HOUSE OF LORDS

Conduct Committee

9th Report of Session 2019–21

Registration of members' foreign interests: follow-up

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HL Paper 255

Code of Conduct for Members, Guide to the Code of Conduct and Code of Conduct for Members' Staff

The present Code of Conduct for Members of the House of Lords was agreed on 30 November 2009. Amendments to it were agreed by the House on 30 March 2010, 12 June 2014, 25 February 2016, 9 February 2017, 3 April 2017, 30 April 2019,18 July 2019, 16 March 2020 and 8 July 2020.

The Guide to the Code of Conduct was proposed by the Committee for Privileges (2nd Report, Session 2009–10, HL Paper 81) and agreed by the House on 16 March 2010. The Guide was amended on 9 November 2011, 6 March 2014, 13 May 2014, 24 March 2015, 25 February 2016, 9 February 2017, 3 April 2017, 30 April 2019, 18 July 2019, 16 March 2020 and 8 July 2020.

The Code of Conduct for House of Lords Members' Staff was agreed on 13 May 2014. Amendments to it were agreed on 24 March 2015, 30 April 2019, 18 July 2019, 16 March 2020 and 8 July 2020.

Review

The Codes and Guide are kept under review by the Conduct Committee. Recommended changes are reported to the House and take effect when agreed by the House.

The members of the Conduct Committee are:

Baroness Anelay of St Johns
Lord Brown of Eaton-under-Heywood
Cindy Butts (lay member)
Mark Castle (lay member)
Andrea Coomber (lay member)
Dr Vanessa Davies (lay member)
Baroness Donaghy
Baroness Hussein-Ece
Lord Mance (Chairman)

Advice

The Registrar of Lords' Interests advises members of the House and their staff on their obligations under the Codes of Conduct.

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Registers of Interests

A list of interests of members and their staff can be found online:
http://www.parliament.uk/hlregister

Commissioner for Standards

The independent Commissioner for Standards is responsible for considering any alleged breaches of the Codes of Conduct.

Address: The Commissioner for Standards, House of Lords, London SW1A 0PW
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Website: www.parliament.uk/hl-standards

Independent Complaints and Grievance Scheme helpline

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Email: support@ICGShelpline.org.uk

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Introduction

1. On 2 December 2020, the House agreed the Conduct Committee report, *Registration of members' foreign interests*.[1] The report proposed that members be required to register earnings from "governments of foreign states (including departments and agencies), organisations which may be thought by a reasonable member of the public to be foreign state-owned or controlled, and individuals with official status (whether executive, legislative or judicial) in foreign states when acting in that capacity". These proposals arose out of a recommendation from the Intelligence and Security Committee of Parliament on Russia's influence in the United Kingdom's democracy, and indications in the 2019 Queen's Speech briefing notes[2] that the Government was considering legislation analogous to the US Foreign Agents Registration Act.[3]

2. The report also proposed that members required to register a client under this provision, or under the personal service company provision, should be able to apply to the Registrar for an exemption if they believed that they were bound by an established duty of confidentiality. We subsequently held a consultation on this issue.

Consultation

3. The consultation asked for members' views on the following issues. We also sent the consultation questions to the key professional bodies.

   (1) Are you aware of any professions or sectors which carry any kind of duty not to name clients publicly?

   (2) In these professions or sectors, is this duty written down anywhere in professional guidance? If not, on what basis could such a duty be asserted?

   (3) In these professions or sectors, are there any exceptions to such a duty? Is the duty discharged if the client waives the right to confidentiality or if the relationship becomes known in the public domain, e.g. in court?

   (4) We are working on the assumption that the level of earnings will always need to be disclosed, even if the name of the client is not, with the public interest trumping commercial confidentiality. Do you have any comment on this?

   (5) In many cases, it may be difficult for members to identify what proportion of the fees paid by a client are attributable to their own work

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1 Conduct Committee, *Registration of members' foreign interests* (7th Report, Session 2019–21, HL Paper 182)

2 HM Government, 'Queen's Speech December 2019: background briefing notes' (19 December 2019): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/853886/Queen_s_Speech_December_2019_-_background_briefing_notes.pdf

3 United States Department of Justice, 'Foreign Agents Registration Act': https://www.justice.gov/nsd-fara

as opposed to the work of others in their organisation. In such cases, we assume that the only option would be to register the total amount paid by the client to the organisation over the year. If you have any comments or suggestions on this, please say.

4. In total, 42 members responded to the consultation, and we had responses from the Bar Standards Board, the Faculty of Advocates, the Institute of Chartered Accountants in England and Wales, the Institute and Faculty of Actuaries and the Solicitors Regulation Authority. We are not publishing the evidence received from members, but the submissions from the professional bodies are set out in Appendix C.

Responses and analysis

Exemptions

5. The responses from members covered the full spectrum of opinion from wanting no exemptions whatsoever, to objecting to the scheme on principle.

6. Those who wanted no exemptions suggested that when it came to a member of the legislature having a professional relationship with a foreign power, the public interest in disclosure trumped any professional or commercial duty of confidentiality. As a matter of principle, it would be inappropriate for a member to enter into such a professional relationship if they were not at liberty to register the interest.

7. Members who advocated for exemptions fell largely into two categories.

   (a) Those whose profession carried a duty of confidentiality, some of whom suggested that the provision would force them to take leave of absence.

   (b) Those fearing that disclosing the identity of clients would make them less attractive than competitors, while disclosing fees would put them at a commercial disadvantage. This was particularly so if over time the provision were extended to cover all clients regardless of connections with foreign governments. In the case of members employed by a company, the concern was that employers would stop allocating certain clients to them or dispense with their services altogether. This was against the House's long-expressed support for members maintaining outside careers and keeping their expertise up to date.

8. We understand these concerns, but we believe that the public interest requires absolute transparency when it comes to members of the national legislature working for a foreign power. If the interest cannot be properly disclosed, then it should not be taken on by an active member. We have no current plans to recommend the extension of this enhanced disclosure requirement to other types of client, and so any adverse professional or commercial impact on members will be limited.

9. We considered carefully the submissions made about specific professions, to assess the case for any kind of exemption. The arguments for a duty of confidentiality were strongest for medicine and law. The former is not relevant here, because the new provision could not catch a doctor treating a patient (services to an individual are only caught by the new provisions where the service is being provided to them in their official capacity, whereas medical treatment is always received in a personal capacity).

10. Law is the most difficult area. We received submissions from the Bar Standards Board, the Solicitors Regulation Authority and the Faculty of Advocates, and from members who practise or formerly practised as barristers, solicitors, arbitrators and judges.

11. Drawing on a variety of statute law, common law and professional guidance, all three professional bodies agreed that it would be a breach of the duty of confidentiality for a lawyer to reveal that they act for a particular client except (a) with the client's consent, (b) if required by law or (c) if the information is already in the public domain. The Faculty of Advocates suggested that this duty might not apply where a client was on an ongoing retainer, but this may be different in the Scots jurisdiction.

12. Most of the lawyer members took a similar view, arguing that clients were entitled to confidentiality. Some accepted that clients should become registrable if the relationship entered the public domain (for example through a court appearance), but even then the client's right of confidentiality required them not to disclose the fees paid.

13. One former holder of high judicial office took a different view, agreeing with those calling for no exemptions to the new provisions. They argued that "the public interest ultimately must override the issue of client confidentiality" and that, since the proposed new rule is prospective, the client could be told in advance and decide whether a disclosure at some future point in time is a reason why it does not want to go forward with using that lawyer. In their view, not many clients would be so deterred.

14. They further proposed a compromise, whereby the identity need not be disclosed until the relationship becomes public or the lawyer is first paid (which will often be after the case has been concluded), whichever comes first.

15. We also considered the position of arbitrators. The same former judge argued that the same should apply: that the identity of the parties and the fees would be registrable after the arbitration becomes public or the arbitrator is paid, whichever comes first. In many cases only one of the parties to the arbitration would be registrable, and in every case the contents of the arbitration would remain confidential.

16. This view was strongly contested by a practising arbitrator. Quite apart from the fact that the parties were not clients and it was implausible to suggest that any member would seek to advance the interests of a party to an arbitration in the House, there was (with some limited exceptions) a clear duty of confidentiality. Requiring members to depart from this duty would make them unattractive as arbitrators and could risk damaging London's reputation as a leading centre of arbitration.

17. **Our main conclusion is that the public interest demands that there should be no exemptions to the scheme for registering certain foreign interests which the House agreed in December.**

18. **In recognition of the sensitivity of some legal proceedings we propose that lawyers should be required to disclose the identity of clients only once the relationship has entered the public domain or they have been paid (wholly or in part) for the work, whichever comes first. As with any interest, they would need to make the disclosure within**

one month of it becoming registrable, but they would have longer to register their fees, as set out in our last report.

19. **We believe that the scheme for lawyers, as described above, should also apply to arbitrators with respect to registrable parties.**

20. We have also considered whether any fields other than the law should be covered by this modified system, but we have concluded that the case has not been made out.

Intergovernmental organisations

21. One member asked whether it is intended that work for intergovernmental organisations should be covered by the new provisions. It is our intention that such organisations would fall within the definition of being "thought by a reasonable member of the public to be foreign state-owned or controlled" unless the United Kingdom was a full member. **We ask the House to note that the new provision covers intergovernmental organisations of which the United Kingdom is not a full member.**

Pre-existing relationships

22. Our proposals are prospective, so the new requirements do not apply to work which had already been completed by 1 January 2021. Members taking on new work are able to explain the House's disclosure requirements to potential clients from the outset. We are aware, however, that our proposals may cause difficulties in respect of some members' pre-existing professional relationships. It therefore makes sense to provide a period of grace during which members can complete the work in question, obtain the client's agreement to disclosure, or if necessary end the relationship. During this period, the details of relationships which were already in existence when our original report was agreed (2 December 2020) would not need to be disclosed. It would make sense for the period of grace to expire on 31 December 2021. After this date, all such relationships still in existence, and the associated earnings, would become registrable.

23. **We propose a period of grace lasting until 31 December 2021, during which the new provisions will not apply to professional relationships which already existed on 2 December 2020.**

Apportionment of earnings

24. The consultation asked how members should disclose earnings where their "portion" of a company's total earnings for the work could not easily be separated out. The suggestion was that in such circumstances the company's total earnings from the client should be disclosed, presumably with an explanatory note.

25. A number of members said that it would be impossible to apportion fees between individuals who have carried out work for a client, and inappropriate to reveal the total fees paid to the company, because of both client and commercial confidentiality.

26. We believe that it is reasonable to ask members in such a situation to make a best guess at the value of their contribution to the work, thus avoiding the apparent difficulties of disclosing the overall fees paid (which would nonetheless be available as a fallback).

27. **We recommend that members should be required to estimate the value of their individual work for a client or, failing that, to disclose the overall fees paid to the firm instead.**

Drafting change

28. Several members raised an ambiguity in the changes to the Guide to the Code agreed by the House in December. The relevant passage reads as follows.

> 55. While clients of companies in which members hold a directorship must be declared in relevant circumstances (see paragraph 97), they do not need to be registered except where:
>
> (a) the company is the member's own intermediary (most commonly a limited company that they control); or
>
> (b) the client is (i) a government of a foreign state (including departments and agencies), (ii) an organisation which may be thought by a reasonable member of the public to be foreign state-owned or controlled, or (iii) an individual with official status (whether executive, legislative or judicial) in a foreign state when acting in that capacity, to which the member personally provides services.

Some members felt that it was unclear whether the words "to which the member personally provides services" applied to all three categories in the paragraph or just the last. It is intended to apply to all three, and a revised form of words is in Appendix A.

APPENDIX A: PROPOSED CHANGES TO THE GUIDE TO THE CODE

Categories of registrable interest

Category 1: Directorships

Remunerated directorships in public and private companies, including non-executive directorships, and including directorships which are not directly remunerated, but where remuneration is paid through another company in the same group.

53. In this category, and in others, "remuneration" includes not only salaries and fees, but also the receipt of any taxable expenses, allowances or benefits, such as the provision of a company car. Members should register the name of the company in which the directorship is held and give a broad indication of the company's business, where this is not self-evident from its name. Directly remunerated directorships of companies which are not trading should be registered.

54. In addition to any remunerated directorships, members are required to register under this category any directorships which are themselves unremunerated but where either (a) remuneration is paid through another company in the same group where the companies in question are associated; or (b) the company concerned is a subsidiary of another company in which the member concerned holds remunerated directorships. Other unremunerated directorships should be registered under category 10 (non-financial interests) so that in one category or another all directorships should be registered.

55. ~~The amount of remuneration in respect of interests falling within this category is not disclosed. The contract does not need to be deposited with the Registrar.~~ While clients of companies in which members hold a directorship must be declared in relevant circumstances (see paragraph 97), they do not need to be registered except where:

(a) the company is the member's own intermediary (most commonly a limited company that they control);[5] or

(b) ~~the client is a foreign government to which the member personally provides services.~~ **the member personally provides services to the client and the client is (i) a government of a foreign state (including departments and agencies), (ii) an organisation which may be thought by a reasonable member of the public to be foreign state-owned or controlled, or (iii) an individual with official status (whether executive, legislative or judicial) in a foreign state when acting in that capacity.**

55A. Members providing legal and arbitral services need to register the identity of registrable clients and parties under this category only once (a) the identity of the client or party has entered the public domain or (b) they have been paid for the work (wholly or in part), whichever comes first.

55B. The level of remuneration in respect of interests falling within this category only needs to be disclosed where it is received from governments of foreign states (including departments and agencies), organisations which may be thought by a reasonable member of the public to be foreign state-owned or controlled, and individuals with official status (whether

5 Also known as a personal service company.

executive, legislative or judicial) in foreign states when acting in that capacity.

55C. Although members may consult the Registrar on whether an organisation or individual meets the definitions in paragraphs 55 and 55B, they must themselves take the final decision and in case of doubt should err on the side of registration.

55D. Where earnings are registrable they should be disclosed once in respect of each financial year, no later than 31 January following the end of that financial year. Members may disclose the exact amount received from each source, or indicate within which of the following bands their earnings from each source falls: £0–5,000, £5,000–10,000; £10,000–20,000; in further increments of £10,000 up to £100,000; or £100,000–200,000 and thereafter in £100,000 increments. Where members have undertaken the work with others, they should estimate the value of their own contribution or disclose the total amount paid by the client.

55E. Contracts under this category do not need to be deposited with the Registrar.

Category 2: Remunerated employment etc.

Employment, office, trade, profession or vocation which is remunerated or in which the member has any pecuniary interest.

56. All provision of services outside the House in return for payment should be registered here. When making an entry in this category, members must register the name of the employer or source of the payment, the nature of its business (where this is not self-evident) and the type of work carried out. Partners in partnerships and limited liability partnerships (LLPs) should also register their position in this category.

57. While clients of companies for which members work**, and clients of members in professional practice,** must be declared in relevant circumstances (see paragraph 97), they do not need to be registered except where:

(a) the company is the member's own intermediary (most commonly a limited company that they control);[5] or

(b) ~~the client is a foreign government to which the member personally provides services.~~ **the member personally provides services to the client and the client is (i) a government of a foreign state (including departments and agencies), (ii) an organisation which may be thought by a reasonable member of the public to be foreign state-owned or controlled, or (iii) an individual with official status (whether executive, legislative or judicial) in a foreign state when acting in that capacity.**

57A. Members providing legal and arbitral services need to register the identity of registrable clients and parties under this category only once (a) the identity of the client or party has entered the public domain or (b) they have been paid for the work (wholly or in part), whichever comes first.

58. Members who have paid posts as consultants or advisers should indicate the nature of the consultancy or advice given, for example "management consultant",

5 Also known as a personal service company.

"legal adviser" or "public affairs consultant". They should, in the case of public affairs consultancies, give careful consideration to paragraph 8(d) of the Code and paragraphs 15 to 23 of the Guide (especially paragraph 19).

59. Occasional income or benefits from speeches, lecturing, broadcasting, royalties**,** ~~or~~ journalism **or freelance work** which exceeds £1,000 in the course of a calendar year from a single source should be registered under this category and the source should be identified. Fees which are donated to another person, or to a charitable or community organisation, must still be registered but the donation may be noted in the Register entry.

60. Membership of Lloyd's should be registered under this category. Members who have resigned from Lloyd's should continue to register their interest as long as syndicates in which they have participated continue to have years of account which are open or in run-off. Members of Lloyd's are also required to disclose the categories of insurance business which they are underwriting.

61. Members who have previously practised a profession may register that profession under this category with a bracketed remark such as "[non-practising]" after the entry.

62. Members are not required to register pension arrangements (save for certain investments in self-invested personal pensions—see paragraph 72), unless conditions are attached to the continuing receipt of the pension that a reasonable member of the public might regard as likely to influence their conduct as parliamentarians. Such conditions attaching to pensions from European Union institutions do not normally require the pension to be registered or declared in proceedings in the House.

63. Membership of the House is not to be registered under this category.

64. ~~The amount of remuneration in respect of interests falling within this category is not disclosed. The contract does not need to be deposited with the Registrar.~~ **The level of remuneration in respect of interests falling within this category only needs to be disclosed where it is received from governments of foreign states (including departments and agencies), organisations which may be thought by a reasonable member of the public to be foreign state-owned or controlled, and individuals with official status (whether executive, legislative or judicial) in foreign states when acting in that capacity.**

64A. Although members may consult the Registrar on whether an organisation or individual meets the definitions in paragraphs 57 and 64, they must themselves take the final decision and in case of doubt should err on the side of registration.

64B. Where earnings are registrable they should be disclosed once in respect of each financial year, no later than 31 January following the end of that financial year. Members may disclose the exact amount received from each source, or indicate within which of the following bands their earnings from each source falls: £0–5,000, £5,000–10,000; £10,000–20,000; in further increments of £10,000 up to £100,000; or £100,000–200,000 and thereafter in £100,000 increments. Where members have undertaken the work with others, they should estimate the value of their own contribution or disclose the total amount paid by the client.

64C. Contracts under this category do not need to be deposited with the Registrar.

…

97. Members must declare any client **of their own, or any client** of an organisation in which they have a financial interest ~~where (a) they~~ **if they** might reasonably be expected to know that it is a client**,** ~~and (b)~~ **where** the activities or interests of that client are relevant to the matter under discussion. Where a member feels unable to declare a client due to a duty of confidentiality, then the member should not participate in any proceedings or correspond with ministers or officials regarding matters potentially affecting that client.

APPENDIX B: MINUTES OF PROCEEDINGS ON THE REPORT

Thursday 11 March 2021

Present:

Baroness Anelay of St Johns
Lord Brown of Eaton-under-Heywood (Acting Chair)
Cindy Butts (lay member)
Mark Castle (lay member)
Andrea Coomber (lay member)
Dr Vanessa Davies (lay member)
Baroness Donaghy
Baroness Hussein-Ece

Lord Mance (Chair) recused himself owing to his relevant interests.

Registration of members' foreign interests: follow-up

The Committee divided on the Question that this Report be agreed to:

Contents	*Not-contents*
Baroness Anelay of St Johns	Lord Brown of Eaton-under-Heywood
Cindy Butts	
Mark Castle	
Andrea Coomber	
Dr Vanessa Davies	
Baroness Donaghy	
Baroness Hussein-Ece	

The Report was accordingly agreed to and ordered to be published.

APPENDIX C: SUBMISSIONS FROM THE PROFESSIONAL BODIES

Bar Standards Board

(1) Is there any kind of duty not to name clients publicly in your profession (as distinct from revealing the content of any advice given)?

There is no express duty on barristers not to name their clients publicly. However, under Core Duty 6 and rule C15.5 of the Bar Standards Board's Handbook, barristers are under an obligation to keep the affairs of each client confidential, except where disclosure is required or permitted by law or where the client has given consent. Revealing a client's name could amount to a breach of these obligations where knowledge that the client has sought legal advice is not in the public domain. Further, most client communications, advice and litigation documents are subject to legal privilege. This prevents barristers from disclosing the content of such communications/documents. Again, disclosing the name of the client could be a breach of legal privilege. This is a complex area and the Committee may wish to seek legal advice to ensure that the proposed obligations take into account issues of legal privilege.

(2) If so, is this duty written down anywhere in professional guidance? If not, on what basis could such a duty be asserted?

See response to (1) above.

(3) Are there any exceptions to such a duty? Is the duty discharged if the client waives the right to confidentiality or if the relationship legitimately becomes known in the public domain, e.g. in court?

See response to (1) above. If a matter is already in the public domain by virtue of legal proceedings in court, the barrister's representation of a client will usually be recorded on the court records and in the public domain. A client can waive confidentiality and legal privilege by express consent.

(4) We are working on the assumption that the level of earnings will always need to be disclosed, even if the name of the client is not, with the public interest trumping commercial confidentiality. Do you have any comment on this?

We have no comment to make – this is a matter for the House of Lords. However, if the client is named then the earnings would need to be kept confidential as part of the client's affairs.

(5) In many cases, it may be difficult for Members to identify what proportion of the fees paid by a client are attributable to their own work as opposed to the work of others in their organisation. In such cases, we assume that the only option would be to register the total amount paid by the client to the organisation over the year. If you have any comments or suggestions on this, please say.

The majority of barristers are self-employed, so it should not be difficult for most barristers who are Members to identify the fees paid to them by a client. Otherwise we have no comment to make on this, which is a matter for the House of Lords.

Faculty of Advocates

(1) Is there any kind of duty not to name clients publicly in your profession (as distinct from revealing the content of any advice given)?

It would be expected that practising advocates would not reveal to anyone not entitled to the information the fact that person P has sought their advice. This is part of the duty of confidentiality. Confidentiality is a primary and fundamental right and duty of the advocate. The question seeks to draw a distinction between naming clients and revealing the content of advice given. This can be an illusory distinction, at least as far as Scots law is concerned ("Nor am I attracted by the proposition that the client's identity is necessarily or even readily to be seen as extraneous to the confidential communication. On the contrary, it seems to me to be quite artificial to distinguish the identity of the client from the subject matter of the solicitor/client relationship." *Conoco (UK) Ltd v The Commercial Law Practice* 1997 SLT 372 at 378, Lord Macfadyen). The fact that P has sought legal advice is, itself, likely to be indicative of how P views a matter in which they are involved. If P, or P's situation, is known, for an advocate to disclose that P has sought their advice would have a revelatory effect.

(2) If so, is this duty written down anywhere in professional guidance? If not, on what basis could such a duty be asserted?

The duty of confidentiality is set out in section 2.3 of the Guide to the Professional Conduct of Advocates (7th edition, October 2019) available at http://www.advocates.org.uk/media/3199/guide-to-conduct-7th-edition-october-2019.pdf

The duty of confidentiality is, however, binding on an advocate not merely as a matter of professional discipline, but also at common law.

(3) Are there any exceptions to such a duty? Is the duty discharged if the client waives the right to confidentiality or if the relationship legitimately becomes known in the public domain, e.g. in court?

The duty is in relation to specific pieces of work, that is the seeking of advice or the conduct of litigation on a particular matter. It would be unlikely to extend to any longer-term arrangement, known as a retainer, paid to an advocate, which may be more the type of relationship which the changes to the House of Lords Code of Conduct envisage. The consultation refers to a duty on Members of the House 'to register all clients they personally work with'. A retainer is the only situation in which there is a continuing general relationship between an advocate and a client. It would be likely to depend on circumstances whether it would be a breach of the obligation of confidentiality for an advocate to disclose publicly that they had been instructed for specific pieces of work, or retained by organisation X or individual Y.

(4) We are working on the assumption that the level of earnings will always need to be disclosed, even if the name of the client is not, with the public interest trumping commercial confidentiality. Do you have any comment on this?

It is hard to see that disclosure of the level of earnings from clients unspecified would breach a professional obligation. Indeed the Scottish Legal Aid Board has, for many years, listed advocates by name alongside the amounts they have earned from legal aid work in the preceding year.

(5) In many cases, it may be difficult for Members to identify what proportion of the fees paid by a client are attributable to their own work as opposed to the work of others in their organisation. In such cases, we assume that the only option would be to register the total amount paid by the client to the organisation over the year. If you have any comments or suggestions on this, please say.

This would not apply to advocates, whose fees are always received by them as individuals. Advocates continue to be forbidden from entering into partnership.

Institute and Faculty of Actuaries

(1) Is there any kind of duty not to name clients publicly in your profession (as distinct from revealing the content of any advice given)?

The Actuaries' Code does not specifically prohibit disclosure of a Member's client's identity, however there are general duties around confidentiality.

The key professional ethical requirements applying to our Members are set out in the Actuaries' Code, which can be accessed on the following link on the IFoA website: https://www.actuaries.org.uk/system/files/field/document/Revised%20Actuaries%27%20Code%20FINAL.pdf.

Amplification 1.2 of the Actuaries' Code states that "Members should respect confidentiality". The word "should" indicates that the presumption is that Members comply with this provision however it is recognised that there will be some circumstances in which Members are able to justify non-compliance.

(2) If so, is this duty written down anywhere in professional guidance? If not, on what basis could such a duty be asserted?

Please see above.

(3) Are there any exceptions to such a duty? Is the duty discharged if the client waives the right to confidentiality or if the relationship legitimately becomes known in the public domain, e.g. in court?

As explained above, the requirement is a 'should' obligation therefore non-compliance may be justified in certain circumstances.

The non-mandatory guidance (the Guidance) to the Actuaries' Code states that sensitive information will not be shared without permission other than in exceptional circumstances and that whilst the duty of confidentiality is important, it is not absolute.

In particular, it states that information can be disclosed by Members in certain circumstances where "disclosure is required by law, is permitted by law, and can be justified in the public interest".

The guidance states that information which is already lawfully in the public domain is "not ordinarily confidential".

The full details of the information referred to above can be found at paragraphs 3.9 to 3.16 of the Guidance, which can be accessed on the following link on the IFoA website: https://www.actuaries.org.uk/upholding-standards/standards-and-guidance/actuaries-code.

(4) We are working on the assumption that the level of earnings will always need to be disclosed, even if the name of the client is not, with the public interest trumping commercial confidentiality. Do you have any comment on this?

The IFoA does not have any comments to provide on this.

(5) In many cases, it may be difficult for Members to identify what proportion of the fees paid by a client are attributable to their own work as opposed to the work of others in their organisation. In such cases, we assume that the only option would be to register the total amount paid by the client to the organisation over the year. If you have any comments or suggestions on this, please say.

The IFoA does not have any comments to provide on this.

Institute of Chartered Accountants in England and Wales

General comments

Chartered Accountants are expected to demonstrate the highest standards of professional conduct and to take into consideration the public interest. Ethical behaviour by our members plays a vital role in ensuring public trust in financial reporting and business practices and upholding the reputation of the accountancy profession.

The ICAEW Code of Ethics[6] (the Code) is available at https://www.icaew.com/technical/ethics/icaew-code-of-ethics/icaew-code-of-ethics. The Code helps our members meet the above obligations by providing them with ethical guidance.

Paragraphs 55B and 64A of the revised House of Lords Code of Conduct suggest that our members would need to apply for an exemption on the grounds of a duty of confidentiality. We believe this approach should be based on the individual member's circumstances, covering all current and future relationships, rather than having to seek an exemption on a client-by-client basis. We believe additional clarity on this point is required.

The revised House of Lords Code of Conduct suggests that where a member claims an exemption on the grounds of duty of confidentiality, then they are still required to register the type of client and fees disclosed (in bandings) without naming the client. It would be essential that the client could not be identified by this disclosure, otherwise the member could be in breach of their duty of confidentiality. We believe additional clarity on this point is required.

(1) Is there any kind of duty not to name clients publicly in your profession (as distinct from revealing the content of any advice given)?

(2) If so, is this duty written down anywhere in professional guidance? If not, on what bases could such a duty be asserted?

The Code sets out how our members should behave in respect to confidentiality:

> "The principle of confidentiality is not only to keep information confidential, but also to take all reasonable steps to preserve confidentiality. Whether information is confidential or not will depend on its nature. A safe and proper approach for professional accountants to adopt is to assume that all unpublished information about a client's or employer's affairs, however gained, is confidential. Some clients

6 ICAEW's Code of Ethics was recently revised, with the current version applying from 1 January 2020.

> or employers may regard the mere fact of their relationship with a professional accountant as being confidential."
>
> (Paragraph 114.0 A1, Page 15)

The Code does not explicitly state that there is a duty not to name clients publicly. However, we consider that the default position implied above in Paragraph 114.0 A1 of the Code would be that our members should keep the names of their clients confidential, unless there is a reasonable justification for disclosure (see paragraph 8), or the existence of the professional relationship is already in the public domain.

There are specific disclosure and reporting requirements for certain types of services that our members might provide, where the fact that the member acts for a client would be in the public domain. This includes, for example, certain insolvency appointments, or where our member firm acts as a statutory auditor.

(3) Are there any exceptions to such a duty? Is the duty discharged if the client waives the right to confidentiality or if the relationship legitimately becomes known in the public domain, e.g. in court?

The Code provides a number of circumstances where a member can breach their ethical duty of confidentiality, including:

> "(a) Disclosure is required by law, for example:
>
> (i) Production of documents or other provision of evidence in the course of legal proceedings; or
>
> (ii) Disclosure to the appropriate public authorities of infringements of the law that come to light;
>
> (b) Disclosure is permitted by law and is authorised by the client or the employing organisation; and
>
> (c) There is a professional duty or right to disclose, when not prohibited by law:
>
> (i) To comply with the quality review of a professional body;
>
> (ii) To respond to an inquiry or investigation by a professional or regulatory body;
>
> (iii) To protect the professional interests of a professional accountant in legal proceedings; or
>
> (iv) To comply with technical and professional standards, including ethics requirements."
>
> (Paragraph 114.1 A1, Page 15)

If a client provided authority for the member to disclose the existence of their professional relationship, then this may be permissible under the Code. However, further consideration would also need to be given to the members' legal obligations, and any GDPR requirements.

(4) We are working on the assumption that the level of earnings will always need to be disclosed, even if the name of the client is not, with the public interest trumping commercial confidentiality. Do you have any comment on this?

Details of the fees that a member earns from a client would not usually be information in the public domain, other than where certain services have specific disclosure requirements. For example, the statutory audit fee charged to an audited entity would usually be disclosable in the statutory accounts of the entity, plus fees for any non-audit services the auditor firm had provided to the entity.

Where this information is not in the public domain, client consent for the disclosure of the fees charged would likely be necessary if the client was named.

(5) In many cases, it may be difficult for Members to identify what proportion of the fees paid by a client are attributable to their own work as opposed to the work of others in their organisation. In such cases, we assume that the only option would be to register the total amount paid by the client to the organisation over the year. If you have any comments or suggestions on this, please say.

We have no comments on this question.

Solicitors Regulation Authority

(1) Is there any kind of duty not to name clients publicly in your profession (as distinct from revealing the content of any advice given)?

(2) If so, is this duty written down anywhere in professional guidance? If not, on what basis could such a duty be asserted?

Yes - Solicitors are required to keep the affairs of clients confidential which would include their identity and the fact they have instructed the solicitor or their firm. This duty of confidentiality exists as an obligation under both common law and data protection legislation as well as being one of the core professional principles set out in statute (see Section 1(3)(e) of the Legal Services Act 2007) and underpinned by the SRA Standards and Regulations (see paragraph 6.3 of the SRA Code of Conduct for Solicitors, RELs and RFLs[7]). This is supported by guidance (see Guidance note "Confidentiality of client information"[8]).

(3) Are there any exceptions to such a duty? Is the duty discharged if the client waives the right to confidentiality or if the relationship legitimately becomes known in the public domain, e.g. in court?

Yes - Disclosure of client confidential information is permitted in certain circumstances. These include with the consent of the client and when such disclosure is permitted by law (see Guidance note "Confidentiality of client information").

7 Available at https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors
8 Available at https://www.sra.org.uk/solicitors/guidance/confidentiality-client-information

(4) We are working on the assumption that the level of earnings will always need to be disclosed, even if the name of the client is not, with the public interest trumping commercial confidentiality. Do you have any comment on this?

(5) In many cases, it may be difficult for Members to identify what proportion of the fees paid by a client are attributable to their own work as opposed to the work of others in their organisation. In such cases, we assume that the only option would be to register the total amount paid by the client to the organisation over the year. If you have any comments or suggestions on this, please say.

The level of earnings or fees received by a solicitor (or their firm) from a client could possibly be disclosed as long as in doing so the duty of confidentiality is not breached, including their identity. The practical steps that may be required by solicitors or their firms to identify and attribute fee income would depend on their own finance systems or commercial arrangements. As such we are unable to provide further comment on this point.