

A Quick Look At Conflict



DGLEGAL

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Standards & Regulations

The obligations of firms and individuals in relation to conflicts are set out in paragraphs 6.1 and 6.2 of the Code of Conduct for Solicitors, RELs and RFLs and Code of Conduct for Firms (referred to collectively as ("the Codes").

Firms are responsible to ensuring for all staff – including non solicitors – adhere to the Code

Own Interest Conflict

SRA Code of Conduct for Solicitors, RELs and RFLs – 6.1
Code of Conduct for Firms – 6.1

You do not act if there is an *own interest conflict* or a significant risk of such a conflict

What is Own Interest Conflict?

An own Interest Conflict is any situation where:

- your duty to act in the best interests of any client in relation to a matter conflicts, or
- where there is a significant risk that it may conflict with your own interests in relation to that or a related matter

It is important to note that, it comes to an 'own interest' conflict, there are [no exceptions](#) to the ban on acting. So, for example, obtaining your client's consent to act, or telling your client to obtain ILA as to whether to allow you to continue to act, will not change the position – there will still be a conflict

Examples

A financial interest of yours or someone close to you. For example, a client asks you to carry out due diligence on a company which a you or your partner own shares in.

A personal or business relationship. For example, where you are asked to advise on a claim against a relative, a friend or someone with whom you are involved with in a common financial enterprise.

In the above examples, the firm should not act even if the conflict is limited to one fee earner.

The firm's role as an employee. For example, a client asks for advice in relation to a dispute involving an employer or a fellow employee.

The firm's own conduct (as a firm or an individual). For example, the wrong advice has been given to the client or the wrong action taken on their behalf. Be aware of the Howell Jones case where Howell Jones acted for a client in divorce proceedings despite being advised that a conflict could arise. They were referred to the SDT and were fined £5,000 and ordered to pay more than £26,000 in costs.

Client Conflict

SRA Code of Conduct for Solicitors, RELs and RFLs – 6.2
Code of Conduct for Firms – 6.2

A conflict of interest means a situation where your separate duties to act in the best interests of two or more clients in the same or a related matter conflict

- ❖ For this situation to happen, you must be currently acting, or intending to, act for two or more clients
- ❖ Firms make the mistake of thinking that they can never act for a party where they have acted for the other in the past for example, you would not be prohibited from acting for a client even if you previously acted against them in family proceedings on behalf of their former partner. However, you should consider whether, although you may be able to comply with the conflict and confidentiality obligations, you may be professionally embarrassed in acting against a former client

Examples

- Two clients seeking separately to purchase a particular asset or to be awarded a particular contract
 - Acting for an investor and the scheme in which they will be investing
 - One client selling or leasing an asset to another client
 - Agreeing a commercial contract between two clients
 - Acting for both sides in litigation
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- Consider the situation with a RTC. Firms often act for the driver and passengers. What happens when the other side alleges that your driver client was at fault, rather than their client.

Exceptions

The clients have a *substantially common interest* in relation to the matter or the aspect of it

- ❖ This exception applies in situations where there is a clear common purpose between the clients and a strong consensus on how that purpose is to be achieved. It could be where two clients want to instruct you to advise them on the purchase or setting up of a business together, or taking out a lease as joint tenants

The clients are *competing for the same objective*

- ❖ This exception applies when two or more clients are competing for an "objective" which, if attained by one client, will make that "objective" unattainable to the other client or clients

How to Apply the Exceptions

You can only rely on either exception if a specific set of conditions are all met:

- all the clients have given informed consent, given or evidenced in writing, to you acting
- What will constitute the clients' informed consent to you acting, despite the conflict or risk of it, will vary according to the circumstances. You must make sure that all the clients have given their agreement with appropriate knowledge and understanding of the situation. If the client is more vulnerable, you will need to take this into account when giving them the necessary information.

Where appropriate, you put in place effective safeguards to protect your clients' confidential information

- You have a duty to protect your clients' confidential information. Where there is a conflict of interest, or a potential one, it is likely that information relevant to the matter cannot be passed by you between clients. This could be because of a lack of consent to disclose it or because it is not in the client's best interests to do so.

How to Apply the Exceptions

It is vital that you ensure that all the clients have given informed consent, given or evidenced in writing, to you acting.

And

You put in place effective safeguards to protect your clients' confidential information.

If there is a Conflict Can you Carry on Acting?

Potentially, it is possible to act for both clients where a conflict has been identified. However, this is not easy. Structural barriers must be put in place. This means different fee earners acting for the clients.

Safeguards must be put in place to ensure each client's confidentiality to ensure that information cannot pass from the fee earner acting for one client to the fee earner acting for the other client.

How to Prevent Conflict

- ❖ Ensure that the firm has a robust conflict check policy
- ❖ Ensure that the conflict check is carried out on each new matter
- ❖ Ensure that you have sufficient information to enable you to conduct appropriate checks, including details such as, for example, the name of your client(s) and other relevant parties, in addition to their addresses and relevant business interests
- ❖ Consider a register of interests for staff members to ensure no breach of 6.1 – own interest conflict

Summary

- ❖ Conflict, both own and client, is a complex and serious issue if the SRA Standards & Regulations are breached. It has implications for the client, the individual fee earner and the firm.
- ❖ If you are unsure of a specific situation, seek advice from a senior staff member or from one of the contacts on the next page

Assistance

- ⌚ <https://www.lawsociety.org.uk>
- ⌚ <https://www.sra.org.uk/solicitors/guidance/conflicts-interest/>
- ⌚ SRA Ethics Helpline 0370 606 2577 available 10.00 to 12.00 and 14.00 to 16.00
- ⌚ DG Legal - <https://dglegal.co.uk/> or 01509 214999

Any Questions?



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