

**LAW SOCIETY – REGULATION REVIEW WORKING PARTY
CONSULTATION**

CONFLICTS OF INTEREST

A RESPONSE BY THE ASSOCIATION OF PERSONAL INJURY LAWYERS

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CONFLICTS OF INTEREST

1. The Association of Personal Injury Lawyers (APIL) was formed in 1990 and represents around 5000 solicitors, barristers, legal executives and academics whose interest in personal injury work is predominantly on behalf of injured claimants. The aims of the association are:
 - To promote full and prompt compensation for all types of personal injury;
 - To improve access to our legal system by all means including education, the exchange of information and the enhancement of law reform;
 - To promote health and safety;
 - To alert the public to dangers in society such as harmful products and dangerous drugs;
 - To provide a communication network exchanging views formally and informally.
2. APIL welcomes this opportunity to respond to the Law Society's consultation paper on conflicts of interest. We should stress that the views expressed in this response relate to conflicts of interest arising within personal injury practice only.
3. In summary, whilst APIL believes that the current rules for dealing with conflicts of interest would benefit from some amendment, we do not believe that they need radical alteration. More specifically, we do not believe that the concepts of 'informed consent' or 'information barriers', which could provide acceptable solutions in some conflict situations, would be suitable within personal injury practice which is adversarial and litigation based. We cannot, of course, comment upon the suitability of these concepts within, for example, contractual negotiations.

4. There are three situations within a personal injury practice in which an actual or potential conflict of interest is likely to arise:
 - Conflict between existing clients who have consulted the same solicitor;
 - Conflict between existing clients who have instructed different solicitors within the same firm;
 - Conflict arising following a solicitor's change of firm.

Conflict Between Existing Clients Who Have Consulted One Solicitor

5. We believe that solicitors should be required to use their judgement in assessing whether a conflict situation arises in the context of their work. If it is clear to a solicitor that an actual conflict exists or that there is a significant risk that a conflict will arise, the rules should require that solicitor to decline to act for either one or both of the clients as under the current rules.
6. In some situations, however, whilst there is neither an actual or significant risk of a conflict, there may, nevertheless, be a genuine risk that a conflict will arise in the future. For example, following a road traffic accident involving more than one car, the injured driver (D1) and passenger(s) in one of those cars may consult the same solicitor about pursuing claims for compensation from the driver of the other car (D2). It may be unclear whether D1 is partly to blame for the accident. If he is, the solicitor would not be able to act for both D1 and the passenger and should decline to act for either one or both of them depending on the circumstances. The relevant facts may not become clear, however, until the end of the protocol period when certain amounts of information have been exchanged.
7. If a solicitor believes that there is a genuine risk that a conflict of interest may arise between existing clients, as may occur in the above situation, we believe

that the rules should require solicitors to consider whether they can and should continue to act. If they do not believe they can they should decline to do so. If they believe they can continue acting and wish to do so, they should be required to:

- Write to the client(s) outlining that he believes there is a genuine risk that a conflict of interest may arise
 - Explain why he believes he will still be able to act
 - Outline to his client that he is free to consult another solicitor.
8. We believe that the above provides a suitable solution to those situations in which the solicitor is unsure whether a conflict will in fact arise. It would prevent clients having to instruct two solicitors on the same matter unnecessarily and would enable clients to make informed decisions about the most suitable solicitor to instruct. We prefer the above approach to that of 'informed consent' because we fear that with 'informed consent' some solicitors may be tempted to try and persuade clients of their suitability to act in order to get their consent. We should stress that the rule should be drafted in such a way as to make clear that it applies only to situations in which there is a genuine potential risk that a conflict will arise, rather than a mere fanciful risk.

Conflict Between Existing Clients of a Firm of Solicitors Who Have Consulted Different Solicitors

9. It is fairly common for firms of solicitors to have both commercial and personal injury departments. A conflict situation may arise where both parties to actual or potential litigation instruct different solicitors within the same firm. For example, an employee may instruct a solicitor in the personal injury department to pursue a claim for compensation against his employer company,

which is a client of the commercial department in the same firm. In that situation we believe the rules should require one of the solicitors to decline to act. We do not believe that 'information barriers' would provide sufficient protection for clients in the context of litigation (as they may do in other situations).

Conflict Arising Following A Solicitor's Change of Firm

10. If a solicitor changes his practice, situations may arise in his new firm which cause or could potentially cause a conflict of interest to arise. The previous firm may, for example, be representing a defendant in personal injury litigation, whereas the new firm may be representing the claimant. As stated above, if an actual or significant risk of a conflict arises the rules should require that solicitor to decline to act. If there is a genuine, but not significant, risk that a conflict could arise but the solicitor, in his judgement, believes that he or his firm can continue to act, we believe the steps as outlined in paragraph 7 should be taken to allow the relevant client to make an informed choice.

11. In conclusion, whilst we are not aware that our members have experienced any particular difficulties with the operation of the professional rules of conduct on conflicts of interest, we do believe that the rules would benefit from some amendment for those situations in which there is a genuine, but not significant, risk of a conflict arising.