



The Bar Council

Conflicts – pre-instruction discussions

Purpose:	To draw barristers' attention to their professional obligations in relation to this subject
Scope of application:	All practising barristers
Issued by:	The Ethics Committee
Last reviewed:	February 2024
Status and effect:	Please see the notice at end of this document. This is not "guidance" for the purposes of the BSB Handbook I6.4.

Q. A solicitor for a defendant has spoken briefly to me about his client's case. The prosecution subsequently sought to brief me and sent me the papers. I have not had the opportunity to read the papers. Now the defence solicitor is seeking to brief me. Which set of instructions should I take?

A. This will depend upon the content of your discussion with the defence solicitor, the nature of the information provided at that time and, in particular, whether you learned anything about the defendant, the defence case or the solicitor's view of the case in circumstances whereby you owe a duty of confidence to the defendant or the defence solicitor in respect of the information disclosed. Such a duty of confidence may arise in law even though you have not been formally instructed.

You must not accept instructions to act in a particular matter if there is a real risk that information confidential to a person to whom you owe a duty of confidence (in this case, the defendant or the defence solicitor) may be relevant to the matter such that, if obliged to maintain confidentiality, you could not act in the best interests of the prospective client (in this case, the prosecution), see CD2 and rC21.4.

You should also consider whether, as a result of the information disclosed to you, there is a real prospect that you are not going to be able to maintain your independence in presenting the prosecution case, see CD4 and rC21.10.

If you have been given any such information then you ought to return the prosecution brief unread. There would be nothing then to prevent you accepting the defence brief in those circumstances.

If you have no such information and there is no other reason why you should not accept the prosecution brief, then as that brief arrived first, you should accept it in accordance with the 'cab rank rule', see rC29.

Although the question above is based on criminal proceedings, please note that the same considerations apply to civil cases.

Important Notice

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