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Confidentiality Within Chambers

Information for Instructing
Solicitors as to Chambers
Guidelines

1.1 General

The Chambers Confidentiality Guidelines policy applies where two (or more) members of Chambers are instructed on behalf of different parties in a case, or are acting as judge, mediator etc. in a case involving other members of chambers.

The policy is modelled on the Bar Council's Guidelines issued in May 2000 and designed to prevent members of chambers from being in breach of paragraph 603 of the Code of Conduct (duty of confidentiality).

2.1 The Present System: the Clerk's Room

The present system operated in the clerk's room in QEB (and operated for many years) is that there is no "separate" clerking, i.e. with particular clerks allocated to one party or another in a case where more than one member of chambers is instructed.

3.1 Informing the Clerks and/or Solicitors

At the outset of a case it may be that lay clients want the very fact that they are taking legal advice to be known only to their own advisers and therefore kept in the strictest confidence. It is important that Instructing Solicitors inform the clerks or counsel of the need for this type of confidentiality in such cases. Special arrangements may be made through the clerks in individual cases.

In such circumstances, members of chambers will confirm with the clerks the need for confidentiality in a particular case. (The senior clerk is responsible for members of the clerks room and administration.) The clerks will need to be told when the position changes.

Once the position is reached when both barristers can be informed (by the clerks or by the solicitors) that another member of chambers is acting for the other side, both sets of solicitors are informed that they have instructed counsel in the same chambers, and of chambers practice in such circumstances, to enable the client to decide if he wishes to continue to instruct the barrister in question.

The clerks will consider with the solicitors whether any variation of usual chambers practice is necessary in the particular case.

4.1 Papers

In appropriate cases, solicitors will be asked if they wish to make special arrangements to preserve confidentiality (such as a codename, special delivery or sealing arrangements).

Where papers are particularly sensitive because of the instruction of more than one member of chambers in a case, special arrangements for the delivery of papers to the members of chambers concerned may be made.

Where particularly sensitive documents are to be delivered, the solicitors should make special arrangements with the clerks to ensure security. If this has not been done, confidentiality cannot be guaranteed.

4.2 Faxes / Email to the clerks

Where more than one member of chambers is instructed in a particular case, solicitors should be aware that incoming faxes/email (sent to clerks@qeb.co.uk) are received on one machine, so to enable them to preserve confidentiality of faxed documents it is essential that they contact the clerks before sending documents by fax, or consider alternative delivery systems.

It should be noted that confidentiality with regard to faxes or emails sent to the clerks mail box can only be assured during office hours where the clerks have been contacted before a document is sent.

4.3 E-Mails to members

Since all members of chambers have separate e-mail addresses if used, the issue of confidentiality should not ordinarily arise

5.1 Discussion amongst Members of Chambers

Barristers on opposite sides are advised not to discuss the case with each other, save on a formal basis (unless specifically authorised to do so.) Members of chambers are also advised that care is to be taken when discussing cases in which another member of chambers may be instructed.

While members of chambers may be authorised by their instructing solicitors to engage in a "without prejudice" meeting or negotiation with another member of chambers in a case, members of chambers are advised against any form of "off the record" chat or discussion, in the light of the Bar Council's confirmation that there is no privilege in Counsel to Counsel discussions