

NEW DIRECT ACCESS RULES (October 2006)

1. An advocate may accept instructions from any person or body detailed in the Appendix hereto, whether on their own behalf or on behalf of a client. Instructions under these rules will be referred to as "Direct Access Instructions".

2. Advocates may not, however, accept instructions to act from, or on behalf of, any person or body from which they receive any remuneration other than the professional fees or retainers paid to them as advocate. Thus they may not act for, or accept instructions from, a company of which they are a director, or any person or body by which they are employed, or a firm of which they are a partner, and from which they derive director's fees, a salary, or a share of the profits either in name or in reality.

3. Advocates may not accept instructions to receive or handle clients' money; nor to do administrative work which would normally be carried out by an instructing solicitor; nor to carry out investigative work which would normally be carried out by an instructing solicitor, any more than they might do so when instructed by a solicitor. An advocate acting under these rules may, however, meet and discuss matters with a client or a potential witness without a representative of the instructing body or person being present, so long as both the advocate and the instructing person or body consider this appropriate in terms of the code of conduct.

4. An advocate who is instructed by any person or body detailed in the Appendix other than a Scottish solicitor must satisfy himself or herself so far as appears necessary of

- (i) their competence to give the instructions in question;
- (ii) if those instructions are given on behalf of a client, their authority to do so; and
- (iii) their understanding of the terms of engagement and their effect, and in particular the limitations on the work which an advocate may do and also any disadvantage which may, as a real possibility, be suffered by the client if the client does not act through a Scottish solicitor.

If an advocate cannot be satisfied of these matters, they may not accept those instructions. If an advocate at any time concludes that they are no longer satisfied of any of these matters, or that it is not in the interest of the client or the interests of justice that such instructions be given other than through the medium of a Scottish solicitor, they must so inform the person instructing and may refuse to act further except through that medium.

5. For the avoidance of doubt, the “cab rank” rule does not apply to instructions provided under these rules.

6. It is expected that an Advocate who accepts instructions under Direct Access Rules shall follow any guidance issued by the Direct Access Guidance Committee from time to time.

APPENDIX TO DIRECT ACCESS RULES

1. Legal professionals:

- (i) Members of the Law Societies of England and Wales, and Northern Ireland;
- (ii) Non-practising members of Faculty;
- (iii) European lawyers registered under the European Communities (Lawyers Practice)(Scotland) Regulations;
- (iv) Persons on the register of foreign lawyers held by the Law Society of Scotland;
- (v) Qualified conveyancing and executry practitioners in Scotland;
- (vi) Persons or bodies qualified to practise law in a jurisdiction other than Scotland who actually do so practise law;

2) Other professionals:

- (i) Members of any professional body recognised for this purpose by the Faculty, and any such body itself;
- (ii) Parliamentary agents;
- (iii) Any person or body on the register maintained by the Office of the Immigration Services Commissioner.

3) Public authorities:

- (i) Any person or body subject to complaint to the Scottish Public Services Ombudsman;
- (ii) Any public authority in terms of the Freedom of Information (Scotland) Act 2002 or the Freedom of Information Act 2000;
- (iii) Any person or body subject to complaint to the European Ombudsman;

- (iv) Any public authority under the law of the European Union;
- (v) Any person or body acting under law in a governmental, judicial or legislative capacity;
- (vi) Members of the British and Irish Ombudsman Association or the International Ombudsman Institute.

4) Other persons and bodies:

- (i) Any person or body on the Financial Services Authority Register;
- (ii) Any voluntary organisation in membership of the Scottish Council for Voluntary Organisations, the National Council for Voluntary Organisations, the Northern Ireland Council for Voluntary Action, or the Wales Council for Voluntary Action;
- (iii) Any body on the register maintained by the office of the Scottish Charity Regulator or the Central Register of Charities maintained by the Charity Commission for England and Wales;
- (iv) Any public limited company regulated by the London Stock Exchange;
- (v) Any community interest company registered as such;
- (vi) Any trade union or employers association on the list maintained by the Certification Officer;
- (vii) Any body incorporated by statute which is so established to represent or regulate any trade, business or profession;
- (viii) The Medical and Dental Defence Union of Scotland, The Medical and Dental Defence Union, and the Medical Protection Society.
- (ix) Any person or body, or member of a class, recognised for this purpose by the Faculty.

5 Initial list of bodies recognised under part 2 i):

1. All professional bodies in the United Kingdom which have been awarded a Royal Charter
2. All Designated Professional Bodies under the Financial Services and Markets Act 2000
3. Architects Registration Board of the United Kingdom
4. Army Legal Service
5. Directorate of Legal Services of the Royal Navy
6. Naval Prosecuting Authority
7. Directorate of Legal Services of the Royal Air Force
8. Association of Average Adjusters
9. Association of Taxation Technicians
10. Insolvency Practitioners Association
11. Institute of Indirect Taxation
12. Institute of Chartered Accountants in Ireland
13. Officers of Arms in Ordinary (The Heralds and Pursuivants of the Lyon Court)
14. Incorporated Society of Valuers and Auctioneers
15. Pensions Management Institute
16. Institute of Trade Mark Attorneys
17. The Chartered Insurance Institute or any member thereof
18. Property Factors Registered on the Scottish Property Factors Register

6. Further list of bodies subsequently recognised under parts 2 (i) or 4 (ix):

1. The Society of Messengers-at-Arms and Sheriff Officers and members thereof
2. British Branch of the Society of Trust and Executry Practitioners

3. Faculty Services Ltd
4. Park Home Legal Services Ltd
5. The Association of Commercial Attorneys
6. MR Associates
7. Chamberlain McBain
8. Whealing Project Consultancy Limited
9. The Scottish Trades Union Congress