

COMMISSION

PARIS - LONDRES

Responsable : ALAIN-CHRISTIAN MONKAM



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Déontologie comparée de l'avocat et du Solicitor Comparison Approach of Lawyers' Rules of Ethics

Intervenants / Speakers:

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PARIS-LONDON COMMISSION

Comparison Approach of
Lawyers' Rules of Ethics



Introduction

- Chair: Mr Alain-Christian Monkam, UK
solicitor and French avocat
- Speakers:
- Mr Antony Townsend, Chief Executive of the Solicitors Regulation Authority
- Mrs Michèle Brault, Mr Thomas Baudesson, Members of the *Conseil de l'Ordre* specialising in ethical issues at the Bar of Paris

Short History

- ▣ Role of the Solicitors Regulation Authority
- ▣ Role of the Ordre des Avocats

I- Solicitors and *avocats*: fundamentals of the two professions

UK aspects: the 10 principles of the SRA

- ▣ **You must:**
- ▣ uphold the rule of law and the proper administration of justice;
- ▣ act with integrity;
- ▣ not allow your independence to be compromised;
- ▣ act in the best interests of each *client*;
- ▣ provide a proper standard of service to your *clients*;
- ▣ behave in a way that maintains the trust the public places in you and in the provision of legal services;
- ▣ comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and co-operative manner;
- ▣ run your business or carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles;
- ▣ run your business or carry out your role in the business in a way that encourages equality of opportunity and respect for diversity; and
- ▣ protect *client* money and *assets*.

I- Solicitors and *avocats*: fundamentals of the two professions

French aspects:

the 16 ethical principles of the French bar: similarities and differences
with the SRA principles

▣ Points of similarity:

- ▣ uphold the rule of law and the proper administration of justice: principles of dignity, conscience and loyalty
- ▣ act with integrity: principles of dignity, conscience and probity
- ▣ not allow your independence to be compromised: principle of independence
- ▣ act in the best interest of each client: principle of competence, diligence, prudence and devotion
- ▣ provide a proper standard of service to your client: same principles as above
- ▣ behave in a way that maintains the trust the public places in you and the provision of legal services: principles of dignity and conscience

I- Solicitors and *avocats*: fundamentals of the two professions

French aspects:

the 16 ethical principles of the French bar - similarities and differences with
the SRA principles

Differences: from corporate social responsibility to human values

- Principles 7 to 10,
- Essential principles of the profession of *avocat*: principles of delicateness, humanity, impartiality, fraternity, courtesy

II- Relationships with the courts

UK aspects:

Chapter 5 of the SRA Code of Conduct: You and the Court

□ **Outcomes**

- You must achieve these outcomes:
- O(5.1) you do not attempt to deceive or knowingly or recklessly mislead the *court*;
- O(5.2) you are not complicit in another *person* deceiving or misleading the *court*;
- O(5.3) you comply with *court* orders which place obligations on you;
- O(5.4) you do not place yourself in contempt of *court*;
- O(5.5) where relevant, *clients* are informed of the circumstances in which your duties to the *court* outweigh your obligations to your *client*;
- O(5.6) you comply with your duties to the *court*;
- O(5.7) you ensure that evidence relating to sensitive issues is not misused;
- O(5.8) you do not make or offer to make payments to witnesses dependent upon their evidence or the outcome of the case.

II- Relationships with the courts

UK aspects:

Chapter 5 of the SRA Code of Conduct: You and the Court

- **Indicative behaviours**
- Acting in the following way(s) may tend to show that you have achieved these outcomes and therefore complied with the *Principles*:
- IB(5.1) advising your *clients* to comply with *court* orders made against them, and advising them of the consequences of failing to comply;
- IB(5.2) drawing the *court's* attention to relevant cases and statutory provisions, and any material procedural irregularity;
- IB(5.3) ensuring child witness evidence is kept securely and not released to *clients* or third parties;
- IB(5.4) immediately informing the *court*, with your *client's* consent, if during the course of proceedings you become aware that you have inadvertently misled the *court*, or ceasing to act if the *client* does not consent to you informing the *court*;

II- Relationships with the courts

UK aspects:

Chapter 5 of the SRA Code of Conduct: You and the Court

- **Indicative behaviours**
- IB(5.5) refusing to continue acting for a *client* if you become aware they have committed perjury or misled the *court*, or attempted to mislead the *court*, in any material matter unless the *client* agrees to disclose the truth to the *court*;
- IB(5.6) not appearing as an advocate, or acting in litigation, if it is clear that you, or anyone within your *firm*, will be called as a witness in the matter unless you are satisfied that this will not prejudice your independence as an advocate, or litigator, or the interests of your *clients* or the interests of justice.
- Acting in the following way(s) may tend to show that you have not achieved these outcomes and therefore not complied with the *Principles*:
- IB(5.7) constructing facts supporting your *client's* case or drafting any documents relating to any proceedings containing:
 - (a) any contention which you do not consider to be properly arguable; or
 - (b) any allegation of fraud, unless you are instructed to do so and you have material which you reasonably believe shows, on the face of it, a case of fraud;

II- Relationships with the courts

UK aspects:

Chapter 5 of the SRA Code of Conduct: You and the Court

- **Indicative behaviours**
- IB(5.8) suggesting that any *person* is guilty of a crime, fraud or misconduct unless such allegations:
 - (a) go to a matter in issue which is material to your own *client's* case; and
 - (b) appear to you to be supported by reasonable grounds;
- IB(5.9) calling a witness whose evidence you know is untrue;
- IB(5.10) attempting to influence a witness, when taking a statement from that witness, with regard to the contents of their statement;
- IB(5.11) tampering with evidence or seeking to persuade a witness to change their evidence;
- IB(5.12) when acting as an advocate, naming in open *court* any third party whose character would thereby be called into question, unless it is necessary for the proper conduct of the case;
- IB(5.13) when acting as an advocate, calling into question the character of a witness you have cross-examined unless the witness has had the opportunity to answer the allegations during cross-examination.

II- Relationships with the courts

French aspects:

- appreciation of *lie*
- a bit of history (old *Parlements*; reason for the mandat *ad litem*)
- a mix of prudence and distrust
- the French distinction between judges and *Magistrats* (NB: French *magistrats* are very different to English *magistrates*)
- two different tracks for two different professions / only few *avocats* become judges
- freedom of speech and the French approach of contempt of court for lawyers (pre/post 1981)

III- Legal privilege and confidentiality

UK aspects:

Chapter 4 of the SRA Code of Conduct - Confidentiality and disclosure

□ **Outcomes**

- You must achieve these outcomes:
- O(4.1) you keep the affairs of *clients* confidential unless disclosure is required or permitted by law or the *client* consents;
- O(4.2) any individual who is advising a *client* makes that *client* aware of all information material to that retainer of which the individual has personal knowledge;
- O(4.3) you ensure that where your duty of confidentiality to one *client* comes into conflict with your duty of disclosure to another *client*, your duty of confidentiality takes precedence;
- O(4.4) you do not act for A in a matter where A has an interest adverse to B, and B is a *client* for whom you hold confidential information which is material to A in that matter, unless the confidential information can be protected by the use of safeguards, and:
 - (a) you reasonably believe that A is aware of, and understands, the relevant issues and gives informed consent;
 - (b) either:
 - (i) B gives informed consent and you agree with B the safeguards to protect B's information; or
 - (ii) where this is not possible, you put in place effective safeguards including information barriers which comply with the common law; and
 - (c) it is reasonable in all the circumstances to act for A with such safeguards in place;
- O(4.5) you have effective systems and controls in place to enable you to identify risks to *client* confidentiality and to mitigate those risks.

III- Legal privilege and confidentiality

UK aspects:

Chapter 4 of the SRA Code of Conduct – Confidentiality and disclosure

- ▣ **Indicative behaviours**
- ▣ Acting in the following way(s) may tend to show that you have achieved these outcomes and therefore complied with the *Principles*:
- ▣ IB(4.1) your systems and controls for identifying risks to *client* confidentiality are appropriate to the size and complexity of the *firm* or *in-house practice* and the nature of the work undertaken, and enable you to assess all the relevant circumstances;
- ▣ IB(4.2) you comply with the law in respect of your fiduciary duties in relation to confidentiality and disclosure;
- ▣ IB(4.3) you only outsource services when you are satisfied that the provider has taken all appropriate steps to ensure that your *clients'* confidential information will be protected;

III- Legal privilege and confidentiality

UK aspects:

Chapter 4 of the SRA Code of Conduct – Confidentiality and disclosure

▣ **Indicative behaviours**

- ▣ IB(4.4) where you are an individual who has responsibility for acting for a *client* or supervising a *client's* matter, you disclose to the *client* all information material to the *client's* matter of which you are personally aware, except when:
 - ▣ (a) the *client* gives specific informed consent to non-disclosure or a different standard of disclosure arises;
 - ▣ (b) there is evidence that serious physical or mental injury will be caused to a person(s) if the information is disclosed to the *client*;
 - ▣ (c) legal restrictions effectively prohibit you from passing the information to the *client*, such as the provisions in the money-laundering and anti-terrorism legislation;
 - ▣ (d) it is obvious that privileged documents have been mistakenly disclosed to you;
 - ▣ (e) you come into possession of information relating to state security or intelligence matters to which the Official Secrets Act 1989 applies;
- ▣ IB(4.5) not acting for A where B is a *client* for whom you hold confidential information which is material to A unless the confidential information can be protected.
- ▣ Acting in the following way(s) may tend to show that you have not achieved these outcomes and therefore not complied with the *Principles*:
 - ▣ IB(4.6) disclosing the content of a will on the death of a *client* unless consent has been provided by the personal representatives for the content to be released;
 - ▣ IB(4.7) disclosing details of bills sent to *clients* to third parties, such as debt factoring companies in relation to the collection of book debts, unless the *client* has consented

III- Legal privilege and confidentiality

French aspects:

Client / lawyer communication

- ❑ a strict confidentiality protected by law (breach = criminal sanctions)
- ❑ based on the identity of the sender and recipient, not the *dominant purpose* of the communication
- ❑ waiver of privilege (an external lawyer cannot communicate information on a matter, even with the authorisation of the client; waiver of privilege only by the client, not the lawyer)
- ❑ no privilege for in-house lawyers

Communication between (external) lawyers

- ❑ the same strict confidentiality for all communications (as for client / lawyer communications)
- ❑ based on the same legal provisions (since 1997 only)
- ❑ clients cannot receive a copy of the correspondence exchanged between lawyers
- ❑ open letters (*lettres officielles*): a (very) limited exception
- ❑ difficulty to ensure confidentiality once a confidential information has been passed on to a client by the lawyer (the client is not bound by the confidentiality between lawyers)
- ❑ the concept of *without prejudice* does not exist in France

IV- Conflicts of interests

UK aspects:

Chapter 3 of the SRA Code of Conduct: Conflicts of interests

▣ **Systems**

- ▣ O(3.1) you have effective systems and controls in place to enable you to identify and assess potential *conflicts of interests*;
- ▣ O(3.2) your systems and controls for identifying *own interest conflicts* are appropriate to the size and complexity of the *firm* and the nature of the work undertaken, and enable you to assess all the relevant circumstances, including whether your ability as an individual, or that of anyone within your *firm*, to act in the best interests of the *client(s)*, is impaired by:
 - ▣ (a) any financial interest;
 - ▣ (b) a personal relationship;
 - ▣ (c) the appointment of you, or a member of your *firm* or family, to public office;
 - ▣ (d) commercial relationships; or
 - ▣ (e) your employment;
- ▣ O(3.3) your systems and controls for identifying *client conflicts* are appropriate to the size and complexity of the *firm* and the nature of the work undertaken, and enable you to assess all relevant circumstances, including whether:
 - ▣ (a) the *clients'* interests are different;
 - ▣ (b) your ability to give independent advice to the *clients* may be fettered;
 - ▣ (c) there is a need to negotiate between the *clients*;
 - ▣ (d) there is an imbalance in bargaining power between the *clients*; or
 - ▣ (e) any *client* is vulnerable;

IV- Conflicts of interests

UK aspects:

Chapter 3 of the SRA Code of Conduct: Conflicts of interests

□ **Prohibition on acting in conflict situations**

- O(3.4) you do not act if there is an *own interest conflict* or a significant risk of an *own interest conflict*;
- O(3.5) you do not act if there is a *client conflict*, or a significant risk of a *client conflict*, unless the circumstances set out in Outcomes 3.6 or 3.7 apply;
- **Exceptions where you may act, with appropriate safeguards, where there is a client conflict**
- O(3.6) where there is a *client conflict* and the *clients* have a *substantially common interest* in relation to a matter or a particular aspect of it, you only act if:
 - (a) you have explained the relevant issues and risks to the *clients* and you have a reasonable belief that they understand those issues and risks;
 - (b) all the *clients* have given informed consent in writing to you acting;
 - (c) you are satisfied that it is reasonable for you to act for all the *clients* and that it is in their best interests; and
 - (d) you are satisfied that the benefits to the *clients* of you doing so outweigh the risks;
- O(3.7) where there is a *client conflict* and the *clients* are *competing for the same objective*, you only act if:
 - (a) you have explained the relevant issues and risks to the *clients* and you have a reasonable belief that they understand those issues and risks;
 - (b) the *clients* have confirmed in writing that they want you to act, in the knowledge that you act, or may act, for one or more other *clients* who are *competing for the same objective*;
 - (c) there is no other *client conflict* in relation to that matter;
 - (d) unless the *clients* specifically agree, no individual acts for, or is responsible for the supervision of work done for, more than one of the *clients* in that matter; and
 - (e) you are satisfied that it is reasonable for you to act for all the *clients* and that the benefits to the *clients* of you doing so outweigh the risks.

IV- Conflicts of interests

UK aspects:

Chapter 3 of the SRA Code of Conduct: Conflicts of interests

□ **Indicative behaviours**

- Acting in the following way(s) may tend to show that you have achieved these outcomes and therefore complied with the *Principles*:
- IB(3.1) training *employees* and *managers* to identify and assess potential *conflicts of interests*;
- IB(3.2) declining to act for *clients* whose interests are in direct conflict, for example claimant and defendant in litigation;
- IB(3.3) declining to act for *clients* where you may need to negotiate on matters of substance on their behalf, for example negotiating on price between a buyer and seller of a property;
- IB(3.4) declining to act where there is unequal bargaining power between the *clients*, for example acting for a seller and buyer where a builder is selling to a non-commercial *client*;
- IB(3.5) declining to act for *clients* under Outcome 3.6 (*substantially common interest*) or Outcome 3.7 (*competing for the same objective*) where the *clients* cannot be represented even-handedly, or will be prejudiced by lack of separate representation;
- IB(3.6) acting for *clients* under Outcome 3.7 (*competing for the same objective*) only where the *clients* are sophisticated users of legal services;
- IB(3.7) acting for *clients* who are the lender and borrower on the grant of a mortgage of land only where:
 - (a) the mortgage is a standard mortgage (i.e. one provided in the normal course of the lender's activities, where a significant part of the lender's activities consists of lending and the mortgage is on standard terms) of property to be used as the borrower's private residence;
 - (b) you are satisfied that it is reasonable and in the *clients'* best interests for you to act; and
 - (c) the certificate of title required by the lender is in the form approved by the *Society* and the Council of Mortgage Lenders.
- Acting in the following way(s) may tend to show that you have not achieved these outcomes and therefore not complied with the *Principles*:

IV- Conflicts of interests

UK aspects:

Chapter 3 of the SRA Code of Conduct: Conflicts of interests

□ **Indicative behaviours**

- IB(3.8) in a personal capacity, selling to or buying from, lending to or borrowing from a *client*, unless the *client* has obtained independent legal advice;
- IB(3.9) advising a *client* to invest in a business, in which you have an interest which affects your ability to provide impartial advice;
- IB(3.10) where you hold a power of attorney for a *client*, using that power to gain a benefit for yourself which in your professional capacity you would not have been prepared to allow to a third party;
- IB(3.11) acting for two or more *clients* in a *conflict of interests* under Outcome 3.6 (*substantially common interest*) where the *clients'* interests in the end result are not the same, for example one partner buying out the interest of the other partner in their joint business or a seller transferring a property to a buyer;
- IB(3.12) acting for two or more *clients* in a *conflict of interests* under Outcome 3.6 (*substantially common interest*) where it is unreasonable to act because there is unequal bargaining power;
- IB(3.13) acting for two buyers where there is a *conflict of interests* under Outcome 3.7 (*competing for the same objective*), for example where two buyers are competing for a residential property;
- IB(3.14) acting for a buyer (including a lessee) and seller (including a lessor) in a transaction relating to the transfer of land for value, the grant or assignment of a lease or some other interest in land for value.

IV- Conflicts of interests

French aspects:

Client conflicts of interest

- ❑ a more or less similar approach of conflicts of interests
- ❑ specificity of the French fundamental principle of "tactfulness" (*principe de délicatesse*) which, for example, can prevent a lawyer from acting against a former client even in circumstances where there is no actual conflict or when there is no risk that confidential information is used.
- ❑ A less sophisticated legal market : the concept of *sophisticated client* not quite accepted yet.
- ❑ Reluctance to accept Chinese walls/information barriers (although the drafting of the rules on conflicts in 2000 expressly admitted it)

Personal/own interest conflicts

- ❑ a hot topic at present for politicians who want to join the Bar
- ❑ no specific provisions enacted by the French bars to impose systems and controls within law firms to prevent own interest conflicts

V- Publicity

UK aspects:

Chapter 8 of the SRA Code of Conduct: Publicity

□ **Outcomes**

- You must achieve these outcomes:
- O(8.1) your *publicity* in relation to your *firm* or *in-house practice* or for any other business is accurate and not misleading, and is not likely to diminish the trust the public places in you and in the provision of legal services;
- O(8.2) your *publicity* relating to charges is clearly expressed and identifies whether VAT and *disbursements* are included;
- O(8.3) you do not make unsolicited approaches in person or by telephone to *members of the public* in order to publicise your *firm* or *in-house practice* or another business;
- O(8.4) *clients* and the public have appropriate information about you, your *firm* and how you are regulated;
- O(8.5) your letterhead, website and e-mails show the words "authorised and regulated by the Solicitors Regulation Authority" and either the *firm's* registered name and number if it is an *LLP* or *company* or, if the *firm* is a *partnership* or *sole practitioner*, the name under which it is licensed/ authorised by the *SRA* and the number allocated to it by the *SRA*.

V- Publicity

UK aspects:

Chapter 8 of the SRA Code of Conduct: Publicity

□ **Indicative behaviours**

- Acting in the following way(s) may tend to show that you have achieved these outcomes and therefore complied with the *Principles*:
- IB(8.1) where you conduct other regulated activities your *publicity* discloses the manner in which you are regulated in relation to those activities;
- IB(8.2) where your *firm* is an *MDP*, any *publicity* in relation to that *practice* makes clear which services are regulated legal services and which are not;
- IB(8.3) any *publicity* intended for a jurisdiction outside England and Wales complies with the *Principles*, voluntary codes and the rules in force in that jurisdiction concerning *publicity*;
- IB(8.4) where you and another business jointly market services, the nature of the services provided by each business is clear.
- Acting in the following way(s) may tend to show that you have not achieved these outcomes and therefore not complied with the *Principles*:
- IB(8.5) approaching people in the street, at ports of entry, in hospital or at the scene of an accident; including approaching people to conduct a survey which involves collecting contact details of potential *clients*, or otherwise promotes your *firm* or *in-house practice*;
- IB(8.6) allowing any other *person* to conduct *publicity* for your *firm* or *in-house practice* in a way that would breach the *Principles*;
- IB(8.7) advertising an estimated fee which is pitched at an unrealistically low level;
- IB(8.8) describing overheads of your *firm* (such a normal postage, telephone calls and charges arising in respect of *client* due diligence under the Money Laundering Regulations 2007) as *disbursements* in your advertisements;
- IB(8.9) advertising an estimated or fixed fee without making it clear that additional charges may be payable, if that is the case;
- IB(8.10) using a name or description of your *firm* or *in-house practice* that includes the word "solicitor(s)" if none of the *managers* are *solicitors*;
- IB(8.11) advertising your *firm* or *in-house practice* in a way that suggests that services provided by another business are provided by your *firm* or *in-house practice*;
- IB(8.12) producing misleading information concerning the professional status of any *manager* or *employee* of your *firm* or *in-house practice*.

V- Publicity

French aspects:

- ▣ information that is true, informative, appropriate and non misleading
- ▣ soliciting
- ▣ rules relating to letter-head paper, website, emails
- ▣ third party site

VI-Fees

UK aspects:

Chapter 1: O(1.6) to O.(1.16) - Client Care

- **Outcomes**
- O(1.6) you only enter into fee agreements with your *clients* that are legal, and which you consider are suitable for the *client's* needs and take account of the *client's* best interests;
- O(1.7) you inform *clients* whether and how the services you provide are regulated and how this affects the protections available to the *client*;
- O(1.8) *clients* have the benefit of your *compulsory professional indemnity insurance* and you do not exclude or attempt to exclude liability below the minimum level of cover required by the *SRA Indemnity Insurance Rules*;
- O(1.9) *clients* are informed in writing at the outset of their matter of their right to complain and how *complaints* can be made;
- O(1.10) *clients* are informed in writing, both at the time of engagement and at the conclusion of your *complaints* procedure, of their right to complain to the *Legal Ombudsman*, the time frame for doing so and full details of how to contact the *Legal Ombudsman*;
- O(1.11) *clients'* *complaints* are dealt with promptly, fairly, openly and effectively;
- O(1.12) *clients* are in a position to make informed decisions about the services they need, how their matter will be handled and the options available to them;
- O(1.13) *clients* receive the best possible information, both at the time of engagement and when appropriate as their matter progresses, about the likely overall cost of their matter;
- O(1.14) *clients* are informed of their right to challenge or complain about your bill and the circumstances in which they may be liable to pay interest on an unpaid bill;
- O(1.15) you properly account to *clients* for any *financial benefit* you receive as a result of your instructions;
- O(1.16) you inform current *clients* if you discover any act or omission which could give rise to a claim by them against you.

VI-Fees

UK aspects:

Chapter 1: IB (1.13) to IB (1.24) – Client Care

□ **Fee arrangements with your client**

- IB(1.13) discussing whether the potential outcomes of the *client's* matter are likely to justify the expense or risk involved, including any risk of having to pay someone else's legal fees;
- IB(1.14) clearly explaining your fees and if and when they are likely to change;
- IB(1.15) warning about any other payments for which the *client* may be responsible;
- IB(1.16) discussing how the *client* will pay, including whether public funding may be available, whether the *client* has insurance that might cover the fees, and whether the fees may be paid by someone else such as a trade union;
- IB(1.17) where you are acting for a *client* under a fee arrangement governed by statute, such as a conditional fee agreement, giving the *client* all relevant information relating to that arrangement;
- IB(1.18) where you are acting for a publicly funded *client*, explaining how their publicly funded status affects the costs;
- IB(1.19) providing the information in a clear and accessible form which is appropriate to the needs and circumstances of the *client*;
- IB(1.20) where you receive a *financial benefit* as a result of acting for a *client*, either:
 - (a) paying it to the *client*;
 - (b) offsetting it against your fees; or
 - (c) keeping it only where you can justify keeping it, you have told the *client* the amount of the benefit (or an approximation if you do not know the exact amount) and the *client* has agreed that you can keep it;
- IB(1.21) ensuring that *disbursements* included in your bill reflect the actual amount spent or to be spent on behalf of the *client*;

□ **Complaints handling**

- IB(1.22) having a written *complaints* procedure which:
 - (a) is brought to *clients'* attention at the outset of the matter;
 - (b) is easy for *clients* to use and understand, allowing for *complaints* to be made by any reasonable means;
 - (c) is responsive to the needs of individual *clients*, especially those who are vulnerable;
 - (d) enables *complaints* to be dealt with promptly and fairly, with decisions based on a sufficient investigation of the circumstances;
 - (e) provides for appropriate remedies; and
 - (f) does not involve any charges to *clients* for handling their *complaints*;
- IB(1.23) providing the *client* with a copy of the *firm's complaints* procedure on request;
- IB(1.24) in the event that a *client* makes a *complaint*, providing them with all necessary information concerning the handling of the *complaint*.

VI-Fees

UK aspects:

Chapter 9 - Fees

□ **Outcomes**

- You must achieve these outcomes:
- O(9.1) your independence and your professional judgement are not prejudiced by virtue of any *arrangement with another person*;
- O(9.2) your *clients'* interests are protected regardless of the interests of an *introducer* or *fee sharer* or your interest in receiving *referrals*;
- O(9.3) *clients* are in a position to make informed decisions about how to pursue their matter;
- O(9.4) *clients* are informed of any financial or other interest which an *introducer* has in referring the *client* to you;
- O(9.5) *clients* are informed of any fee sharing *arrangement* that is relevant to their matter;
- O(9.6) you do not make payments to an *introducer* in respect of *clients* who are the subject of criminal proceedings or who have the benefit of public funding;
- O(9.7) where you enter into a financial *arrangement* with an *introducer* you ensure that the agreement is in writing.

VI-Fees

UK aspects:

Chapter 9 – Fee sharing and referrals

Indicative behaviours

- Acting in the following way(s) may tend to show that you have achieved these outcomes and therefore complied with the *Principles*:
- IB(9.1) only entering into *arrangements* with reputable third parties and monitoring the outcome of those *arrangements* to ensure that *clients* are treated fairly;
- IB(9.2) in any case where a *client* has entered into, or is proposing to enter into, an *arrangement* with an *introducer* in connection with their matter, which is not in their best interests, advising the *client* that this is the case;
- IB(9.3) terminating any *arrangement* with an *introducer* or *fee sharer* which is causing you to breach the *Principles* or any requirements of the Code;
- IB(9.4) being satisfied that any *client* referred by an *introducer* has not been acquired as a result of marketing or other activities which, if done by a *person* regulated by the SRA, would be contrary to the *Principles* or any requirements of the Code;
- IB(9.5) drawing the *client's* attention to any payments you make, or other consideration you provide, in connection with any *referral*;
- IB(9.6) where information needs to be given to a *client*, ensuring the information is clear and in writing or in a form appropriate to the *client's* needs.
- Acting in the following way(s) may tend to show that you have not achieved these outcomes and therefore not complied with the *Principles*:
- IB(9.7) entering into any type of business relationship with a third party, such as an unauthorised *partnership*, which places you in breach of the SRA *Authorisation Rules* or any other regulatory requirements in the Handbook;
- IB(9.8) allowing an *introducer* or *fee sharer* to influence the advice you give to *clients*;
- IB(9.9) accepting *referrals* where you have reason to believe that *clients* have been pressurised or misled into instructing you.

VI-Fees

French aspects:

- ▣ brief history
- ▣ no culture of written agreement nor description of the diligences
- ▣ ban on agreement quota litis
- ▣ ban on referral
- ▣ del credere ("*Ducroire*")