

This Protocol is intended to assist [*name of barrister*] (the “**Barrister**”) and [*name of employer*] (the “**Employer**”) in managing their relationship as a consequence of the Barrister exercising his or her right to practise as a dual qualified self-employed barrister by [*going on secondment with*] the Employer, and in particular how the Employer and Barrister shall deal with conflicts of interest and/or duty (referred to herein as ‘conflicts of interest’) which arise in connection with cases or issues (referred to in this Protocol as “**Matters**”) on which the Barrister is or is anticipated to be engaged as part of their [*secondment*].

1. The Barrister will not act in more than one capacity in relation to the same Matter for the same client<sup>1</sup> at the same time. With this in mind:

1.1. If the Employer intends for the Barrister to work during their [*secondment*] in his or her employed capacity on a Matter in which they have previously been or are engaged in a self-employed capacity:

1.1.1. The Barrister shall not perform any work in an employed capacity unless and until:

(a) The Barrister ceases to be engaged on that Matter in a self-employed capacity;

(b) The client has been informed that the Barrister will from a specified date be working on the Matter in an employed capacity, and has also been provided with such further information as they may require to understand the implications (if any) of this; and

(c) The client has given their consent to the Barrister acting on the Matter in their employed capacity.

1.2. The Barrister may not commence working on a Matter in a self-employed capacity if they have previously been engaged on that same Matter in their employed capacity unless and until:

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<sup>1</sup> Where the client is the same person as the Employer, references in this Protocol to the “client” should be construed accordingly.

- 1.2.1. The Barrister ceases to be engaged on the relevant Matter in their employed capacity;
    - 1.2.2. The client has been informed that the Barrister will from a specified date be working on the Matter in a self-employed capacity, and has also been provided with such information as they may require to understand the implications (if any) of this; and
    - 1.2.3. The client has given their consent to the Barrister acting on the Matter in their self-employed capacity.
  - 1.3. Neither the Employer nor the Barrister shall do anything which would cause the client or any third party reasonably to doubt the capacity in which the Barrister is acting on a Matter at any one time.
2. Before commencement of the [*secondment*]:
- 2.1. The Employer shall provide the Barrister with a list of the Matters on which they intend the Barrister to work in an employed capacity during their [*secondment*], including sufficient information about those Matters to enable the Barrister to run their ordinary conflicts checks; and
  - 2.2. The Barrister will thereafter run their ordinary conflicts checks on the Matters identified by the Employer. Until that conflicts check has been run and paragraphs 4 and 5 have been complied with, the Barrister shall not commence work on the relevant Matters.
3. If during the [*secondment*] the Employer wishes to engage the Barrister in his or her employed capacity on a particular Matter not previously identified in accordance with paragraph 2.1 above:
- 3.1. If practicable, the Employer shall provide the Barrister with sufficient notice of that fact and such other details as are required to enable the Barrister to run their ordinary conflicts checks, and the Barrister will thereafter run their ordinary conflicts checks, in each case before commencing work on the relevant Matter.

- 3.2. If due to urgency it is impracticable for the Employer and Barrister to comply with paragraph 3.1 before work on the relevant Matter is required to commence:
- 3.2.1. The Employer shall provide the Barrister with sufficient details of the Matter in question so as to enable the Barrister to satisfy themselves whether there is an actual or real risk of a conflict of interest.
- 3.2.2. In the event that the Barrister is unable to satisfy themselves that there is no actual or real risk of a conflict of interest, the Barrister shall not carry out any work on the relevant Matter unless and until the Barrister has run their ordinary conflicts checks and paragraphs 4 and 5 of this Protocol have been complied with.
- 3.2.3. In the event that the Barrister is satisfied that there is no actual or real risk of a conflict of interest, they may immediately commence work on the relevant Matter, save that:
- (a) The Barrister shall cease to work on the Matter if and as soon as they become aware of an actual or real risk of a conflict of interest, in which case paragraph 5 of this Protocol shall apply.
- (b) The Barrister shall run their ordinary conflicts checks as soon as practicable after commencing work.
4. If and to the extent that the conflicts checks referred to in this Protocol do not reveal an actual or real risk of a conflict of interest, the Barrister will inform the Employer of that fact and shall, subject to their professional obligations, be permitted to work on the relevant Matters during their [*secondment*] in an employed capacity.
5. If and to the extent that an actual or real risk of a conflict of interest is identified by the Barrister after they have run the conflicts checks referred to in this Protocol, or they otherwise become aware of such a conflict during their [*secondment*]:
- 5.1. The Barrister will consider his or her professional obligations.

- 5.2. If appropriate, the Barrister will notify [*person at Employer*] and discuss a strategy to deal with the potential or actual conflict with the outcome or solution to be recorded in writing, subject to the remainder of this paragraph 5.
- 5.3. If in relation to any Matter on which the Employer proposes to engage the Barrister in his or her employed capacity during their [*secondment*] there is an actual or real risk of a conflict of interest:
- 5.3.1. Between existing or former clients of the Barrister in his or her self-employed capacity on the one hand and the existing or former clients of the Employer on the other, the Barrister will not act or continue to act on the relevant Matter in his or her employed capacity unless and until all persons affected give their informed consent to the Barrister so acting.
- 5.3.2. Between a prospective client of the Barrister in his or her self-employed capacity and a former or existing client of the Employer:
- (a) The Barrister shall consider in accordance with their professional obligations whether to accept the instruction from the prospective client in their self-employed capacity, to work on the Matter identified by the Employer or, if so required by their professional obligations, to refuse to either accept the instructions or work on the Matter. The Barrister shall then notify the Employer of their decision as soon as practicable, but shall not be required to disclose any confidential information about the Barrister's prospective client or the proposed instruction from them. The Employer hereby recognises that, as a result, the Barrister may be unable to work on a Matter which the Employer would otherwise engage the Barrister to act in their employed capacity during their [*secondment*]. The Barrister hereby recognises that, as a result, the Barrister may be unable to accept instructions which they would otherwise accept in their self-employed capacity.
- (b) In the event that the Barrister elects to accept the instruction from the prospective client in their self-employed capacity, paragraphs 5.1 -

**Error! Reference source not found.** and 5.3.1 of this Protocol shall apply.

6. If before or during the period of the Barrister's [*secondment*] he or she becomes aware that a previous or prospective engagement in their self-employed capacity may give rise to an actual or real risk of a conflict of interest (including a real risk that an obligation of confidentiality will be breached) by reason of their [*secondment*] at the Employer, but this would not otherwise be brought to the Employer's attention through compliance with paragraphs 2 and 3 of this Protocol:<sup>2</sup>
  - 6.1. If the Barrister can lawfully notify the Employer of the fact of that actual or potential conflict of interest, they shall do so as soon as practicable, and thereafter paragraph 5 of this Protocol shall apply.
  - 6.2. If the Barrister is unable lawfully to so notify the Employer, the Barrister will:
    - 6.2.1. consider whether in all the circumstances he or she is professionally obliged to withdraw from and/or terminate the [*secondment*] and/or the engagement in their self-employed capacity, if he or she considers that he or she is so obliged shall do so upon giving reasonable notice to the Employer and/or his or her client in his or her self-employed capacity;
    - 6.2.2. in any event during the [*secondment*] take all reasonably necessary steps to ensure that they do not act in the relevant Matter(s) in their employed capacity, or receive or disclose confidential information in connection with such Matter(s), unless all affected parties give their informed consent;
    - 6.2.3. keep under review their continued or prospective engagement in the relevant Matter(s) in their self-employed capacity and consider their professional obligations accordingly.
    - 6.2.4. if he or she later becomes able lawfully to notify the Employer of the actual or potential conflict, shall do so in accordance with paragraph 6.1 of this Protocol.

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<sup>2</sup> For example, because the Barrister is instructed on the other side of a case to the Employer, but the Employer has not identified that case as one on which it intends to engage the Barrister during their secondment.

7. During the [*secondment*], the Barrister shall not accept new instructions in their self-employed capacity which give rise to an actual or real risk of a conflict of interest (including a real risk that an obligation of confidentiality will be breached) by reason of the Barrister's [*secondment*] at the Employer, unless paragraph 5 of this Protocol has first been complied with and the Barrister is permitted to accept those new instructions in accordance with the procedures set out there.
8. After the [*secondment*], the Barrister will not accept new instructions in their self-employed capacity which give rise to an actual or real risk of a conflict of interest (including a real risk that an obligation of confidentiality will be breached) by reason of the Barrister's [*secondment*] at the Employer, unless paragraph 5 of this Protocol has first been complied with and the Barrister is permitted to accept those new instructions in accordance with the procedures set out there.
9. Whilst the Barrister is [*seconded*] to the Employer, each will take reasonable steps to avoid disclosures of confidential information about the Employer's Matters on which the Barrister is not engaged, and will discuss and the steps to be taken before the [*secondment*] commences and record these in writing. These steps could include, by way of example, agreeing to the creation of information barriers, ensuring that the Barrister is unable or agrees not to access electronic or hard copy files of Matters on which they are not engaged, ensuring that the Barrister is not sent email communications which disclose confidential information about Matters on which they are not engaged, or ensuring that discussions about such Matters do not take place where the Barrister can hear them.