

COMBAR AND CHANCERY BAR ASSOCIATION
GUIDANCE ON ANNEXE S TO THE CODE OF CONDUCT

Introduction

1. Following difficulties with the interpretation and implementation of previous guidance on Annexe S to the Code of Conduct, and following a meeting attended by all specialist bar associations, on 25 October 2011 the Bar Standards Board (“BSB”) issued revised guidance on Annexe S. The current BSB guidance can be found on the BSB website¹.
2. This note represents suggestions from COMBAR and the Chancery Bar Association as to how the requirements of that Annexe may be met in commercial and chancery cases other than direct access cases. It replaces guidance previously published by COMBAR.

The requirement in paragraph 1 of Annexe S

3. Since 6 October 2010 paragraph 1 of Annexe S to the Code of Conduct has required that:
“Barristers must notify clients in writing at the time of engagement or if not practicable at the next appropriate opportunity: (a) Of their right to make a complaint, how and to whom this can be done, including their right to complain to the Legal Ombudsman at the conclusion of the complaints process, the timeframe for doing so and the full details of how to contact the Legal Ombudsman; (b) That the lay client may complain directly to Chambers without going through solicitors.”
4. In its guidance dated 25 October 2011, the BSB draws a distinction between cases in which the barrister is aware of the contact details of the client and those where the barrister is not aware of those contact details.
5. In view of the importance of the information being sent to the right person and the possibly damaging consequence of its being sent to the wrong person, COMBAR and the Chancery Bar Association take the view that “*contact details*” in para 15 of the BSB Guidance means

¹ <http://www.barstandardsboard.org.uk/news/latest/783.html>

expressly confirmed details of (a) a specific person or department that is authorised to receive notification of the right to complain and (b) that person or department's contact address.

The guidance from COMBAR and the Chancery Bar Association

Notification to professional clients

6. Chambers should ensure that at the time of engagement (or if not practicable at the next appropriate opportunity) a letter or email is sent to the professional client advising them of the matters referred to at paragraph 0 above. Annexe S confirms (at paragraph 1) that "*the notification of the information at 1(a) and 1(b) does not require a separate specific letter. It is sufficient for it to be contained in the ordinary terms of reference letter (or equivalent letter) that is sent by Chambers upon acceptance of instructions.*"

Notification to lay clients

7. All chambers should also ensure that they have a procedure for the notification of complaints procedures to lay clients. The BSB Guidance makes it clear that the notification duty is discharged by an unequivocal, positive agreement by the professional client to pass on the information to the lay client.² Where that agreement is not obtained, a different way of providing the information will have to be used, as follows.

Where the barrister meets the lay client at the time of engagement

8. The procedure for notifying lay clients should provide that, if a barrister meets the lay client in court or conference at the time of engagement, the barrister should provide the client at that point with details of the client's right to complain.
9. The BSB has suggested that this information be provided in a "*client information sheet*". There is no reason why that sheet should not be in a standard form containing general

² Paragraph 18 of the BSB's guidance suggests that an unequivocal agreement by the professional client to pass on chambers' complaint information to the client, either in a particular case, or in relation to each case in which a member of chambers is instructed by that professional client, will serve to discharge the obligation to provide the lay client with the information. It is anticipated that not all firms of solicitors will provide unequivocal agreements of that kind to cover all their partners and all their clients. This guidance accordingly proceeds on the assumption that no such agreement is or can be reached.

information about chambers. Based upon the BSB's **Guidance**, it appears that the sheet should also contain words such as the following:

“Feedback and complaints

[insert chambers name] values all feedback. If anything is wrong, we would always want to know and to put it right. Please tell your barrister, or your solicitor, straight away. You can contact your barrister or [name] in chambers directly about it.

You can also contact the Legal Ombudsman (Tel: 0300 555 0333), enquiries@legalombudsman.org.uk. Complaints to the Legal Ombudsman must ordinarily be referred to the Legal Ombudsman within 6 months of a written response to the complaint and within one year of the matter complained about.

More information

You can find out more about chambers on Chambers website at xxxx

You can find out more about how barristers work, and read their code of conduct, on the Bar Standards Board's website at www.barstandardsboard.org.uk”

Where the barrister does not meet the lay client at the time of engagement

10. Where the barrister does not meet the lay client at the time of engagement, the relevant notification will have to be sent in correspondence.
11. Where correspondence is to be written directly to the lay client, care will have to be taken to ensure that the correspondence is correctly addressed.
12. COMBAR and the Chancery Bar Association accordingly suggest that, in all cases other than those where there is a meeting with the client at the time of engagement, steps should be taken to obtain from the professional client either confirmation that the professional client will pass a copy of the relevant letter on to the lay client or the correct contact details for the lay client.
13. This can be done by adding 2 paragraphs to the correspondence to the professional client referred to at paragraph 0 above as follows³:

“With effect from 6th October 2010, we are also required by the Bar's Code of Conduct to ensure that all lay clients are informed (a) of their right to make a complaint, how and to whom this can be done, including their right to complain to the Legal Ombudsman at the conclusion of the complaints process, the timeframe for doing so and the full details of how to contact the Legal Ombudsman; and (b) that the lay client may complain directly to Chambers without going through solicitors.

To enable us to comply with this obligation, we would be grateful if you could either confirm your agreement to provide a copy of this letter⁴ to your clients, or alternatively provide us with the contact details of the correct representative of the lay client for these purposes so that we can do so.”

³ Where enquiries under the Money Laundering Regulations 2007 are made, it may be more effective for the request for contact details to be sought in the form that makes those enquiries.

⁴ The letter will have the relevant complaints information in it: see paragraph 6 above.

14. If no response is received to that letter within a reasonable period of time (say 7-14 days) or if the details requested are refused and no such confirmation is positively given, then to achieve compliance there is likely to be no realistic alternative to providing the requisite information to the professional client with instructions to provide that information to the client on behalf of the barrister. Accordingly, a follow up letter should be sent, which could provide as follows:

“As we noted in our letter dated [], we are required by the Bar’s Code of Conduct to ensure that all lay clients are informed (a) of their right to make a complaint, how and to whom this can be done, including their right to complain to the Legal Ombudsman at the conclusion of the complaints process, the timeframe for doing so and the full details of how to contact the Legal Ombudsman; and (b) that the lay client may complain directly to Chambers without going through solicitors.

To enable us to comply with this obligation, please provide a copy of this letter and its attachment to the lay client on our behalf.”

The attachment to that letter could be the Client Information Sheet referred to at paragraph 9 above, a draft letter addressed to the lay client containing the information or the letter referred to at paragraph 6 above or the relevant part of that letter.

30 November 2011