



The Bar Council

## Devilling

<b>Purpose:</b>	To address the devilling of work between barristers
<b>Scope of application:</b>	All self-employed practising barristers
<b>Issued by:</b>	The Ethics Committee
<b>First issued:</b>	November 2014
<b>Last reviewed:</b>	February 2020
<b>Status and effect:</b>	<b>Please see the notice at end of this document. This is not "guidance" for the purposes of the BSB Handbook I6.4.</b>

1. "Devilling" is the long-established practice among self-employed barristers by which one barrister obtains the assistance of another, usually a more junior, barrister to carry out work to help the first barrister discharge his instructions.

2. The BSB Handbook defines devilling as follows:

"Devilling" means where a self-employed barrister ("A") arranges for another barrister ("B") in the same chambers to carry out work for A on the basis that A will be responsible for the payment of B's remuneration for such work and will be responsible to the client for the work as if it were their own. "Devil" and "devils" will be construed accordingly."

This definition embraces all arrangements under which a self-employed barrister ("A") engages another barrister ("B") to assist him or her (i.e. the first barrister) in carrying out work for which he or she is responsible to the client. Such arrangements may cover work in the nature of preparing a first draft of a document, researching a point of law, obtaining copies of relevant authorities, preparing a chronology,

organising papers or summarising evidence: in short work of any kind to help the first barrister carry out his or her instructions.

3. The definition is arguably wide enough to encompass the delegation of oral advocacy by A to B (e.g. attendance at a short procedural hearing). The Ethics Committee is not however aware that advocacy services have ever been "devilled", and it does not consider that they can be: A cannot ensure that oral advocacy will be performed by B as well as if he or she had performed the advocacy himself or herself, nor can A ensure that B's judgments and decisions taken in the course of an oral hearing will be the same as those that A would have made.

4. It is implicit in the definition that the arrangement is one under which it is intended that B will be separately remunerated *by A* for the work done. The definition does not cover arrangements by which a pupil in receipt of pupillage funding undertakes work for their pupil-supervisor, or for another member of chambers. Such arrangements have not, historically, been considered "devilling". (The position of "third-six" pupils is however more complex: they do not fall within the definition of "pupil" in the BSB Handbook, and may well be considered "devils", particularly if they are not in receipt of pupillage funding and are being remunerated on the basis of work done for each member of chambers.)

5. The BSB Handbook definition also restricts devilling to such arrangements made by barristers *in the same chambers*. The Ethics Committee does not believe that is historically accurate, although devilling arrangements between barristers in different chambers have become very rare. The Ethics Committee understands that the BSB made a deliberate decision to restrict the definition in this way.

6. "Devilling", as defined, is distinct from "[Outsourcing](#)" – i.e. the outsourcing to a third party of support services critical to the delivery of legal services (e.g. clerking services) – which is covered by Rule C86.

7. The term "devilling" will be used here in accordance with the definition set out in the BSB Handbook. It will be assumed that A is the instructed barrister and B his or her, usually more junior, assistant – although there is of course nothing to prevent a more junior barrister engaging the assistance of one more senior.

## **The position of A, the instructed barrister**

### **General**

8. A barrister instructed to do or provide any work of any kind will remain personally responsible to the client for the proper performance or provision of that

work, regardless of whether he or she obtains the assistance of another barrister in preparing to deliver or provide it. See Rule C20:

"Where you are a *BSB authorised individual*, you are personally responsible for your own conduct and for your professional work. You must use your own professional judgment in relation to those matters on which you are instructed and be able to justify your decisions and actions. You must do this notwithstanding the views of your *client, professional client, employer* or any other person."

9. Where you have devilled work to B, the work done for or provided to the client must be properly and competently carried out, *to the standard which the client could reasonably expect of you*. Accordingly you must satisfy yourself that any work done or assistance given by B has been properly and competently carried out, such that your instructions will be carried out *as well as if you had done all the work yourself*. In addition, you must ensure that *any decisions or judgments made by B are the decisions and judgments that you would make yourself*. The quality of the service done for or provided to the client by you must not be prejudiced or compromised by your decision to obtain assistance from B. In short, you must supervise and scrutinise B's work with sufficient care and diligence that you can properly adopt the work provided to the client as your own.

### **Must I obtain the client's consent to the devilling of work?**

10. The starting point here will be the terms upon which you will accept or have accepted instructions.

11. Clause 8.3 of the Bar's [Standard Contractual Terms](#) for the Supply of Legal Services by Barristers to Authorised Persons 2012 provides that: "The Barrister may delegate the provision of any part of the Services but will remain responsible for the acts, omissions, defaults or negligence of any delegate as if they were the acts, omissions, defaults or negligence of the Barrister"<sup>1</sup>. This therefore would appear to authorise devilling or other delegation of work without separate client consent.

12. In contrast Clause 6.1 of the COMBAR/ CLSS terms (version 3<sup>2</sup>) make the following provision: "The Barrister will be solely responsible for providing the Services under the Agreement. The Barrister may only involve another barrister or

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<sup>1</sup> The explanation issued by the Bar Council about these Standard Terms clarifies, at paragraph 42, that "*this provision is to allow devilling or preparation of drafts by pupils; it is not intended to allow other types of delegation of the work required.*" But the provision itself is not so limited.

<sup>2</sup> The current version at the time of the last review of this document.

other third party in the performance of the Services under the Agreement if the Barrister obtains the Solicitor's prior consent, that consent not to be unreasonably withheld." The Joint Guidance on those terms advises that "If a barrister needs assistance or if the barrister considers that it would be sensible for someone else to be engaged in relation to the work, the barrister should discuss this with the solicitor".<sup>3</sup> That discussion will include discussion of the basis on which the fees of the other barrister or third party are to be charged, and who is to be responsible for paying them.

13. Many instructions are however still accepted on the "traditional basis" i.e. on the basis of the terms formerly set out in Annexes G1 and G2 to the old Code of Conduct of the Bar (8<sup>th</sup> ed.), or variants of them. There is no express provision in those terms in relation to the devilling or delegation of work. The Ethics Committee does not consider that a prohibition on the involvement of another barrister is to be implied; and that the position under these terms is therefore similar to that under the Bar's Standard Contractual Terms.

14. Public access: Where you have accepted public access instructions, but wish to engage a devil, you must take care to ensure that your contractual arrangements with the client permit devilling. As presently drafted, the Bar Standard Board's Model Client Care Letters do not allow any delegation of work: they all specify that "*I personally* [i.e. the instructed barrister] *will do all the work needed under this arrangement*". If necessary, separate client consent to the involvement of a devil must be obtained. In every case therefore in which you are considering seeking the assistance of a devil, you should check the terms on which you have accepted instructions, to ensure that such delegation of work is permitted. You should also consider your obligations as a data controller, which will require you at least to notify your client of the proposed disclosure of personal data to a devil and may, where special categories of personal data are concerned, require explicit consent to such disclosure: see paragraphs 22, 23 and 33 to 40 below.

**Do I nonetheless have to tell the client that I intend to engage a devil to assist in the case?**

15. In order to answer this question, you will need to consider two issues. The first is this. Even if the *consent* of the client is not required, it may be that the client should be *informed in advance* that you intend to obtain the assistance of a devil. Consideration must be given to Rule C19:

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<sup>3</sup> The Joint Guidance continues: "*This is not, however, intended to prevent a barrister making proper use of a pupil who is in training with the barrister's chambers. Nor is it intended to prevent a barrister from seeking the assistance of another barrister in order, for example, to check certain points of law or to locate comment on a particular authority...*". It is not altogether clear how this is consistent with Clause 6.1.

"If you supply, or offer to supply, *legal services*, you must not mislead, or cause or permit to be misled, any person to whom you supply, or offer to supply, *legal services* about:

- .1 the nature and scope of the *legal services* which you are offering or agreeing to supply;
  - .2 the terms on which the *legal services* will be supplied, ***who will carry out the work and the basis of charging***;
  - .3 who is legally responsible for the provision of the services;
- ..."  
(*emphasis* supplied)

A client may be misled by omission (e.g. by not being informed of an intention to deviate work) as well as by commission. It may be so misled even if the terms on which the work has been accepted themselves *permit* deviating.

16. Whether you need for this reason to tell the client about your intention to engage a deviate may depend on the scope of the work that you intend to delegate:

17. For example if you were to intend to deviate *some central or critical aspect of the work*, and were to carry out that intention without disclosing it to the client, there is a possibility that the client might have been misled as to who was in substance to carry out the work.

18. Services provided by barristers are personal services, in which the identity of the service provider is, ordinarily, an important element. The client's usual expectation, even in a case where delegation is permitted, will be that the skills and experience of the barrister instructed will be fully brought to bear on all critical aspects of the instruction.

19. Unless therefore you can conscientiously assert that you will so supervise and/or scrutinise the work of B that you will be able properly to describe the final product as your own, you should disclose your intention to obtain the assistance of a deviate.

20. However if the intention is to delegate only minor, preliminary or incidental parts of the work required – e.g. organizing papers, preparing a chronology, obtaining copies of relevant authorities, or researching a defined point of law for recent developments – then it is likely that you can properly delegate that part of the work to B without having to disclose that delegation to the client.

21. In any case of doubt, the intention to engage a devil should be disclosed to the client, to avoid any risk that the client might be misled.

22. The second issue concerns data protection. For many tasks, it is likely that you will need to disclose some personal data to the devil. The circumstances in which this may be permissible are summarised in paragraphs 24 to 34 below. This may require you to obtain your client's consent. If so, and particularly if that consent needs to be explicit, then you might be able to obtain this by giving – and obtaining your client's explicit agreement to – a sufficiently detailed explanation of what devilling would involve, and what personal information might be disclosed for that purpose, if you were to engage a devil; but you would need to judge whether you have obtained sufficient consent to every disclosure of personal data that you propose to make in each case in which you engage a devil. You would also need to consider whether this was sufficient for you to be able to disclose personal data to a devil which concerns third parties (such as witnesses and other litigants).

23. In the absence of any necessary consent from your client, you would need to consider very carefully whether you could justify a particular disclosure as being “necessary” for a purpose listed in Arts. 6(1) or 9(2) of the GDPR. The meaning of “necessary” is a question of European law on which the Bar Council cannot advise you, but you would be wise to exercise considerable caution if you do not have your client's agreement or consent to a particular devilling arrangement. You should also exercise considerable caution regarding any personal data relating to third parties.

### **Charging for the work of the devil**

24. If you have accepted instructions offered at a set or fixed fee, no separate considerations arise from the involvement of a devil. You will charge the set fee, regardless of the basis on which you may have agreed to remunerate the devil.

25. If however a fixed fee has been agreed and accepted on the basis that the work is *likely* to take *you* a certain number of hours, but you do not spend those hours on the work because you engage the assistance of a devil, there is again a serious risk that the client will have been misled about the basis of charging; unless you were to disclose in advance your intention to obtain that assistance.

26. If you have accepted instructions on the basis that you will be paid at an hourly rate (cf. Clause 11.2 of the Bar's Standard Contractual Terms) this will – absent specific agreement – prevent you from claiming any fees for any time spent by a devil or other delegate. The BSB Handbook at gC59 indicates as follows:

"If you are a *self-employed barrister*, you would, for example, likely be regarded as having breached Rule C19 if you charged at your own

hourly rate for work done by a *devil* or *pupil*. Moreover, such conduct may well breach your duty to act with honesty and integrity (CD3)."

In these circumstances, i.e. if there has been agreement on your remuneration at an hourly rate, but you would nonetheless want reimbursement of some or all of a devil's fees, the client's prior agreement to pay, additionally, for any work done by the devil must be sought.

### **Accepting instructions with an intention to devil work: additional considerations**

27. Whenever you are offered instructions, you must also bear in mind Rule C17:

Your duty to act in the best interests of each *client* (CD2) includes a duty to consider whether the *client's* best interests are served by different legal representation, and if so, to advise the *client* to that effect.

[NB CD2 and Rule C17 remain relevant after instructions have been accepted. You are required to keep the appropriateness of any continuing instruction under review, against the developing circumstances of the case, in order to remain satisfied that the best interests of the client continue to be served by your carrying out the work, rather than someone else e.g. someone more junior or with different experience.]

28. If, therefore, you were to consider that some substantial part of the work which you are being asked to undertake (or which remains to be performed), or all of it, would be better performed – more quickly, more cheaply, more expertly or otherwise in the best interests of the client – by another barrister, separately instructed, you should discuss the separate instruction of that other barrister with the client.

29. The view of the Ethics Committee is that this remains the case, even if the terms of your instructions would permit the devilling of the work: CD2 and Rule C17 cannot be contracted out of simply by terms which permit delegation of work.

30. The client may consider that its interests are best served by you accepting or continuing with the instructions on the basis that some or all of the work will be devilled, subject to it being overseen and ultimately delivered under your responsibility. But that should be the client's choice, not yours.

### **Confidentiality**

31. If you have accepted instructions on terms that permit the delegation of the work required, that will implicitly allow you to communicate confidentially, and to the extent necessary, the confidential content of your instructions to a devil.

Communication of the content of the instructions to a devil, for the purpose of assisting you to carry out your instructions, will not involve any breach of confidence.

32. However, if the terms you have accepted do *not* permit such delegation (cf. Clause 6.1 of the COMBAR/ CLSS terms), it is likely to be a breach of confidence to communicate confidential information to a devil or other delegate without the client's informed consent.<sup>4</sup> Clause 10.2 of the COMBAR/ CLSS terms (version 3) is explicit in this regard:

"10.2 The Barrister may only disclose Information if and to the extent that:

- (a) disclosure is required by law;
- (b) disclosure is authorised by the Solicitor or Lay Client;
- (c) disclosure is required by the professional rules applicable to Barristers practising in England and Wales;
- (d) the Information is already in the public domain other than as a result of breach by the Barrister of the Barrister's obligations; or
- (e) disclosure is made to a pupil or mini-pupil of the Barrister."

The fact that Clause 10(e) permits disclosure to a pupil or mini-pupil emphasises that disclosure to a devil is not permitted. Such a disclosure would also in those circumstances be a breach of the requirement for lawful processing under the Data Protection Act 2018 ("DPA") and the GDPR,<sup>5</sup> insofar as the information disclosed is personal data.

## **Data Protection**

33. In many cases, your instructions will include personal data relating both to your lay or public access client and to third parties. As a controller of that data under the GDPR and DPA, the circumstances in which you will be able to use that data or disclose it to anyone else, including a devil, are restricted to the circumstances set out in the GDPR and the DPA.<sup>6</sup>

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<sup>4</sup> This document does not touch on the separate question of whether an instructed barrister can disclose the confidential content of his instructions to a colleague, to the extent necessary to discuss particular points or issues of difficulty. Cf. Code of Conduct 8<sup>th</sup> edition para 702

<sup>5</sup> General Data Protection Regulation (EU) 2016/679

<sup>6</sup> See generally, the General Data Protection Regulation (GDPR): Guide for Barristers and Chambers available at <http://www.barcouncilethics.co.uk/documents/gdpr-guide-barristers-chambers/>



34. For many tasks, it is likely that you will need to disclose some personal data to the devil. That disclosure will amount to “processing” the data. Art. 5(1) of the GDPR requires, amongst other things, that any personal data is processed lawfully, fairly and in a transparent manner, and for specified, explicit and legitimate purposes. You will need to establish (and be prepared to demonstrate) one of the specific legal grounds for processing in Art. 6. That means in effect you will need to be able to justify the devilling as being “necessary” (in the sense of being proportionate to the need) for one of the purposes set out in Arts. 6(1)(b)–(f),<sup>7</sup> or you will have to obtain from your client and anyone else whose personal data is given to the devil “freely given, specific, informed and unambiguous” consent “by a statement or by a clear affirmative action” (for the purposes of Art. 6(1)(a)) or be sure that the processing falls within the exemptions from these requirements set out in the Schedules to the DPA, see in particular Sch. 2 para. 19. The conditions set out in Art. 6(1) include “(f) *processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.*” This condition may be applicable in appropriate circumstances, but you will need to consider whether your interest in providing legal services for clients using a devil outweighs the rights of the persons whose personal data is involved. You will also need to make appropriate reference to the possibility of disclosure to a devil in your GDPR privacy notice.<sup>8</sup>

35. If the data is ‘special category data’,<sup>9</sup> then you will *additionally* need to show either that one of the bases in Art. 9(2)(b)–(j) applies, or that you have *explicit* consent (within the meaning of Art. 9(2)(a)) from your lay client and anyone else whose personal data is processed. Art. 9.2(f) permits processing of special category data if processing is “necessary for the establishment, exercise or defence of legal claims.” In [recent guidance from the ICO](#) the meaning of “legal claims” has been explained. This guidance recognises that “processing necessary for obtaining legal advice [or] establishing, exercising or defending legal rights” falls within the “legal claims” exception. This means that it is not limited to situations where contentious proceedings are underway or imminent.

36. If the data is or relates to criminal convictions and offences or related security measures (under Art. 10 GDPR) then you will need to be sure that the processing falls within the lawful conditions provided in s. 10 DPA or falls within a relevant

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<sup>7</sup> It might well not be ‘necessary’ to disclose personal data to the devil for the named purposes if the data can, for example, sensibly be redacted from any instructions before passing them on.

<sup>8</sup> You may find it helpful to refer to the practical suggestions made about this in the context of mini-pupils (see section 2 of the [mini-pupillage document](#))

<sup>9</sup> Such as information about a person’s race, ethnic origin, politics, religion, trade union membership, genetics, biometrics (where used for ID purposes), health, sex life or sexual orientation.

exemption. DPA Schedule 1 Part 3 para. 33 permits processing of personal data relating to criminal convictions and offences or related security measures where the processing *“(a) is necessary for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings), (b) is necessary for the purpose of obtaining legal advice, or (c) is otherwise necessary for the purposes of establishing, exercising or defending legal rights.”*

37. As regards explicit consent, guidance from the Information Commissioner<sup>10</sup> states that:

“Explicit consent is not defined in the GDPR, but it is not likely to be very different from the usual high standard of consent. All consent must involve a specific, informed and unambiguous indication of the individual’s wishes. The key difference is likely to be that ‘explicit’ consent must be affirmed in a clear statement (whether oral or written). The definition of consent says the data subject can signify agreement either by a statement (which would count as explicit consent) or by a clear affirmative action (which would not). Consent that is inferred from someone’s actions cannot be explicit consent, however obvious it might be that they consent. Explicit consent must be expressly confirmed in words. Individuals do not have to write the consent statement in their own words; you can write it for them. However you need to make sure that individuals can clearly indicate that they agree to the statement – for example by signing their name or ticking a box next to it. If you need explicit consent, you should take extra care over the wording. Even in a written context, not all consent will be explicit. You should always use an express statement of consent.”

38. If the data of third parties is included in the potential disclosure to the devil, then it is unlikely to be practicable to get consent from such third parties (in particular for reasons of confidentiality and privilege), and you will only be able to pass their data to a devil if you can rely upon one of the other legal grounds for processing in Art. 6 (and Art. 9, if the data is special category data) or if the data is criminal conviction or offences data under Art. 10, as explained in para. 36 above, or if any of the exemptions from these requirements set out in the Schedules to the DPA apply. You should exercise considerable caution about whether this is the case, certainly if you do not have your client’s agreement to the devilling arrangement. Indeed, it may be impossible to use a devil without disclosing this fact to your client.

39. Your privacy notice should be made available, and making it accessible on a website is helpful, though of course, third parties are likely to be completely unaware that the processing is being carried out, so this is of little use. For this reason,

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<sup>10</sup> <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/consent/what-is-valid-consent/>

processing personal data of third parties will almost always have to be justified under lawfulness conditions and/or the exemptions, rather than by relying on consent.

40. In addition, as a data controller you are required to maintain appropriate organisational and technical measures to ensure that the data is kept secure. You must also ensure that the devil will keep the data secure. The processing of the data by the devil must also be carried out pursuant to a formal data processing contract, which will be either a controller to controller agreement or a controller to processor agreement.<sup>11</sup> Which agreement is appropriate will depend on the control which you wish to exert over the performance of the work. If you are content for the devil to exercise their professional judgment about how the work is carried out then, then a controller to controller agreement is likely to be most appropriate. If there is no discretion as to how the work is done then a controller to processor agreement is likely to be most appropriate. The latter must include a requirement that the devil is to act only on instructions from you as data controller, and include all the other obligations referred to in Art. 28(3).

41. The disclosure of data to a devil may also be prohibited by the terms and conditions of your retainer. Similarly, if your client objects to the use of a devil, any disclosure for such purposes is unlikely to be considered fair or lawful.

42. It will be clear from the brief outline above that your data protection obligations raise questions of law on which the Bar Council cannot advise you, so you will need to take your own view on these questions, and on the steps you may need to take in order for you to be able to disclose personal data fairly and lawfully to a devil. If in doubt, you should not disclose personal data, particularly special category personal data, to a devil.

### **Non-discrimination**

43. You must not discriminate in your choices of devils on any unlawful or improper basis: CD8 and Rules C12 and C110-C112.

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<sup>11</sup> Assistance with completion of these agreements can be found on the ICO website at <https://ico.org.uk/for-organisations/data-protection-and-brexit/controller-to-controller-contract-builder/> and <https://ico.org.uk/for-organisations/data-protection-and-brexit/controller-to-processor-contract-builder/>

## The position of B, the devil

### The duties of the devil

44. As a devil, you will be working for and on the instructions of A, the instructed barrister. Your client, according to the BSB Handbook definition will be A rather than the lay client. You will be paid by A, on whatever basis or terms you will have agreed with A, and will have no right to be remunerated by A's client. Such terms as are agreed should be made or evidenced in writing.

45. On this basis, the devil will not generally owe all the duties of a barrister to the lay client. However, as instructions and other documents received from A will be received in confidence, you will owe the same duties of confidence to the client as does A. This applies regardless of whether the disclosure of information to you may have involved a breach of confidence by A. While you do not need a client-barrister relationship for the duty of confidentiality to exist, the BSB Handbook at gC46 makes this expressly clear:

"If you are a pupil of, or are devilling work for, a self-employed barrister, Rule C15.5 applies to you as if the client of the self-employed barrister was your own client."

Rule C15.5 provides:

"Your duty to act in the best interests of each client (CD2), to provide a competent standard of work and service to each client (CD7) and to keep the affairs of each client confidential (CD6) includes the following obligations:

...

.5 you must protect the confidentiality of each client's affairs, except for such disclosures as are required or permitted by law or to which your client gives informed consent."

Furthermore, your obligation to provide a competent standard of work to your client (in this case, barrister A) will remain. CD5, also, provides that "You must not behave in a way which is likely to diminish the trust and confidence which the public places in you or in the profession", and you should therefore also have regard to the best interests of the lay client while carrying out your work for A. Ultimately, however, the full ethical duties of the barrister, including to protect the best interests of the lay client (CD2) will rest with A.

## **Data protection**

46. If the material to be disclosed to you includes personal data within the meaning of the GDPR, then you will have to agree to be subject to the same obligations in relation to that data as you would in a case of your own (i.e. in which you have received instructions directly from a professional or public access client). Whether you are acting as a data processor rather than a data controller will depend on the terms of the agreement to carry out the work. If the terms are so constrained as to leave you no discretion about how you carry out the task then it is likely that you will be a data processor. However, if the terms leave room for you to exercise your own discretion about how to carry out the task, then it is likely that you will be a data controller. In any event, you should ensure that you keep the data secure and follow the instructions of A in relation to such data, which may include more onerous obligations than you consider necessary. You may not be entitled to disclose the information except as directed by A or as required by law. You must enter into a contract with A, which is either a controller to controller agreement or a controller to processor agreement which includes all the obligations referred to in GDPR Art. 28.3. Which agreement is appropriate will depend on the terms under which you agree to provide the work.

## **Public Access**

47. There no impediment to you, as a devil, accepting work from A, which A has undertaken to provide or carry out under public access instructions, even if you are not yourself entitled to accept public access instructions. It is A alone who will have accepted the public access instructions, and who must comply with the Public Access Rules.

## **Practical Considerations**

### **Conflicts of interest or duty**

48. It is important that the devilling of work is properly recorded in each barrister's Chambers' records, so that potential future conflicts of interest or duty can be identified at the outset and avoided.

### **Remuneration of devils**

49. The BSB Handbook contains no rules regulating the payment of fees by one self-employed barrister to another. (Cf. Code of Conduct 8<sup>th</sup> ed. at paragraphs 406.1 and 406.2.)

50. In the case of devilling, therefore, the basis/ rate of fees to be charged to A by B, the time for payment, and all other terms of payment will have to be a matter of

private arrangement between the two barristers. In case of dispute, reference should be made to the barristers' Head of Chambers, or to their Chambers' internal dispute resolution procedure. It may be possible to resolve the dispute using the Bar Council's [Mediation and Arbitration Service](#), but this depends on both parties having paid the Bar Representation Fee and being willing voluntarily to submit to arbitration or mediation. Ultimately, however, resort to the civil courts may be necessary.

### **Fee Notes and Taxation**

51. The Bar Council's current understanding is as follows.
52. Work performed by a devil, B, should be the subject of a fee note issued to the instructed barrister A.
53. B must treat remuneration received from such work as earnings from his professional practice and must ensure it is included in computations of his liability to income tax.
54. VAT should be charged by B on his fees for such work, if B is registered for VAT.
55. Barrister A (if registered for VAT) may treat VAT charged by B as deductible "input tax" for the purposes of calculating his or her own liability to pay VAT.
56. For income tax purposes, the fees of B are tax-deductible expenses of A.

### **Important Notice**

This document has been prepared by the Bar Council to assist barristers on matters of professional conduct and ethics. **It is not "guidance" for the purposes of the BSB Handbook I6.4, and neither the BSB nor a disciplinary tribunal nor the Legal Ombudsman is bound by any views or advice expressed in it.** It does not comprise - and cannot be relied on as giving - legal advice. It has been prepared in good faith, but neither the Bar Council nor any of the individuals responsible for or involved in its preparation accept any responsibility or liability for anything done in reliance on it. For fuller information as to the status and effect of this document, please see [here](#).