issues and gives informed consent;
- either:
  - B gives informed consent and you agree with B the safeguards to protect B’s information; or
  - where this is not possible, you put in place effective safeguards including information barriers which comply with the common law; and
- it is reasonable in all the circumstances to act for A with such safeguards in place.

5.7 Although there is no definition of “interest adverse” in the Code of Conduct, the guidance notes to Rule 4, 2007 Code stated that the intention was to mirror what is considered to be adverse for these purposes at common law and referred to the leading case on information barriers – Bolkiah v KPMG [1999] 2 AC 222. A review of the Bolkiah line of cases indicates that a matter needs to be litigious or involve some form of hostility (e.g. a contested takeover) in order for there to be an “interest adverse”. However, the old SRA guidance in the 2007 Code went on to say that adversity arises simply where one party is, or is likely to become, the opposing party on a matter, whether in negotiations or some form of dispute resolution and might therefore catch many types of “non-contentious” matters.

5.8 Advising against a former client could be an issue for in-house lawyers who specialise within a particular industry and change jobs a number of times. Although your employer should be able to accept that you have to vary your duty of disclosure in respect of information gathered on previous jobs, it may be harder for you to obtain the informed consent to act against a former employer where it is felt the information you
know is still relevant – particularly as it will be virtually impossible for you to demonstrate that you have put effective safeguards in place to keep information confidential, as information barriers cannot operate within an individual’s head. There may also be issues of integrity and independence in being able to act even if you have the consent of A and B. However, in practice, this issue would be resolved in time as most of the information you hold on former clients will cease to be commercially current and therefore material to your new employer.

5.9 Outcome 4.5 requires all in-house lawyers to have effective systems and controls in place to enable them to identify risks to client confidentiality and mitigate those risks. Unlike many of the other Outcomes addressing systems and controls, this obligation does not seem to be limited to those who have management responsibilities. In practice, it is likely that some kind of documented policy regarding confidentiality would need to be put in place to ensure that the in-house department was mitigating against any potential non-compliance.

PRACTICAL EXAMPLE

You are asked to advise your client on a potential investment in an entity for which you once worked. Can you do so?

In-house lawyers are personally responsible for ensuring that they have systems in place to identify and mitigate risks to client confidentiality (including in relation to former clients). Although you have a duty of disclosure to your existing employer, you also have a duty of confidentiality to your former employer. As your duty of confidentiality overrides your duty of disclosure, ideally you should have varied your duty to disclose to your current employer any relevant information regarding your former employer before you started to work for your new employer.

Despite being able to vary your duty of disclosure, there may be other considerations here that will prevent you from acting. If your view, based on information you know about your former employer, is that such an investment would disadvantage your current employer, it may mean that you cannot act as your inability to inform your client means you risk breaching Principle 2 (act with integrity) and in relation to your current client, Principles 3 (independence) and 4 (acting in best interests).

See also Practical example 2, paragraph 4, Do I have a conflict of interest?

NEXT STEPS

In many ways the biggest risks to client confidentiality within the in-house context arise out of own interest conflicts. So asking in-house lawyers to complete checklists along the lines suggested in Appendix 5, Conflicts and confidentiality checklist may assist to ensure that there is an effective system in place. In addition, in-house lawyers with management responsibilities may wish to consider:

- including a standard term within in-house lawyers’ contracts of employment setting out their duty of confidentiality to their employer and other clients within the employer group and varying their duty of disclosure in respect of information they hold on their former clients or others. The term should also require in-house lawyers to report any potential confidentiality conflict to their supervisor (so that the supervisor can consider whether it is appropriate for the in-house lawyer to work on the matter in question at all);
• adopting a confidentiality policy which documents some of the organisational procedures relating to confidentiality (for example, how information should be stored and secured, how it can be shared within the organisation, who has access to what information and when and how information should be disposed of); and

• ensuring that in-house lawyers vary their duty of disclosure when advising clients other than their employer (see Appendix 7, Precedent terms and conditions for instructing X PLC’s legal team below).

FURTHER READING

Hilton v Barker Booth & Eastwood [2005] 2 WLR 827 – this landmark House of Lords decision concerned a solicitor with a “confidentiality conflict”. The fact that he had chosen to put himself in an impossible position did not exonerate him from liability and he could not use his “embarrassment” as a reason why his duty to either client should be taken to have been modified.
6. WHAT SYSTEMS AND CONTROLS ARE IN PLACE?

Key issues

- A number of Outcomes under the Code of Conduct require legal departments to have effective systems and controls in place to ensure compliance with the requirements on equality and diversity, conflicts of interest, confidentiality, and the Code of Conduct more generally.
- Most of these Outcomes apply only to those with "management responsibilities".
- There is no guidance on what might amount to a "system" although it is acknowledged that these do not need to be IT-based. (A written policy may be an adequate system provided it is backed up by some form of monitoring or training.)
- Many in-house departments will already have systems in place to address a number of relevant issues which are applicable across the client organisation as a whole, such as equality and diversity and IT security.

6.1 A number of Outcomes under Chapter 2 (Equality and diversity), Chapter 3 (Conflicts of interest), Chapter 4 (Confidentiality) and Chapter 7 (Your role in the business), Code of Conduct require in-house practices within England and Wales to have systems and controls in place to ensure compliance.

6.2 For the most part these Outcomes apply only to those in-house solicitors who have "management responsibilities", although Outcome 4.4 (having effective systems and controls in place to enable you to identify issues as to client confidentiality) seems to apply to all in-house lawyers. This means that although the SRA does not directly regulate in-house departments, it does, through these "systems and control" Outcomes, in some sense regulate the way in which they are run.

6.3 The term "management responsibility" is not defined and may not always be easy to apply to in-house departments, particularly where responsibility for systems or policies and procedures falls within a broader management structure. However, other areas, especially those relating to conflicts of interest and ensuring compliance with all the Principles, Outcomes and rules set out in the Handbook, would seem to be directed at the in-house department and more specifically its managers.

6.4 See paragraph 4, Do I have a conflict of interest?, paragraph 5, Do I have a confidentiality conflict? and paragraph 6, What systems and controls are in place? for discussion on systems and controls relating to client conflicts and confidentiality and see paragraph 2, What duties do I owe my client? for discussion on systems and controls relating to supervising clients' matters. Other relevant Outcomes for those practising in England and Wales are as follows:

- you must take all reasonable steps to encourage equality of opportunity and respect for diversity in your workplace (IHP 2.1);
- you have a clear and effective governance structure and reporting lines (Outcome 7.1);
- you have effective systems and controls in place to achieve and comply with the Principles, rules and Outcomes and other requirements of the Handbook, where applicable (Outcome 7.2);
you are able to identify, monitor and manage the risk to compliance with all the Principles, rules and Outcomes and other requirements of the Handbook and to take steps to address issues identified (Outcome 7.3);

- you train individuals working in the firm to maintain a level of competence appropriate to their work and level of responsibility (Outcome 7.6). Despite the reference to “firm” the SRA has made it clear that this Outcome applies in-house to those with management responsibility;

- you only outsource reserved legal activities to a person who is authorised to conduct such activities (Outcome 7.9); and

- you ensure that any outsourcing of legal activities or operational functions critical to the delivery of any legal activities is subject to the SRA having contractual audit rights over the service provider (Outcome 7.10).

6.5 In relation to Outcome 7.10, it is unclear how this outsourcing requirement can practically apply to in-house lawyers. Although not specifically noted in the SRA guidance, it would seem apparent that this obligation does not extend to situations where you are instructing a law firm in relation to work which you do not have the capacity or expertise to carry out internally. More likely it will apply where you outsource to a non-regulated provider (for example, a legal business outsourcing provider) to carry out work you would normally do internally. Although the same obligation would not apply where the business team outsources the service directly, this may not be a convenient or workable solution.

6.6 Although no guidance is given in relation to what a system should consist of and how it should be documented or implemented, the SRA has emphasised that the factors which should be taken into account will include: the size and complexity of the business; the number, experience and qualifications of the employees; the number of offices; and the nature of the work undertaken. It therefore seems that a “system” can be as simple as a policy or procedure (rather than something IT-based) which is backed up by training and some form of monitoring (for example, a periodic review of the effectiveness of any policy or checklist). A sensible starting point, when trying to identify what the relevant risks are, may be to focus on:

- issues most likely to affect your type of client (for example, when might conflicts of interest and confidentiality conflicts occur, see paragraph 4, Do I have a conflict of interest? and paragraph 5, Do I have a confidentiality conflict? above);

- what are the matters which could result in complaints from other employees (for example, failure to have proper reporting or supervisory structures see paragraph 2, What duties do I owe my client?); and

- anything which may result in third party complaints (for example, in relation to undertakings, or not giving transparency information about complaints procedures or contract races) (see Appendix 4, Client care checklist).

6.7 Not all the Outcomes in Chapter 7 (Management of your business) relate to systems and controls. Outcomes 7.5 and 7.7 require all in-house lawyers to:

- comply with legislation applicable to their business, including anti-money laundering and data protection legislation; and
comply with the statutory requirements for the direction and supervision of reserved legal activities and immigration work.

PRACTICAL EXAMPLE

You are a solicitor qualified in England and Wales working in London for a Japanese bank. You support the business teams working in branches within France and the US. The Japanese bank has an in-house legal team based in Tokyo which occasionally provides you with support. What systems and controls need to be put in place?

The obligations set out in the Principles and the Code of Conduct apply to you because you are a solicitor admitted in England and Wales whose activities are carried out from an office in England. The locations of the business teams you are advising (in France, the US and Japan) have no impact on the professional obligations imposed on you by the Handbook.

Additionally if you are someone with "management responsibilities" you are obliged under the Code of Conduct to have effective systems and controls in place in respect of your activities in England and Wales in order to ensure that you are:

- taking steps to encourage equality and diversity;
- able to identify risks to client confidentiality and mitigate those risks (this applies to all solicitors practising from the London office individually);
- able to identify and assess potential conflicts of interests;
- able to comply with the Handbook;
- training individuals to a level of competence appropriate to their work and level of responsibility;
- complying with statutory requirements for the direction and supervision of reserved legal activities and immigration work;
- supervising client matters and ensuring that the quality of the work is checked by suitably competent and experienced people;
- not outsourcing reserved legal activities to persons who are not authorised; and
- only outsourcing legal activities to third parties who contractually agree to SRA audit rights.

The Handbook makes it clear that systems and controls should be appropriate to the size and complexity of your department, and are only required in respect of England and Wales solicitors (or RELs) (except for systems and control relating to confidentiality which will extend to non-lawyers working for you). Therefore if you are the only solicitor admitted in England and Wales working for the Japanese bank, it would seem that there is no need for a system even though you, as an individual, would need to comply with the obligations within the Handbook.

If systems are required because you oversee a number of other lawyers who have been admitted in England and Wales and who are also based in the London office, it is possible that the systems referred to in the first (equality and diversity), fifth (training individuals) and seventh (supervising client matters) bullet points above are already being dealt with by your Japanese legal department and (assuming there is no great difference in the rules governing these areas) if any relevant policies extend to you, no further work would be needed. Areas which perhaps do require focus are those that cover obligations which differ from those required by Japanese, French or US legal regulators. In particular, the rules relating to confidentiality and conflicts of interest are most likely to vary between these jurisdictions and you will be required as a
solicitor admitted in England and Wales to comply with the SRA rules and, to the extent you have management responsibilities, to implement systems and controls within your department.

If you only advise your employer, the risks of any conflicts are greatly diminished. However, if you advise a number of entities within your employer group you may wish to consider whether you are able to do so under the conflict rules or whether you need to define the circumstances in which you are able to do so. It may also be worth considering whether your SRA obligations in relation to confidentiality and disclosure in any way require you to vary your duty of disclosure to any of your clients. Although you should make a note of your conclusions in this respect, to the extent that the “system or controls” you are trying to impose are only designed to govern you, it is unlikely that you would need to implement any kind of more formal procedure.

See also Section C, paragraph 1, When do the Overseas Rules apply to my work in other jurisdictions?

**NEXT STEPS**

In-house lawyers with management responsibilities should consider:

- looking at existing procedures relating to business-wide issues including equality and diversity;
- adopting or reviewing existing procedures relating to supervision and training (see above paragraph 2, What duties do I owe my client?);
- reviewing existing training programmes to ensure that in-house lawyers are sufficiently aware of relevant legislation and how it, the Principles and the Code of Conduct apply to work that they do;
- ensuring that there is a training programme in place or a means of ensuring your in-house lawyers remain competent to practise;
- wherever possible, learning from any potential breaches of the Code of Conduct to establish causes and address any weaknesses in systems and controls; and
- making compliance with the Handbook a term of employment for your in-house lawyers.
7. WHAT ARE MY OBLIGATIONS WHEN DEALING WITH THIRD PARTIES?

Key issues

- The Handbook contains specific obligations relating to how in-house lawyers practising in England and Wales deal with third parties.

- These rules relate to how in-house lawyers conduct themselves both inside and outside practice to ensure they do not take unfair advantage of their opponents and others or bring the reputation of the profession into disrepute.

- There are also specific rules relating to your duties to the court.

7.1 The Handbook contains specific obligations relating to how in-house lawyers deal with third parties.

7.2 The Principles relating to upholding the rule of law and proper administration of justice (Principle 1), acting with integrity (Principle 2) and not diminishing the trust the public place in you or the provision of legal services (Principle 6) all apply to in-house lawyers in their private as well as their professional life. For example, the SRA has stated that a finding of unlawful discrimination outside practice could also amount to a breach of Principle 1 and Principle 6.

7.3 Chapter 11 (Relations with third parties), Code of Conduct sets out the following Outcomes:

- you do not take unfair advantage of third parties, such as an unrepresented opposing party (Outcome 11.1);

- you must perform all undertakings given by you within an agreed or reasonable timescale (Outcome 11.2);

- where you act for a seller of land you must inform all buyers immediately of the seller’s intention to deal with more than one buyer (Outcome 11.3); and

- you properly administer oaths, affirmations or declarations where you are authorised to do so (Outcome 11.4).

7.4 In relation to not taking unfair advantage under Outcome 11.1, Indicative Behaviour 11.7 suggests that you would not comply with this requirement where you take unfair advantage of an opposing party’s lack of legal knowledge where they have not instructed a lawyer.

7.5 Although Outcome 11.2 in relation to the giving of undertakings seems to focus on the timely fulfilment of them, the Indicative Behaviours and guidance note appear to extend this obligation. Indicative Behaviour 11.5 suggests that you should maintain an effective system which records when undertakings have been given and when they have been discharged. Further Indicative Behaviour 11.6 suggests that where an undertaking is given which is dependent on the happening of a future event and it becomes apparent the future event will not occur, you should notify the recipient of the undertaking. Finally the guidance note to Chapter 11 states that “this chapter should be read in conjunction with Chapter 7 (Management of your business) in relation to the system you will need to have in place to control undertakings”. In reality, the relevance of these suggestions will depend on how often undertakings are given, who signs them and to whom they are given. For example, if you have an undertakings policy which requires lawyers to avoid giving undertakings unless...
strictly necessary and for all undertakings to be reviewed and signed by your Head of Legal (or someone similarly senior), maintaining a register too may be disproportionate, particularly where the team does little or no conveyancing work.

7.6 In-house lawyers must also comply with the particular regulatory duties connected with litigation and advocacy (Chapter 5, Code of Conduct) which need to be considered with other duties imposed by the court. The relevant Outcomes are as follows:

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

PRACTICAL EXAMPLES

1. You are advising the real estate division of your employer on the renegotiation of a lease with a tenant for some prime office space in London. You are close to sending out engrossed copies of the lease on a Friday afternoon when your client contact mentions that he would like you to hold back sending the documents for now because, over the weekend, they will be showing a prospective tenant round the same office space.

Outcome 11.3 does not allow you to deal with more than one buyer of land (or in this case, prospective tenant) without informing the other tenants of your client’s intention to deal with more than one party. The Handbook does not provide any guidance in respect of the meaning of “deal” although guidance in the 2007 Code suggests that it includes “any communication you have with any of the relevant parties intended to progress the matter – for example, the sending of a draft contract or a plan of the property. Communicating information of an estate agency nature, such as sending out particulars of sale or showing prospective buyers around a property, would not amount to dealing”. In this instance, it would appear that you have not yet been asked to deal with more than one party, but it may be advisable to remind your client that, should they ask you to deal with a second possible tenant, you will need to let the first prospective tenant know.

2. In connection with a regulatory investigation in England, you are asked to provide the regulator with an undertaking that certain documents will not be destroyed. What are the issues?

An undertaking is any statement made by you that you will do something or cause something to be done, or refrain from doing something, given to someone who reasonably relies on it.
Failure to fulfil an undertaking may result in disciplinary action. All undertakings given by in-house lawyers can be enforced by the court. It is therefore important that, before providing an undertaking, an in-house lawyer is certain they can fulfil it. In this case this would mean being certain that the documents in question are under the in-house lawyer’s custody and control and that other members of the company could not intentionally or inadvertently destroy them. Does your department have a policy on the giving of undertakings? For example, do they have to be signed by your head of department?

3. You are an in-house lawyer advising your client who is the defendant in a major breach of contract claim. You are familiar with the contract as you were involved in negotiating it some years back. It transpires that the outcome of the case may hang on what happened at a particular meeting between the CEO of your employer, Mr Banks, and the CEO of the claimant company. Mr Banks is required to give evidence and you need to prepare the witness statement. He gives you his account of what transpired at the meeting but the story does not add up and Mr Banks’ explanation of the discrepancies between his account and the other known facts in the case is not convincing to you. Mr Banks insists his version of events is correct and does not authorise you to amend or alter the witness statement. What are the issues?

There are times in practice where your duty of loyalty to your client will conflict with your duties to the court. In these circumstances, your duty to the court will override your duty of loyalty. Outcome 5.1 of the Code of Conduct requires that you do not knowingly or recklessly mislead the court and Outcome 5.2 requires that you are not complicit in another person deceiving or misleading the court. Furthermore, under the Civil Procedure Rules a person who makes, or causes to be made, a false statement in a witness statement verified by a statement of truth without an honest belief in its truth is guilty of contempt (CPR 32.14(1)). In theory, therefore, allowing a client to submit a witness statement which you believe to be false may amount to misleading the court. The recent case of Brett v the Solicitors Regulation Authority [2014] EWHC 2974 shows that, while employers (and clients) may demand loyalty of their advisers, in-house lawyers should also be mindful of their regulatory and common law duties to the courts and the public at large in upholding the law and the reputation of the profession.

See also paragraph 3, What client care information do I need to provide? Practical example 2.

NEXT STEPS

In-house lawyers with management responsibilities should consider:

- adopting a policy setting out the limited circumstances in which undertakings may be given, how to avoid giving undertakings which are outside your control, who can authorise them and providing guidance on the consequences of doing so (e.g. potential personal liability);

- whether there are any circumstances where any in-house solicitor’s interests outside work may negatively impact upon the reputation of your employer. If so, it may be worth revising any existing outside interest policy which restricts in-house lawyers from pursuing other business interests (including acting as a director) without consent from their employer, and

- training the in-house team to ensure that lawyers understand the demands of the Principles and their application outside work.
8. WHAT DUTIES DO I OWE MY REGULATOR?

Key issues:

• SRA reporting requirements under the Handbook are extensive and underpin the principle that ongoing dialogue and communication with the SRA is expected.

• This means that in-house lawyers practising in England and Wales will not only have to engage with the SRA when subject to an investigation, but may also independently have to approach the SRA with information.

• Reporting requirements are set out in Chapter 10, Code of Conduct and the Practising Regulations 2011 (“Practising Regulations”).

8.1 Chapter 10 (You and your regulator), Code of Conduct requires you to:

− ensure that you comply with all the reporting and notification requirements in the Handbook that apply to you (Outcome 10.1);

− provide the SRA with information to enable the SRA to decide upon any application you make, such as for a practising certificate (Outcome 10.2);

− 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 (Outcome 10.3);

− report promptly to the SRA 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) (Outcome 10.4). This could require you to report your own misconduct;

− 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 (Outcome 10.5). Again, this includes 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 (Outcome 10.6);

− not attempt to prevent anyone from providing information to the SRA or the Legal Ombudsman (Outcome 10.7);

− comply promptly with any written notice from the SRA (Outcome 10.8);

− pursuant to a notice under Outcome 10.8:
  − produce for inspection by the SRA documents held by you, or held under your control;
  − provide all information and explanations requested; and
  − 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 a trustee (Outcome 10.9);

− provide any necessary permission to enable the SRA to:
  − prepare a report on any documents produced; and
  − seek verification from clients, staff and the financial institutions used by you (Outcome 10.10);

and

− when required by the SRA in relation to a matter specified by the SRA, you:
  − act promptly to investigate whether any person may have a claim for redress against you;
  − provide the SRA with a report on the outcome of such an investigation, identifying persons who may have such a claim;
  − notify persons that they may have a right of redress against you, providing them with information as to the nature of the possible claim; and
  − 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 (Outcome 10.11).

8.2 Guidance note 2 suggests that the Outcomes in Chapter 10 should be considered in conjunction with Chapter 7 (Management of your business). When considering what “systems and controls” to put in place, it is worth remembering that sharing information with the SRA may have implications for your client/employer, and so those with management responsibilities within the in-house department may wish to consider how best to support in-house lawyers who need to comply with these enhanced reporting obligations.

8.3 Regulation 15, Practising Regulations requires all solicitors who hold a current practising certificate to inform the SRA within seven days if they:

− are committed to prison;
− are convicted of an indictable offence;
− have been made subject to bankruptcy proceedings;
− make proposals for an individual voluntary arrangement;
− are admitted as a member of a legal profession in another jurisdiction or as a lawyer of England and Wales other than as a solicitor or are subject to disciplinary proceedings as a member of either; or
− have changed their name as shown on their practising certificate.

8.4 Any in-house solicitor who wishes to renew his or her practising certificate must also ensure that they have informed the SRA if any of the events listed in Regulation 3, Practising Regulations (and summarised in Appendix 8, Regulation 3, Practising Regulations 2011) applies to them.
PRACTICAL EXAMPLE

You return home after a two-year secondment abroad during which time you rented out your flat. On your return you find a pile of mail that your tenant had failed to pass on to you. On opening the mail you find that you have been issued with a County Court Judgment in relation to the non-payment for some building repairs commissioned by the tenant in your absence. You had assumed that the tenant should be liable for these repairs but as you do not wish to leave the debt outstanding you take immediate steps to pay the debt in full. Do you need to report yourself to the SRA?

Regulation 3.1 (n), Practising Regulations requires you to inform the SRA if you have been made subject to a judgment which involves the payment of money other than one in which you have paid and supplied evidence of payment to the SRA. The effect of this, in practical terms, is that you will need to inform the SRA of the Country Court Judgment and supply the SRA with the evidence of payment.

NEXT STEPS

In-house lawyers with management responsibilities should:

• check that terms and conditions of employment require employees to declare any criminal convictions or regulatory proceedings brought against them; and

• consider requiring in-house lawyers to report internally where Outcomes have not been achieved so that you may monitor ways to improve standards and ensure that other Handbook requirements are met.
9. CAN I ADVISE ON A PRO BONO BASIS?

Key issues:

- In-house lawyers practising in England and Wales (and elsewhere) may advise on a pro bono basis.
- If you wish to advise on a pro bono basis you may not advise on reserved legal matters where the provision of such advice would be "part of your employer's business".
- See Appendix 3, "Meaning of reserved legal activities" for further details on the meaning of reserved legal activities.

9.1 Rule 4.10, Practice Framework Rules states that you may in the course of your practice, conduct work on a pro bono basis for a client other than your employer provided:

- the work is covered by insurance reasonably equivalent to that required under the SRA Indemnity Insurance Rules;
- no fee is charged (or a conditional fee agreement is used whereby you receive costs from your client’s opponent or other third party, all of which you pay to charity under a fee sharing agreement); and
- you do not undertake any reserved legal activities unless your pro bono services are not part of your employer's business.

9.2 Although Rule 4.10 itself does not define what amounts to something being part of an employer's business, in guidance note (x) to the rule the SRA has set out a series of relevant factors that should be taken into account to determine whether services would be regarded as such. The relevant factors include:

- the relevance of such work to the employer's business;
- whether the work is required of the employee by the employer;
- how often the work is carried out, and where such work is carried out;
- when such work is carried out;
- who provides the necessary professional indemnity insurance;
- the extent to which the employer relies on or publicises such work;
- whether the employer provides management, training or supervision in relation to such work;
- whether the employer specifically rewards the employee in relation to such work;
- how many employees carry out the work;
- the proportion of their time spent on the work; and
- the extent to which such work complements or enhances the employer's business.

9.3 The SRA states that the presence of some of these factors will not necessarily mean that the work carried out will be part of the employer's business. However, if it can be established that a clear relationship with the employer's business exists, the in-house lawyer will not be permitted to act if the matter includes advice on reserved
legal activities. In the majority of cases, taking part in your employer’s pro bono activities will not be prohibited provided adequate insurance is in place. However, if the advice you provide is a reserved legal matter (e.g. dispute resolution or conveyancing), you will need to consider if the provision of this advice, and your employer’s pro bono programme in general, could be construed as part of your employer’s business. Examples of when in-house lawyers are likely to be prevented from acting include:

− where the employer describes its business as including the provision of pro bono services; or

− where the work may boost the employer’s business by providing extra business opportunities or creating contacts.

9.4 In-house lawyers wishing to advise friends, relatives, companies wholly-owned by them or their families or registered UK charities on reserved legal matters may still do so in their own personal capacity without remuneration (or the requirement for professional indemnity insurance) (Rule 10.2, Practice Framework Rules).

PRACTICAL EXAMPLE

You are an in-house dispute resolution lawyer who provides free legal advice as a volunteer at a local community centre in your free time. How do the rules on pro bono affect you?

Although the Practice Framework Regulations do seem to restrict the ability of an in-house lawyer to advise on reserved legal matters on a pro bono basis, in this case you should be able to do so. This is because the work you carry out through the local community centre cannot be “part of your employer’s business” and so, provided you have a valid practising certificate and appropriate insurance is in place, advising on reserved legal matters would be permitted. However, where your employer seeks to take credit for your volunteering efforts or supports your work by supervising it or carrying it out during working hours, the position regarding your ability to advise on reserved legal matters on a pro bono basis is less clear.

NEXT STEPS

In-house lawyers with management responsibilities should consider:

• reviewing the extent of your in-house pro bono activities to assess whether you advise on reserved legal activities and if so whether these could be regarded as part of your employer’s business; and

• drawing up a pro bono policy setting out when in-house lawyers may advise on a pro bono basis.
10. DO I NEED A PRACTISING CERTIFICATE?

Key issues:

- In-house lawyers practising in England and Wales as solicitors (and overseas) must hold a current practising certificate.
- The question of whether you are practising as a solicitor depends on the facts of each case.

10.1 Under the Practice Framework Rules, in-house lawyers who are practising as solicitors must hold practising certificates. Failure to do so may be a criminal offence under the Solicitors Act 1974. There are certain reporting requirements associated with practising certificates as described in Section B, paragraphs 8.1 and 8.2, What duties do I owe my regulator?

10.2 Being a solicitor does not necessarily mean you are practising as one. You will be practising as a solicitor if you are involved in legal practice and:

- your involvement in the work depends on your being a solicitor;
- you are held out explicitly or implicitly as a practising solicitor; or
- you are employed explicitly or implicitly as a solicitor.

10.3 The question of whether you are practising as a solicitor depends on the facts of each case. The SRA has published guidance on its website which suggests that you will need a practising certificate in the following circumstances:

- if you advise on reserved legal activities including, for example, in the conduct of litigation or on a conveyancing matter (see Appendix 3, Meaning of “reserved legal activities”), or you are responsible for supervising unqualified staff in such work;
- if you instruct counsel and rely on your qualification as a solicitor to do so;
- if your job title includes the words “solicitor”, “lawyer”, “counsel”, “attorney” or “legal practitioner”, unless you are using this title as a lawyer of another jurisdiction in which case the jurisdiction must be clearly indicated;
- if you use titles such as “legal officer”, “legal director” or “legal specialist”; or
- if you are described, by yourself or by others, as being a member of The Law Society.

10.4 For these purposes, the term "legal practice" includes not only the provision of legal advice or assistance, or representation in connection with the application of the law or resolution of legal disputes, but also the provision of other services which are typically provided by solicitors. Although there is no further guidance on what might amount to these "other services", it is conceivable that they would include activities such as contract negotiation, the conducting of due diligence or verification exercises and the drafting of other (non-legal) documentation.

10.5 The effect of these rules and guidance is that most in-house lawyers who have been admitted as solicitors in England and Wales will require a practising certificate.

10.6 Under the REL Regulations, a European lawyer who practises as a lawyer in England and Wales on a permanent basis under his or her home
professional title must register with the SRA. Failure to do so is a criminal offence. Registration as a REL will entitle European lawyers to practice rights similar to those of a solicitor in England and Wales.

10.7 The term "on a permanent basis" is not defined in the REL Regulations or in the originating European Communities Council Directive No 98/5/EC of 16 February 1998, but is described in SRA Guidance published on the SRA website as being where a person:

- is ordinarily resident in the UK;
- maintains a regular practice in the UK;
- maintains an office, branch or agency in the UK, through which they carry on professional activities and at which they maintain a regular personal presence; or
- is employed as a lawyer, and their ordinary place of employment is in the UK.

10.8 In respect of the last example set out above, the SRA Guidance specifically states that if a person who is normally based outside the UK is seconded to an office in the UK for a term, for training purposes, to further their personal development or to work on a specific transaction, they might not be regarded as "practising on a permanent basis" if the secondment to the UK is for a defined period set to last 12 months or less. A defined period of longer than one year or for an indefinite or renewable period, however, is likely to be considered as "practising on a permanent basis" in the UK.

10.9 Lawyers qualified in other (non-European) jurisdictions who are employed in-house do not need to register with the SRA. However, they should take care to ensure that they do not hold themselves out as being regulated by or registered with The Law Society or the SRA. To the extent that they are advising on legal matters, non-European foreign lawyers should consider avoiding being held out as solicitors by making it clear under what title they practise and which regulator they are subject to.

PRACTICAL EXAMPLES

1. You are a Spanish qualified lawyer who has been working in London for the last two years advising your employer on general commercial matters. Does the Handbook apply to you and do you need to register with the SRA?

As you are permanently based in the UK, you will need to register as a REL to practise in-house under your home title. Failure to do so is a criminal offence. The Handbook applies to you.

2. You work in the contracting unit of your employer. Although you have been admitted as a solicitor, you have not practised as one for ten years and work alongside non-lawyers. Does the Handbook apply to you and do you need a practising certificate?

The Principles and the Code apply to solicitors, that is to say anyone who has been admitted in England and Wales and whose name is on the roll maintained by The Law Society. This is the case regardless of whether they are practising as solicitors. Although the work you are doing may legitimately be carried out by non-solicitors, you need a practising certificate if your name is still on The Law Society roll or if you are holding yourself out explicitly or implicitly as a solicitor (for example, by adopting a title which suggests you are a legal adviser).
NEXT STEPS

Those with management responsibilities should consider:

• whether any in-house lawyers or European lawyers may require a practising certificate or need to register with the SRA;

• where lawyers do not have a current practising certificate, ways of ensuring that these lawyers are not holding themselves out as solicitors or carrying out reserved legal activities (if unsupervised by a solicitor with a practising certificate);

• introducing a system whereby you ensure that everyone who needs a practising certificate actually renews it (for example, by lodging a copy of their practising certificate with a nominated individual who keeps some sort of register and reminder system).

FURTHER READING


C. In-house lawyer guide – practising outside England and Wales

1. WHEN DO THE OVERSEAS RULES APPLY TO MY WORK IN OTHER JURISDICTIONS?

Key issues:

- The Handbook contains separate rules – in the SRA Overseas Rules 2013 (the “Overseas Rules”) – that apply to solicitors “practising overseas” (that is, providing legal services outside England and Wales) and to RELs practising in Scotland and Northern Ireland.

- When establishing whether the Overseas Rules apply, particular care is required by in-house lawyers who may only have a “temporary practice” overseas or whose practice predominantly comprises the provision of legal services to clients in England and Wales.

- When applicable, the Overseas Rules should be applied alongside local law and regulation and they replace the domestic Principles and Code of Conduct.

1.1 In-house lawyers working outside England and Wales will need to establish whether the Overseas Rules apply to them.

1.2 The Overseas Rules apply to in-house lawyers “practising overseas”, meaning the conduct of a practice of:

- a solicitor established outside England and Wales for the purposes of providing legal services in another jurisdiction; or

- an REL established in Scotland or Northern Ireland for the purposes of providing legal services in those jurisdictions.

1.3 The following factors may indicate that an in-house lawyer is established outside England and Wales:

- a requirement for a work permit in a jurisdiction other than England and Wales;

- the intention to reside outside England and Wales for a period of six months or longer;

- a requirement for authorisation with the regulatory body for the local legal profession in a jurisdiction other than England and Wales; or

- an overseas practising address nominated in mySRA.

1.4 The Overseas Rules consist of ten mandatory Overseas Principles that came into force on 1 October 2013, and a mandatory reporting regime effective as of 1 October 2014. The Practice Framework Rules also apply. The Overseas
Rules are drafted to operate alongside local law and regulation and are applied instead of the Principles and Code of Conduct. Their purpose is to enable the SRA to take a proportionate approach to the regulation of those practising outside England and Wales. They are less prescriptive than the Principles and Code of Conduct but do not allow for a lower standard of behaviour.

1.5 In common with the domestic Principles, the Overseas Principles are mandatory and focus on the outcomes that must be achieved. The drafting differs from that of the domestic Principles in order to reflect the different legal, regulatory and cultural context of practice in other jurisdictions as well as the different level of risks posed by an in-house lawyer practising overseas to the SRA’s regulatory objectives. For a full list of the Overseas Principles see Appendix 2, The Overseas Principles.

1.6 Overseas Principle 3 (independence), Overseas Principle 5 (providing a proper standard of service), Overseas Principle 8 (running your business in accordance with proper governance and sound financial and risk management principles), and Overseas Principle 9 (encouraging equality and diversity) refer to “overseas practice”. As defined, an overseas practice is something conducted by an entity authorised by the SRA and not an individual in-house lawyer. The elements of these Overseas Principles that refer to overseas practice therefore do not apply to in-house lawyers.

1.7 In some circumstances, the Overseas Principles also extend to behaviour which occurs outside practice. Overseas Principle 6 requires solicitors practising overseas to refrain from doing anything that will bring themselves or, by association, the legal profession in England and Wales into disrepute. Overseas Principle 6 is mandatory at all times even though other Overseas Principles are excused if they conflict with local law and regulation.

1.8 An in-house lawyer who is seconded, transferred or assigned to work overseas will normally be treated as practising overseas and subject to the Overseas Rules rather than the domestic Principles and Code of Conduct for the duration of the secondment, transfer or assignment. Careful analysis may, however, be required by in-house lawyers who are practising but not established overseas. This is because they will then be considered to have a “temporary practice overseas” and so remain subject to the domestic Principles and certain aspects of the Code of Conduct rather than the Overseas Rules.

1.9 In-house lawyers engaged in temporary practice overseas are governed by Chapter 13A of the Code of Conduct which applies a number of the Outcomes contained in the Code of Conduct to them including those relating to conflicts of interest, confidentiality and disclosure and relations with third parties. Notable exceptions are the Outcomes relating to client care (which do not apply at all) and equality or diversity (which are replaced with a general requirement not to discriminate unlawfully according to the jurisdiction in which you are practising). Given that, under the domestic Code of Conduct, client care requirements are seldom likely to apply in practice to in-house lawyers (see Section B, paragraph 3, What client care information do I need to provide?) and that most organisations will have their own global policies relating to equality and diversity, it may be more practical for in-house lawyers who are based in England and Wales but flying in and out of different jurisdictions to follow the Principles and the Code of Conduct as if they were practising in England and Wales at all times. Such an approach would, however, need to take into account Outcome 13A.5 which states that “you must be
aware of local laws and regulations governing your practice in an overseas jurisdiction” and Outcome 13A.6 which states “if compliance with any outcome in the Code would result in your breaching local laws or regulations you may disregard that Outcome to the extent necessary to comply with that local law or regulation.”

1.10 Regardless of where you practise or are established as an in-house lawyer, if your practice predominantly comprises the provision of legal services to clients in England and Wales the domestic Principles and full Code of Conduct will apply to you. This will be particularly relevant to those employed by a service company overseas but who predominantly support English or Welsh operating companies.

1.11 The Overseas Rules apply alongside local law and regulation. This means that where you practise as a solicitor overseas, you need to be aware of any local laws and regulations that apply to your practice. In circumstances where in addition to being an England and Wales solicitor you are also admitted and practise as lawyer of the overseas jurisdiction, the Overseas Rules may still apply in addition to your local professional rules to the extent that you hold yourself out to be an England and Wales solicitor.

1.12 The Practice Framework Rules contain specific rules that apply to solicitors practising overseas and to RELs practising in Scotland and Northern Ireland. The rest of this Section C considers how the Overseas Rules and the Practice Framework Rules apply to an in-house lawyer established and practising overseas.
2. WHO IS MY CLIENT?

Key issues

- In-house lawyers practising overseas are subject to restrictions on who they can act for.
- When acting for more than one client, you must act in the best interest of each client.
- Local law and regulation may further restrict who you can act for.
- Understanding who your client is in each instance will assist with complying with the requirements of the Handbook.

2.1 Under Rule 4 (In-house practice) of the Practice Framework Rules, in-house lawyers employed by a body overseas may act only for:

- their employer;
- a company or organisation controlled by their employer or in which their employer has a substantial measure of control;
- a company in the same group as their employer;
- a company which controls their employer;
- an employee, director or company secretary of a company or organisation mentioned in one of the four preceding bullets; and
- subject to certain restrictions, members of the public on a pro bono basis.

In addition, if the in-house lawyer has registered in another member state under the Establishment Directive with the professional body for the local legal profession, the in-house lawyer may practise in-house to the extent that a member of that legal profession is permitted to do so.

2.2 When advising someone other than your employer, you must have professional indemnity insurance cover or consider whether your employer has appropriate indemnity insurance or funds to meet any award made as a result of a claim in professional negligence against you. If no such funds are in place, you must inform the client in writing that you are not covered by the compulsory insurance scheme (Rule 4.2 Practice Framework Rules). This requirement is unlikely to be of relevance to in-house lawyers working within a solvent and well-managed organisation.

2.3 The Practice Framework Rules applying to in-house lawyers employed overseas are more restrictive than those applied to in-house lawyers employed in England and Wales, limiting the associated entities that an in-house lawyer can advise to those his or her employer controls or in which the employer has a substantial measure of control. In-house lawyers overseas may not therefore be able to act for joint ventures in which their employer holds only a minority interest, trade associations, pension funds or clubs or associations operated for the benefit of colleagues.

2.4 The category of colleagues in-house lawyers practising overseas can advise is also more restrictive. It does not extend to former employees or directors. Where you are allowed to advise colleagues, you will not be obliged to ensure that your colleagues do not wish to
instruct another independent lawyer. However, you must ensure that:

– the matter relates to or arises out of the work of your employer;

– the matter does not relate to a claim arising out of personal injury to the work colleague; and

– no charge is made for your work, unless those costs are recoverable from another source.

2.5 In-house lawyers practising overseas should also be aware that, in contrast to those practising in England and Wales, the Practice Framework Rules only allow you to undertake conveyancing matters for a colleague and not anyone else who is a joint owner or joint buyer of the property with that colleague. In reality, whether or not in-house lawyers may advise work colleagues will be determined by their employers.

2.6 Under Rule 4.10, Practice Framework Rules, in-house lawyers employed overseas are permitted to conduct work on a pro bono basis in the course of their practice to the same extent as their colleagues employed in England and Wales. For further details see Section C, paragraph 9, Can I advise on a pro bono basis?

2.7 Any solicitor practising overseas who holds a practising certificate is also allowed under Rule 10.2, Practice Framework Rules to advise friends, relatives, companies wholly-owned by them or their family and registered UK charities, without remuneration, on legal matters including reserved legal activities. In these circumstances, there is an exclusion from the requirement to carry indemnity insurance. However, clients should still be informed that you do not carry insurance and you should consider limiting your liability to them.

2.8 The Practice Framework Rules only apply to SRA regulated lawyers and not to any other members of your department who will need to have regard to their own professional regulations and any relevant local law and regulation when determining for which entities and colleagues they can act for.

2.9 If you are an England and Wales solicitor practising in another EU member state under the Establishment Directive and registered with the professional body for the local legal profession, you are entitled to advise any client that members of that local professional body are entitled to advise as an in-house lawyer under the local rules. In some circumstances this may mean you are able to act for clients that you would not ordinarily be able to act for under the restrictions the SRA has imposed on England and Wales solicitors practising in-house overseas.

2.10 In-house lawyers owe a number of general duties to their clients under the Overseas Principles. For example, Overseas Principle 4 requires them to act in the best interests of each client. It is therefore important to understand when you may be acting for more than one person to ensure that their interests are in fact aligned – although this is as likely to be of concern to your employer as it is to you. You will also need to be aware of any duties that might arise under any local law or regulation. For further discussion on the duties applying to in-house lawyers see Section C, paragraph 3, What duties do I owe my client?

2.11 Failing to establish who your client is in any particular situation could give rise to issues over the scope of legal professional privilege. For further discussion, see Section B, paragraph 1.3, Who is my client?
PRACTICAL EXAMPLE

You are the only England and Wales qualified solicitor working in the US in-house department of a New York based company. You are asked by your employer to provide some advice on a commercial contract which benefits a joint venture entity in which the New York company has a small stake. Are you able to act?

Contrary to the position in England and Wales, under the Practice Framework Rules in-house lawyers practising overseas are unable to act for companies in which their employer has a stake unless that stake is large enough to give the employer a substantial measure of control. A practical solution here may be to explore with an American lawyer colleague whether they are able to do the work in your place.
3. **WHAT DUTIES DO I OWE MY CLIENT?**

Key issues:

- In-house lawyers will owe contractual duties to their clients and may be subject to local law or regulatory duties.

- In addition, they are subject to a number of regulatory duties under the Overseas Rules.

3.1 Solicitors practising overseas must:

- act with integrity (Overseas Principle 2);

- act in the best interests of each client (Overseas Principle 4);

- provide a proper standard of service to clients (Overseas Principle 5); and

- comply with local legal and regulatory requirements in relation to conflicts of interest and confidentiality (guidance note, Overseas Principle 4).

3.2 In-house lawyers practising overseas are given freedom to determine how best to comply with their regulatory duties. In general, it is for you to determine how to discharge your obligation to provide your clients with a proper standard of service (but see Section B, paragraph 3, What client care information do I need to provide?).

3.3 Overseas Principle 8 requires each in-house lawyer to carry out his or her own role in the business effectively and in accordance with proper governance and sound financial and risk management principles but the SRA offers no further indication as to what this might entail or how to go about it. It is left to each lawyer, and his or her employer, to determine what systems and controls (if any) are required to ensure effective compliance.

3.4 There are times when the duties which in-house lawyers working overseas owe to their clients may be overridden. The obligation not to do anything likely to bring yourself or the legal profession in England and Wales into disrepute (Overseas Principle 6) overrides all other obligations imposed on those practising overseas, including the legal and regulatory obligations of the jurisdiction in which an in-house lawyer is practising.

**PRACTICAL EXAMPLE**

You are a financing lawyer working in-house for an international construction group. You are currently seconded to the head office’s legal department based in Madrid. On a Monday afternoon you are asked to attend an urgent meeting with a number of banks to agree a refinancing which must be in place before the end of the day. The negotiations run on and on but the documents are finally agreed at 1 am on the Tuesday morning. The draft document has Monday’s date on it and you are expressly told by the client not to amend it. What do you do?

If you allow your client to sign a document which appears to have been agreed earlier than it was, you may be assisting your client in committing a fraud. Under Overseas Principle 2 you are required to act with integrity. You should explore what the client’s reasons are for wanting the document to bear Monday’s date and explain that as a solicitor you are unable to take part in any form of deception. A possible solution may be for the parties to agree to include a clause that states that the document will take effect “as from Monday”.

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SRA Handbook 2011: in-house lawyer guide
4. WHAT CLIENT CARE INFORMATION DO I NEED TO PROVIDE?

Key issues:

• Unlike the Code of Conduct, the Overseas Rules do not set out any specific client care requirements.

• There is an obligation to provide information about the extent to which you are covered by professional indemnity insurance when you act for someone other than your employer, or for friends and family in your spare time.

4.1 Rule 4.2 of the Practice Framework Rules requires in-house lawyers who advise someone other than their employer to consider whether the employer has sufficient indemnity insurance in place to meet any claim of professional negligence made against them. If no such insurance is in place or the employer’s insurance would not cover the relevant jurisdiction, the client must be informed in writing that the in-house lawyer is not covered by a compulsory insurance scheme.

4.2 If you advise friends, family or a UK registered charity under Rule 10.2, Practice Framework Rules you are not required to carry insurance. However, you should inform your clients of this as well as considering whether to limit your liability.

4.3 If you have registered with a professional body for the local legal profession, you may have the benefit of professional indemnity insurance provided by that local body. If so, this should be disclosed to any work colleague, friend, family or UK registered charity for whom you act.

PRACTICAL EXAMPLE

You have been seconded to the Paris subsidiary of your employer to oversee a transaction. The Paris business has no legal function. What information should you provide?

Although the Overseas Rules do not set out any specific client care requirements, the Practice Framework Rules require you to consider whether you have the benefit of any indemnity insurance or other funds to meet any award made as a result of negligence. Assuming you do not, and the Paris business is not aware of this, you should inform them in writing that your work is not covered by a compulsory insurance scheme.
5. DO I HAVE A CONFLICT OF INTEREST OR A CONFIDENTIALITY CONFLICT?

Key issues:

- With the introduction of the Overseas Rules, in-house lawyers practising overseas no longer carry the conflicts of interest, confidentiality or disclosure rules "on their backs".

- Although this may only have a limited impact on the practice of in-house lawyers, this will be of particular relevance when determining whether it is appropriate to act for someone other than your employer.

5.1 In-house lawyers practising outside England and Wales must follow local law and regulation in the jurisdiction in which they are practising in relation to conflicts of interest and confidentiality (Guidance note, Overseas Principles 4).

5.2 The Overseas Rules make no express reference to the duty of disclosure, but your obligation to comply with local law and regulation (subject to Overseas Principles 6) would appear to dictate that local law also should govern any duty of disclosure.

5.3 This means any potential for conflicts of law to arise as a result of you being a lawyer admitted in England and Wales practising in an overseas legal department should be removed and you will be able to apply the same conflicts of interest and confidentiality conflict rules as your locally admitted colleagues.

5.4 If there is no relevant local law or regulation, you need to be guided by what you consider to be in the best interests of each client in the circumstances. This may result in some circularity. The Outcomes of the Code of Conduct set out in detail what those practising in England and Wales must achieve if they are to be considered by the SRA to be acting in the best interests of each client. There is also a substantial body of case law and judicial opinion on the subject. Although the common law of England and Wales does not apply directly to those practising outside the territory, it would be unwise for any solicitor of England and Wales to completely disregard that common law when making any judgement about what is in the best interests of his or her clients. This will be particularly important if either client is in England and Wales (guidance note, Overseas Principles 1).

5.5 Nevertheless, solicitors practising in-house in jurisdictions which have different rules on conflicts of interest may have more flexibility when determining whether to act for clients other than their employers. You may, for example, decide to be guided by the professional rules governing conflicts of interest in the home jurisdiction of your employer if different from the jurisdiction in which you are practising. You might also be able to place greater reliance on client waivers and consents than is currently permitted under the domestic Code of Conduct.

5.6 If there are no relevant local laws or regulations governing your duties of confidentiality and disclosure to clients, these are likely to become matters of policy that will need to be agreed between you and your employer. Ensuring
any other clients you act for are aware of, and understand, the implications of the agreed policy will become the key to discharging your obligations. In particular, anyone else you advise must understand that you will not be able to keep their information confidential from your employer and at the same time may not be able to disclose your employer’s confidential information to them. In some circumstances, your employer’s policies may make it inappropriate for you to act for other clients taking into account your duties to act in their best interests, to provide a proper standard of service and not to do anything that would bring you or the legal profession in England and Wales into disrepute (Overseas Principles 4, 5 and 6).

PRACTICAL EXAMPLE

You work overseas in a local law department of a large multinational retail group. You are asked to advise both your employer and its wholly-owned subsidiary, Packingco, on the renegotiation of their supply agreement. You are aware that Packingco is unhappy with a number of key terms but is happy for you to act for them as well as your employer.

Under Chapter 3, Code of Conduct a conflict of interests will exist where you owe separate duties to act in the best interests of two or more clients in relation to the same or related matters, and those duties conflict, or there is a significant risk that those duties may conflict (see Section B, paragraph 4, Do I have a conflict of interest?, practical example). However, in-house lawyers practising overseas do not need to follow the domestic conflict rules, but rather may be guided by local professional rules governing conflicts of interests. This may mean that they are able to act in circumstances where there is a potential conflict under the Handbook. If no requirements relating to conflicts of interest exist, you should be guided by what you consider to be in the best interests of each client in the circumstances.
6. **WHAT SYSTEMS AND CONTROLS ARE IN PLACE?**

Key issues:

- No obligations are directly imposed on in-house lawyers working overseas to have systems and controls in place to ensure compliance with any aspect of the Handbook.

- In the context of equality and diversity, in-house lawyers working overseas are encouraged to "do what they reasonably can" to encourage equality of opportunity and respect for diversity within the legal, regulatory and cultural context in which they are practising overseas.

- All in-house lawyers practising overseas should also consider whether any systems and controls are necessary to enable them to carry out their role in the business effectively and in accordance with proper governance and sound financial and risk management principles (Overseas Principle 8). See also Section C, paragraph 8, Systems and controls.

6.1 The Overseas Rules apply only to in-house lawyers in their capacity as regulated individuals practising overseas. In contrast with obligations under the Code of Conduct applicable to in-house lawyers working in England and Wales, in-house lawyers with management responsibilities working overseas are not responsible for ensuring that others comply with the Overseas Principles and there is no requirement for them to ensure that there are systems and controls in place to meet any of the standards set out in the Handbook.

6.2 However, those with management responsibilities practising overseas, or responsibility for an overseas department, may, depending on the size and make up of the legal department, still wish to implement systems and controls similar to those described in Section B, paragraph 7, What are my obligations when dealing with third parties? on a voluntary basis if it would assist each individual solicitor within their department to comply with their personal obligations under the Overseas Principles.

6.3 The Guidance note to Overseas Principle 9 acknowledges that every jurisdiction has its own legal, regulatory and cultural framework for equality and diversity. The SRA does not expect or require in-house lawyers practising overseas to approach these issues as they would in England and Wales. Having said that, the SRA does expect that they will do what they reasonably can to encourage equality of opportunity and respect for diversity within the legal, regulatory and cultural context in which they are practising overseas.

**PRACTICAL EXAMPLE**

You are a solicitor admitted in England and Wales and the General Counsel of a Dubai-based bank. You work out of Dubai and manage a team of ten lawyers none of whom is a solicitor admitted in England and Wales. How does the Handbook apply to you?

You are an in-house lawyer admitted in England and Wales but practising overseas. The Overseas Principles apply to your work in Dubai. These do not extend to your department or contain any requirement relating to systems and controls. Consequently, there is no regulatory requirement to impose any systems and controls on your team and none of the other lawyers within your team will be subject to any form of SRA regulation. While you must carry out your role in the business in accordance with proper governance and sound financial and risk management principles (Overseas Principle 8) and in a way that encourages equality of opportunity and respect for diversity (Overseas Principle 9), you are free to determine what, if any, systems and controls are necessary for you to comply with such principles.
7. WHAT ARE MY OBLIGATIONS WHEN DEALING WITH THIRD PARTIES?

Key issues:

- The Overseas Rules only provide a very high-level steer as to the expected standard of behaviour towards third parties.
- In-house lawyers are left to determine how best to meet those standards.

7.1 The Guidance note to Overseas Principle 2 states that personal integrity is central to your role as a trusted adviser and should characterise all of your professional dealings with the public. Your judgement should be used when considering how best to maintain your integrity at all times and avoid any behaviour outside England and Wales which undermines your character and suitability to be an authorised person.

7.2 Overseas Principle 6 (the requirement not to do anything which will bring you or the legal profession of England and Wales into disrepute) and Overseas Principle 2 (the requirement to act with integrity) apply to your conduct outside work. You should use your judgement when considering how best to maintain your integrity outside your professional life and avoid behaviour outside England and Wales which undermines your character and suitability to be an authorised person.

PRACTICAL EXAMPLE

You are out with colleagues for an after-work drink in New York. A young man standing next to your group bumps into one of your colleagues who then spills their drink over your new work suit. You politely complain to the young man who swears at you and then charges off. Minutes later he returns and pours an iced drink over your head. Your work colleague says "If I were you, I would punch him!". You feel utterly humiliated, what do you do?

Clearly, any sort of physical retaliation would be inappropriate in this situation, notwithstanding the provocation. Apart from all the other potentially serious consequences, it would be likely to risk bringing the legal profession into disrepute.
8. WHAT DUTIES DO I OWE MY REGULATOR?

Key issues:

- The SRA has adopted a lighter touch regime with respect to reporting requirements for in-house lawyers practising overseas as opposed to those practising in England and Wales.

- When practising overseas, you must ensure that you deal with your regulators and ombudsmen in England and Wales in an open, timely and co-operative manner.

8.1 In-house lawyers practising overseas must ensure that they deal with their regulators and ombudsmen in England and Wales in an open, timely and co-operative manner. In addition, they must assist and not impede any SRA authorised person or body in England and Wales in complying with their legal and regulatory obligations and in their dealings with their regulators and ombudsmen (Overseas Principle 7).

8.2 All solicitors who hold a current practising certificate must inform the SRA within seven days if any of the circumstances listed in Section B, paragraph 8.2, What duties do I owe my regulator? have occurred. In addition, any in-house solicitor practising overseas who wishes to renew his or her practising certificate must also ensure that they have informed the SRA if any of the events listed in Appendix 8, Regulation 3 Practising Regulations 2011 apply to them.

8.3 All in-house lawyers practising overseas must under Rule 3, Overseas Rules monitor and report to the SRA any material or systemic breaches by themselves of the Overseas Principles when they occur or as soon as reasonably practicable thereafter.

PRACTICAL EXAMPLE

During your time on secondment at the legal department of your employer’s Australian company, you receive complaints from a number of staff within the company (and from a contact at a supplier) about the inappropriate behaviour of a junior member of your team, an England and Wales qualified solicitor. Do you need to report?

Rule 3 does not expressly require you to report to the SRA information about the behaviour of others (even if you are their manager). However, this is likely to be a matter which would need to be brought to the attention of your employer’s HR department or senior management.
9. CAN I ADVISE ON A PRO BONO BASIS?

Key issues:

• In-house lawyers practising overseas may advise on a pro bono basis in certain circumstances.

• If you wish to advise on a pro bono basis, you may not advise on reserved legal matters where the provision of such advice would be "part of your employer's business".

See Section B, paragraph 9, Can I advise on a pro bono basis? for further details.

10. DO I NEED A PRACTISING CERTIFICATE?

Key issues:

• Under the Practice Framework Rules, in-house lawyers who are practising overseas as solicitors of England and Wales must hold practising certificates.

• Being qualified as a solicitor of England and Wales and working as a lawyer does not necessarily mean you are practising as a solicitor of England and Wales. If you are dual qualified as a lawyer of another jurisdiction and are employed, and only use your title as a lawyer of that jurisdiction, you may not be required to hold a practising certificate. But if your employer is aware of your qualification as an England and Wales solicitor and as a result occasionally asks you to advise on matters governed by the laws of England and Wales, you will need a practising certificate.

See Section B, paragraph 10, Do I need a practising certificate? for further details.
Appendices

Appendix 1: The Principles

You must:

1. uphold the rule of law and the proper administration of justice;

2. act with integrity;

3. not allow your independence to be compromised;

4. act in the best interests of each client;

5. provide a proper standard of service to your clients;

6. behave in a way that maintains the trust the public places in you and in the provision of legal services;

7. comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and co-operative manner;

8. run your business or carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles;

9. run your business or carry out your role in the business in a way that encourages equality of opportunity and respect for diversity; and

10. protect client money and assets.
Appendix 2: The Overseas Principles

You must:

1. uphold the rule of law and proper administration of justice in England and Wales;

2. act with integrity;

3. not allow your independence or the independence of your overseas practice to be compromised;

4. act in the best interests of each client;

5. provide a proper standard of service to your clients/the clients of your overseas practice;

6. not do anything which will or will be likely to bring into disrepute the overseas practice, yourself as a regulated individual or, by association, the legal profession in and of England and Wales;

7. comply with your legal and regulatory obligations in England and Wales and deal with your regulators and ombudsmen in England and Wales in an open, timely and co-operative manner and assist and not impede any authorised person or authorised body practising in England and Wales in complying with their legal and regulatory obligations and dealings with their regulators and ombudsmen;

8. run your business/the business of your overseas practice or carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles;

9. run your business/the business of your overseas practice or carry out your/their role in the business in a way that encourages equality of opportunity and respect for diversity; and

10. protect client money and assets.

NB: “Overseas practice” refers to any of a branch office, subsidiary company or subsidiary entity of a body authorised by the SRA or a business controlled by such a body, or an individual acting as a representative of such a body. As most in-house lawyers do not work for bodies authorised by the SRA, the parts of the Overseas Principles referring to “overseas practice” do not apply to them.
Appendix 3: Meaning of “reserved legal activities”

Section 12 and Schedule 2 of the LSA 2007 define the six separate reserved legal activities as follows:

- **the exercise of a right of audience** – the right to appear before and address a court, including the right to call and examine witnesses;

- **the conduct of litigation** – the issuing of proceedings before any court in England and Wales, the commencement, prosecution and defence of such proceedings and the performance of any ancillary functions in relation to such proceedings;

- **reserved instrument activities** – preparing any instrument of transfer or charge for the purposes of the Land Registration Act 2002, making an application or lodging a document for registration under that Act, preparing any other instrument relating to real and personal estate, but excluding wills or testamentary instruments, powers of attorney and most transfers of securities;

- **probate activities** – preparing any probate papers for the purposes of the law of England and Wales or in relation to any proceedings in England and Wales;

- **notarial activities** – in accordance with section 1 of the Public Notaries Act 1801; and

- **the administration of oaths** – in accordance with the Commissioners for Oaths Acts 1889 and 1891 and the Stamp Duties Management Act 1891.
## Appendix 4: Client care checklist

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<tr>
<td>Information about how you are regulated and how the services you provide are regulated (Outcome 1.7).</td>
<td>Unlike Outcome 8.4 (described below), Outcome 1.7 applies regardless of who your client is. However, it is expected that your employer will understand the regulatory framework in which you practise making it unnecessary to give this information to them. Consider providing this information to clients other than your employer or companies within the employer group.</td>
<td>See Appendix 7, Precedent terms and conditions for instructing X PLC’s legal team.</td>
</tr>
<tr>
<td>Clients and the public have appropriate information about you and how you are regulated (unless this is not relevant to your particular circumstances) (Outcome 8.4).</td>
<td>This will rarely be relevant if you only act for your employer group. Consider providing this information to clients other than your employer or companies within the employer group.</td>
<td>See Appendix 7, Precedent terms and conditions for instructing X PLC’s legal team.</td>
</tr>
<tr>
<td>Information about claims clients might have</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Clients must be informed if any act or omission is discovered which could give rise to a claim against you. (Outcome 1.16).*</td>
<td>Any client who could have a claim against you.</td>
<td>If you believe there has been an act or omission which could give rise to a claim, the circumstances should first be brought to the attention of your supervisor for further analysis.</td>
</tr>
</tbody>
</table>

* Although this Outcome does apply to in-house solicitors, in practice it may (depending on the particular circumstances) be difficult for employers to demonstrate that your actions were outside the norms, authority or practice of the organisation.
<table>
<thead>
<tr>
<th>Handbook requirement</th>
<th>Who should receive the information?</th>
<th>How should the information be given?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Information that must be provided in relation to the service provided</td>
<td></td>
<td></td>
</tr>
<tr>
<td>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 (Outcome 1.12).</td>
<td>All clients.</td>
<td>Provide during the course of acting as relevant. If you are not providing certain services (e.g. legal advice on tax issues), say so (ideally at the outset).</td>
</tr>
<tr>
<td>Agreeing an appropriate level of service with your client, for example, the type and frequency of communications (Indicative behaviour 1.1).</td>
<td>Consider providing this information to clients other than your employer or companies within the employer group.</td>
<td>See Appendix 7, Precedent terms and conditions for instructing X PLC’s legal team.</td>
</tr>
<tr>
<td>Explaining your responsibilities and those of the client (Indicative behaviour 1.2).</td>
<td>Consider providing this information to clients other than your employer or companies within the employer group.</td>
<td>See Appendix 7, Precedent terms and conditions for instructing X PLC’s legal team.</td>
</tr>
<tr>
<td>Ensuring that the client is told in writing of the person dealing with the matter and the name and status of the person responsible for overall supervision (Indicative behaviour 1.3).</td>
<td>Consider providing this information to clients other than your employer or companies within the employer group.</td>
<td>See Appendix 7, Precedent terms and conditions for instructing X PLC’s legal team (details would need to be provided on each matter).</td>
</tr>
<tr>
<td>Make the client aware of all information material to the matter of which the in-house lawyer has personal knowledge except where the client consents to non-disclosure or a different standard of disclosure (Outcome 4.2).</td>
<td>All clients, although you should seek to include a general modification of your duty of disclosure in your contract of employment with your employer rather than via terms and conditions.</td>
<td>See Appendix 7, Precedent terms and conditions for instructing X PLC’s legal team (to non-employer group clients only).</td>
</tr>
<tr>
<td>Handbook requirement</td>
<td>Who should receive the information?</td>
<td>How should the information be given?</td>
</tr>
<tr>
<td>-----------------------------------------------------------</td>
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<td>-------------------------------------</td>
</tr>
<tr>
<td><strong>Information about your duties to the court</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Where relevant, clients are informed of the circumstances in which your duties to the court outweigh your obligations to the client (Outcome 5.5).</td>
<td>All clients.</td>
<td>Provide during the course of the matter as relevant.</td>
</tr>
<tr>
<td><strong>Information about referrals</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Clients are informed of any financial or other interest which you have in referring the client to another person or business (Outcome 6.2).</td>
<td>All clients.</td>
<td>Provide during the course of the matter if relevant. Unlikely to be relevant for many in-house departments.</td>
</tr>
<tr>
<td><strong>Information about complaints</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-employer clients are informed in writing at the outset of their matter of their right to complain and how complaints may be made, unless it is clear that the Outcome is not relevant to your particular circumstances (Outcome 1.9).</td>
<td>Consider providing this information to clients other than your employer or companies within the employer group.</td>
<td>See Appendix 7, Precedent terms and conditions for instructing X PLC’s legal team.</td>
</tr>
<tr>
<td>Handbook requirement</td>
<td>Who should receive the information?</td>
<td>How should the information be given?</td>
</tr>
<tr>
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<td>------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Non-employer clients are informed, in writing, both at the time of engagement and (if they complain) 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, unless it is clear that the Outcome is not relevant to your particular circumstances (Outcome 1.10).</td>
<td>Consider providing this information to clients other than your employer or companies within the employer group.</td>
<td>See Appendix 7, Precedent terms and conditions for instructing X PLC’s legal team.</td>
</tr>
<tr>
<td>If a client makes a complaint, providing them with all necessary information concerning the handling of the complaint (Indicative Behaviour 1.24).</td>
<td>Clients who have made a complaint.</td>
<td>Provide if a complaint is made.</td>
</tr>
</tbody>
</table>

**Information about insurance**

When advising someone other than your employer, informing them in writing if your employer does not have professional indemnity insurance or equivalent funds in place to meet any claim for negligence against you (Rule 4.2 Practice Framework Rules).

Provide this information to clients other than your employer (including related bodies, work colleagues, friends and family).

See Appendix 7, Precedent terms and conditions for instructing X PLC’s legal team.

**Information about conveyancing contract races**

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 (Outcome 11.3).

Any relevant buyers of land (including tenants).

Provide as soon as you become aware that your seller client intends to deal with more than one buyer (or tenant).

If you have an intranet that explains the operation and services offered by the in-house legal function, much of this transparency information can also usefully be included on those pages.
Appendix 5: Conflicts and confidentiality checklist

Example of a client conflict and confidentiality checklist

1. **Who are you acting for on this matter?**
   If you are acting for anyone other than X PLC (employer entity) have you checked with [UK General Counsel] that the department is not also advising X PLC on this matter, or likely to do so in the future?

2. **Are you acting for more than one person in relation to the same or a related matter?**
   If so, are you sure their interests are aligned? Circumstances in which care should be taken include where both parties have significantly different bargaining powers.
   
   If you are unsure on this point, speak to [UK General Counsel].

3. **Have the clients agreed that their matter-related information may be shared?**
   If not, have you varied your duty of disclosure to each client by obtaining their written consent? In the case of non-employer clients, this may be done by sending out the X PLC in-house legal team’s terms of business (see Appendix 7, Precedent terms and conditions for instructing X PLC’s legal team).

4. **Are you acting for an individual director or employee of X PLC or another member of X PLC’s group?**
   If so, does the matter you have been asked to advise on arise out of the work for X PLC or the related body? If you are unsure on this point, speak to [UK General Counsel].

5. **Is there any reason why you should not advise on this matter?**
   - Do you have any personal/other connection to the other party in the matter? For example, are you related to them?
   
   - Do you personally have anything to gain or lose from the proposed matter?
   
   - Are you in possession of any information which is material to this matter but which you cannot disclose because you owe a duty of confidentiality to a previous employer or client?

   If so, you will need to declare your interest (but without disclosing any confidential information) to [UK General Counsel] who may decide that you are unable to work on this matter.
Appendix 6: Precedent substantially common interest consent letter

This letter is addressed to the non-employer group client and sets out the terms on which you can act for it if there may be a risk of a conflict and you are relying on the substantially common interest exemption. It also varies your duty of disclosure to the non-employer group client, thereby protecting the information of your employer. It also provides for what would happen should a conflict arise. This letter has been drafted primarily for those practising in-house in England and Wales.

Dear [                                  ],

As you know, I am advising you, Y Ltd, in relation to Project A. Because I am a member of X PLC’s in-house legal team and we are also advising X PLC on this matter, I thought it would be helpful to set out the basis on which I am able to help you.

[Because there may be other occasions on which members of the X PLC in-house legal team assist you, it seems sensible to lay down a framework which will apply whenever one of us does so. Attached to this letter are terms and conditions which set out the basis on which our services are provided to you whenever we work with you, unless otherwise agreed in writing. These may be updated from time to time and are always available from us on request.]

We have been asked to advise both Y Ltd and X PLC in relation to Project A and you have agreed that you are happy for us to act for you in the knowledge that this is the case.

Given that X PLC [is a major shareholder in Y Ltd], we do not anticipate that acting for both of you would lead to a conflict, or a significant risk of a conflict, arising between our separate duties to act in the best interests of Y Ltd and of X PLC in relation to this matter.

Moreover, even if such a conflict were a possibility, it appears that Y Ltd and X PLC have a substantially common interest in relation to the matter because they have a clear common purpose in relation to this matter and a strong consensus on how it is to be achieved. Provided that you are happy this is the case and you give us written consent, this means we would be able to act for both of you in relation to Project A.

You understand that, as employees of X PLC and as its own in-house advisers, we will hold or have access to a considerable amount of confidential information about X PLC, and you also understand that we will not be required to disclose any of that information to you, or use it on your behalf or for your benefit. You therefore agree that (a) any duty of confidentiality which we owe to X PLC overrides any duty which we might have to disclose information to you which is relevant to this matter and (b) any duty which we might otherwise have to disclose such information to you is modified accordingly. That said, if X PLC directs us to disclose information to you which is pertinent to Project A, we will of course do so.
Any information you give us must be given to us on the basis that it can be freely shared with X PLC, and you agree to us being able to disclose such information to X PLC. If you think there may be information to which your legal advisers should have access but you would not wish to share with X PLC, you must let us know – in these circumstances it may not be appropriate for us to act (or to continue to act) for you.

Finally, for the sake of completeness, if at any time during the lifetime of this matter we think you may cease (or have ceased) to have a substantially common interest with X PLC in relation to this matter, we would have to review whether it is possible for us to continue to act for both you and X PLC. In these circumstances, we may have to cease acting for you but would wish to continue to act for X PLC, and you agree that you would be happy for us to do so.

The scope of our retainer to act for you in relation to this matter is limited to [insert description of work to be done]. Please confirm, by letter or email, that you are happy for us to act for you on the basis described above.

Yours sincerely,
Appendix 7: Precedent terms and conditions for instructing X PLC’s legal team

This letter has been drafted primarily for use by in-house lawyers practising in England and Wales.

Thank you for instructing X PLC legal team. Because there may be other occasions on which members of X PLC in-house legal team assist you, it seems sensible to lay down a framework which will apply whenever one of us does so.

1. THE TEAM

1.1 [                           ], as [General Counsel of X PLC], will be the lawyer responsible for the overall supervision of the work we do for you. If [he/she] should be unavailable for any reason, please speak to [                                       ].

1.2 We will discuss and agree with you, at the outset of a matter, who will be handling your work. During the course of a matter, other lawyers and professional staff may be introduced to you and work on your matter where we think the demands of the matter require it.

2. OUR SERVICES

2.1 [The legal services we provide to you will be carried out or supervised by solicitors regulated by the Solicitors Regulation Authority.]

2.2 At the outset of a matter we will discuss and agree with you the nature and scope of the legal services to be provided by us. They may be varied, by agreement, during the course of a matter.

2.3 To enable us to perform our services, we will need you to supply us with instructions and the information which we consider necessary as promptly as possible.

2.4 Our instructions will be taken from you or from any other person whom we reasonably believe to have been authorised by you to give instructions to us.

2.5 [Please note that X PLC legal team does not carry indemnity insurance in respect of the services they provide.]
3. CONFLICTS OF INTEREST

We will not act in relation to a matter where there is a conflict of interest in relation to that matter, or a related matter, or there is a significant risk that there is a conflict of this kind, unless we are permitted to do so by the professional rules from time to time of the Solicitors Regulation Authority or other applicable law or regulation and, where required, with your consent.

4. CONFIDENTIAL INFORMATION

4.1 We will keep information about your business and affairs confidential and will not disclose it without your consent except (a) to X PLC, (b) to your other advisers, (c) where disclosure is required or permitted by the law or regulation of any relevant jurisdiction, (d) to any body which represents or regulates us in any jurisdiction, (e) (in confidence only) to selected third parties providing services relevant to our work for you, (f) (in confidence only) to our advisers, insurers, brokers or auditors, or (g) to defend ourselves in relation to actual or threatened legal or regulatory proceedings, regardless whether brought or threatened by you or any other person.

4.2 You agree that we will not be required to disclose to you, or use on your behalf or for your benefit, any documents or information in our possession in relation to which we owe a duty of confidentiality to X PLC, or any other existing or former client, or any other person. You therefore acknowledge that any duty of confidentiality that we owe to X PLC, or any other existing or former client, or other person overrides any duty we might have to disclose information to you which is, or might be, relevant to a matter on which we are acting for you and any duty which we might have to disclose such information to you is modified accordingly.

5. COMPLAINTS

5.1 If you wish to make a complaint about any aspect of a matter we are handling or have handled for you, please contact [ ], the [UK General Counsel] of X PLC.

5.2 If that is felt to be inappropriate, or if you feel that the response of the [General Counsel] is inadequate, you can write to [Global Head of Legal] at X PLC.

5.3 We would hope to resolve any problem to your satisfaction. If we do not, you may be able to ask the Legal Ombudsman ("LeO") to help you resolve your complaint. Normally you would need to contact LeO within six months of our final response to your complaint. You can do so by telephone on 0300 555 0333, by email at enquiries@legalombudsman.org.uk or by post at PO Box 6806, Wolverhampton WV1 9WJ.
Appendix 8: Regulation 3, Practising Regulations 2011

Set out below is an edited extract of Regulation 3, Practising Regulations 2011 as applicable to in-house lawyers.

Regulation 3 applies to an initial application for a practising certificate, an application for replacement of a practising certificate, an initial application for registration in the register of European Lawyers and an application for renewal of registration in the register of European Lawyers, and requires you to inform the SRA in any of the following circumstances:

3.1 (a) The applicant has been:

(i) reprimanded, made the subject of disciplinary sanction or made the subject of an order under section 43 of the Solicitors Act 1974 (SA), ordered to pay costs or made the subject of a recommendation to The Law Society or the SRA to consider imposing a condition, by the Tribunal, or struck off or suspended by the court;

(ii) made the subject of an order under section 43 of the SA 1974 by The Law Society or the SRA or rebuked or fined under section 44D of that Act by the SRA;

(iii) made the subject of an intervention by the Law Society Society, the SRA or by any other approved regulator [...];

(iv) made the subject of a disciplinary sanction by, or refused registration with or authorisation by, another approved regulator, professional or regulatory tribunal, or regulatory authority, whether in England and Wales or elsewhere;

[...]

(xi) made subject to a revocation of his or her practising certificate or registration under regulation 10.2(a)(i) or (v) [...].

(b) The SRA (or previously The Law Society) has requested an explanation from the applicant in respect of a matter relating to the applicant’s conduct and has notified the applicant in writing that it does not regard the applicant’s response, or lack of response, as satisfactory.

(c) The applicant has failed to obtain or deliver within the period allowed an accountant’s report required by rules made under section 34 of the SA.
The applicant’s practising certificate or registration has been suspended and the suspension:

(i) has come to an end;

(ii) was continuing when the applicant’s last practising certificate or previous registration expired or was revoked; or

(iii) is continuing.

The applicant has been suspended from practice (or suspended from the register, if the applicant is an REL), and the suspension has come to an end.

The applicant’s last practising certificate or previous registration expired or was revoked whilst subject to a condition.

The applicant’s practising certificate or registration is currently subject to a condition.

The applicant’s right to practise as a lawyer of another jurisdiction or as a lawyer of England and Wales (other than as a solicitor) is subject to a condition or restriction.

The applicant has been restored to the roll or register, having previously been struck off.

The applicant is an undischarged bankrupt.

The applicant:

(i) has been adjudged bankrupt and discharged;

(ii) has entered into an individual voluntary arrangement or a partnership voluntary arrangement under the Insolvency Act 1986; [...].

The applicant lacks capacity (within the meaning of the Mental Capacity Act 2005) and powers under sections 15 to 20 or section 48 of that Act are exercisable in relation to the applicant.

The applicant has been committed to prison in civil or criminal proceedings and:

(i) has been released; or

(ii) has not been released.

The applicant has been made subject to a judgment which involves the payment of money, other than one:
(i) which is limited to the payment of costs; or

(ii) in respect of which the applicant is entitled to indemnity or relief from another person as to the whole sum; or

(iii) which the applicant has paid, and supplied evidence of payment to the SRA (or previously to The Law Society).

(o) The applicant is currently charged with an indictable offence.

(p) The applicant has been convicted of an indictable offence or any offence under the SA, the Financial Services and Markets Act 2000, the Immigration and Asylum Act 1999 or the Compensation Act 2006.

(q) The applicant has been disqualified from being a company director.

(r) The applicant has been removed from the office of charity trustee or trustee for a charity by an order within the terms of section 72(1)(d) of the Charities Act 1993.

(s) The application has been the subject in another jurisdiction of any circumstance equivalent to those listed in (j) to (r).