



Ministry  
of Justice

# **Public Defender Service**

## Code of Conduct

March 2014





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Presented to Parliament pursuant to section 29 of the Legal Aid,  
Sentencing and Punishment of Offenders Act 2012

March 2014

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## Introduction

This Code of Conduct is made under s29 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and applies to civil servants who provide services to individuals and legal persons as part of the Public Defender Service.

The Public Defender Service is part of the Legal Aid Agency, an Executive Agency of the Ministry of Justice through which the Lord Chancellor carries out his operational functions under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. All staff within the Public Defender Service are civil servants. When providing services to an individual under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, section 29 (4) of that Act states that those civil servants are not subject to the direction of the Lord Chancellor.

The Lord Chancellor must lay this Code, and any revisions to the Code, before Parliament.

For the purpose of this Code:

"the Act" means the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

"client" means an individual or legal person who is seeking or receiving legal services from civil servants working in the PDS.

"LAA" means the Legal Aid Agency, the Executive Agency of the Ministry of Justice through which the Lord Chancellor carries out his operational functions under Part 1 of the Act.

"legal services" means advice, assistance, representation, or civil legal services provided under Part 1 of the Act.

"PDS" means the Public Defender Service, the collective name for the civil servants who provide legal services to PDS clients.

"PDS advocacy service" means the advocacy service provided by a PDS lawyer on the instructions of a Provider.

"PDS head of office" means the senior PDS Lawyer at a location that provides legal services.

"PDS lawyer or Accredited Representative" means any person qualified as a solicitor, barrister, Chartered Legal Executive, or Accredited Representative who is a civil servant working in the PDS.

"Professional Body" means the Law Society, the General Council of the Bar, the Chartered Institute of Legal Executives or any other body authorised under the Legal Service Act 2007 as a body that can grant rights of audience or rights to conduct litigation, and their regulatory arms.

"Provider" means a party to a contract with the Lord Chancellor in respect of the provision of legal aid.

## **1. Relationship with other Professional Codes of Conduct**

- 1.1 All PDS lawyers shall comply with the rules of conduct of and have regard to any guidance issued by their professional body in relation to their employment within the PDS.
- 1.2 The Chief Executive of the LAA shall appoint a professional head of the PDS (“the professional head of service”) who shall be responsible for the interpretation of this Code in practice and providing advice and guidance upon it.
- 1.3 This Code applies in addition to any professional or staff code that binds a civil servant. Where any doubt arises as to the interpretation of this Code, the issue shall be referred to the professional head of service who shall provide advice and guidance on the matter, consulting wherever appropriate with those responsible for other professional codes. So far as it is possible to do so, this Code must be interpreted in a way which is compatible with the codes of other professional bodies.

## **2. Duty to Protect the Interests of the Client**

- 2.1 The primary duty of a PDS lawyer or Accredited Representative is to protect the interests of the client so far as consistent with any duties owed to the court and any other rules of professional conduct. A PDS lawyer or Accredited Representative shall do his or her utmost to promote and work for the best interests of the client and to ensure that the client receives a fair hearing. A PDS lawyer or Accredited Representative shall provide the client with legal services in accordance with the Act and may use all proper and lawful means to secure the best outcome for the client.
- 2.2 A PDS lawyer or Accredited Representative shall not put a client under pressure to plead guilty, and in particular, shall not advise a client that it is in his or her interests to plead guilty unless satisfied that the prosecution is able to discharge the burden of proof.

## **3. Duty to Act with Integrity and Independence**

- 3.1 All civil servants shall act with honesty and integrity in carrying out their duties on behalf of the PDS. They must never knowingly or recklessly give false or misleading information.
- 3.2 A PDS lawyer or Accredited Representative has a duty to maintain his or her professional independence and not to allow this to be compromised by prosecuting authorities, the courts, the Lord Chancellor, the Ministry of Justice, LAA, PDS clients or any other source.

## **4. Duty to act Impartially and to avoid Discrimination**

- 4.1 Civil servants shall treat clients fairly, reasonably and without discrimination. In carrying out this duty, civil servants must not unlawfully discriminate against, harass or victimise any other person on the grounds of race, gender reassignment, age, pregnancy and maternity, marriage or civil partnership, sex, sexual orientation, disability, religion or belief.
- 4.2 A PDS lawyer or Accredited Representative may accept instructions from any eligible client, provided that he or she can discharge those instructions effectively having regard to other professional obligations, unless there is some other significant reason why the best interests of the client would not be served, in which case the PDS lawyer or Accredited Representative should cease to act immediately under paragraph 11.1.
- 4.3 A PDS lawyer or Accredited Representative shall only provide legal services to a client where he or she is competent and authorised to do so. Competence requires such legal knowledge, skill, experience and preparation as is necessary to properly represent the interests of the client. Authorisation refers to any requirements of the relevant professional body in relation to accreditation or other professional qualification.
- 4.4 A PDS lawyer or Accredited Representative shall not refuse to provide legal services to a client because of the nature of the allegation, the nature of the client, or because of the PDS lawyer's personal views.

## **5. Duty of Confidentiality**

- 5.1 Subject to paragraph 5.2 and 5.3, a civil servant shall keep all information about a client confidential within the PDS in accordance with sections 33 and 34 of the Act. This duty does not cease once employment has terminated, and can be enforced in a court.
- 5.2 The duty of confidence to a client is subject to any statutory provision, any court order and any relevant rules of professional conduct or otherwise setting out circumstances where the duty of confidentiality may be overridden.
- 5.3 Information about clients of the PDS advocacy service will be subject to the enhanced confidentiality provisions in the PDS Manual to ensure that information relating to a client's case cannot come into the possession or attention of any PDS lawyer providing advocacy services to another client in the same case, where there is an actual or potential conflict of interest between those clients.
- 5.4 Civil servants must keep and use information in accordance with the Data Protection Act 1998.

## **6. Duty to the Court**

- 6.1 A civil servant shall never deceive or recklessly or knowingly mislead the court or tribunal.
- 6.2 Subject to the provisions of this Code and any other rules of professional conduct, civil servants shall ensure that they discharge their duties in a way which is consistent with the proper and efficient administration of justice.

## **7. Duty to avoid Conflicts of Interest**

- 7.1 Subject to 7.3 below, a PDS lawyer or Accredited Representative may not act for any one or more clients if to do so would give rise to an actual or significant risk of a conflict of interest.
- 7.2 The circumstances where a conflict of interest exists include when the duty of the PDS lawyer or Accredited Representative to act in a client's best interests conflicts with the interests of:
  - a. another PDS client;
  - b. any civil servant working in the PDS; or
  - c. any third party whose relationship to any civil servant working in the PDS would reasonably cause the client to believe that the PDS lawyer or Accredited Representative may not act in that client's best interests.
- 7.3 The PDS Advocacy Service may represent more than one client in the same case where there is an actual or significant risk of a conflict of interest between those clients, provided that the PDS lawyer or the Provider acting for each client immediately:
  - a. notifies the client of the conflict or risk of conflict;
  - b. explains that the client is free to be represented by other legal representatives outside the PDS Advocacy Service;
  - c. explains that, if the client wishes to continue to be represented by the PDS lawyer in addition to the other client or clients, each client will be protected by the enhanced confidentiality provisions referred to in 5.3 above;
  - d. obtains written confirmation from the client that they are content for the PDS Advocacy Service to continue to represent more than one client in these circumstances.
- 7.4 Subject to paragraphs 7.3 and 7.5, where a PDS lawyer or Accredited Representative provides legal services to a client and a conflict or a significant risk of conflict arises between the interests of that client and any other client of the PDS, or between the PDS lawyer or Accredited Representative and their client, then he or she must cease to act for all clients affected by the conflict.
- 7.5 Subject to 7.3, if the conflict arises between two or more clients the PDS lawyer or Accredited Representative may continue to act for one client provided the PDS is not in

possession of relevant confidential information obtained whilst acting for the other client or clients.

- 7.6 If a PDS lawyer or Accredited Representative ceases to act for a client owing to a conflict of interest, then he or she has a duty to give that client reasonable notice and refer the client to another Provider, as appropriate.

## **8. Duty to not Offer or Accept Payments**

- 8.1 A civil servant shall not offer or accept any fee, commission, inducement, gratuity, gift, benefit or other form of compensation, whether direct or indirect, unless provided for in the Act or its supporting regulations.

## **9. Relationship with Legal Profession**

- 9.1 A PDS lawyer shall not practise law other than in the performance of his or her duties as a civil servant or engage in any other occupation or any other post (whether paid or voluntary) without express written permission from his or her line manager.
- 9.2 All civil servants shall endeavour to maintain relationships with the legal profession and other agencies in the criminal justice system based on courteousness, mutual respect and professionalism.

## **10. Change of Legal Representative**

- 10.1 If a client wishes to change legal representative, then a PDS lawyer or Accredited Representative shall advise the client about the relevant rules and procedures including any set out in regulations made under the Act.

## **11. Ceasing to act as a Client's Legal Representative**

- 11.1. A PDS lawyer or Accredited Representative shall cease to act for a client where:
- a. a conflict or a significant risk of conflict of interest or breach or significant risk of breach of confidentiality arises (subject to paragraph 7.3 and 7.5 above);
  - b. a conflict or a significant risk of conflict arises between the client's interests and the duty to the court;
  - c. the client withdraws instructions; or

- d. continuing to act would cause him or her to be professionally embarrassed within the meaning of the applicable professional code of conduct.

11.2. A PDS lawyer or Accredited Representative may cease to act for a client where:

- a. the client's behaviour towards the PDS lawyer or Accredited Representative or any other civil servant is violent, threatening or abusive; or
- b. there is some other substantial reason for ceasing to act for the client approved by the PDS head of office or sanctioned by the applicable professional code of conduct.

11.3. Before ceasing to act a PDS lawyer or Accredited Representative shall give reasonable notice and written reasons to the client for doing so, except in the case of paragraph 11.1(c) above.

## 12. Public Interest Disclosure

12.1. If a civil servant believes that he or she is being required to act by the Lord Chancellor, Ministry of Justice or LAA in a way which:

- a. is illegal, improper or unethical;
- b. is in breach of professional rules;
- c. may involve maladministration, fraud or misuse of public funds; or
- d. is otherwise inconsistent with this Code or any staff code;

he or she shall bring this to the attention of the PDS head of office, who shall then notify the professional head of service, or direct to the professional head of service, as appropriate. The professional head of service shall carry out an investigation and make a report to the Board of the LAA.

12.2. If any of the above circumstances arise, a PDS lawyer or Accredited Representative must also consider whether it is appropriate to continue to act for a client.

12.3. This provision does not override the rules of professional privilege.

## 13. Standards of Conduct

13.1. Subject to the provisions of this Code and any other rules of professional conduct, a civil servant shall not do anything to bring the PDS or other body into disrepute in the course of his or her employment or otherwise.

13.2. A civil servant shall not misuse his or her position or information acquired in the course of his or her duties to further his or her own private interests or those of others.

## 14. Complaints

- 14.1. A complaint against a civil servant under this Code shall be made to the PDS head of office who shall investigate the complaint and notify the professional head of service.
- 14.2. A complaint against a PDS lawyer may be dealt with under the procedure laid down by his or her professional body, as well as under the procedure in paragraph 14.1. In these circumstances the PDS head of office and the professional head of service will consider whether there is a duty to notify that professional body of the complaint and act accordingly.
- 14.3. Subject to section 5 of this Code a civil servant shall co-operate with requests from a professional body for comments or information in respect of complaints that the body is investigating.





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