

Clinics: Conflicts of interest



Conflicts of interest are an issue requiring special attention in pro bono legal advice clinics, particularly due to the fact that volunteer lawyers may have commercial or government clients in their everyday jobs whose interests may differ from those of clinic clients. With appropriate policies and systems in place these risks can be managed.

Contents

Introduction	1
What is a conflict?	1
Confidentiality and disclosure.....	2
Regulations	3
Conflict policy and training	3
Screening for conflicts	3
Anonymous clients	5
When you are unable to assist	5
Organisational governance and conflicts.....	5
Pro bono lawyers and conflicts.....	6

Introduction

The Solicitors Regulation Authority (SRA) Code of Conduct regulates law firms, clinics and solicitors, ensuring that they provide a competent and professional service to all clients they advise. Clinic work, including university based clinics, is, therefore, subject to the professional rules and disciplinary procedures of the Code of Conduct

Supervising solicitors and staff must ensure that the clinic operates within the relevant rules and codes. It is essential that volunteers and staff become familiar with the [SRA Code of Conduct \(The Code\)](#) and clinic procedures and adhere to them.

What is a conflict?

Conflicts can arise where a clinic is approached for advice by/where:

- two or more clients who have conflicting interests to each other, or
- one or more clients where the other party to the legal problem is a former client of the clinic and as a result of acting the clinic holds information relevant to the client's case, or
- due to an own interest conflict (which is any situation where your duty to act in the best interests of any client in relation to a matter conflicts, or there is a

significant risk that it may conflict, with your own interests) in relation to that or a related matter.

- there is a personal relationship (of friendship, blood relationship or a sexual relationship) with the client.
- clinics' staff or volunteers have a personal interest in the client's matter.

This is not an exhaustive list, and other conflicts can arise such as:

- Acting against the clinic itself.
- Acting against an advice agency, charity or university which is hosting the clinic.
- Acting against a law firm which a solicitor volunteer works for.

In this document we discuss legal conflicts of interest. Other situations which may be described as a 'conflict', although not in the legal sense, may also arise namely:

- commercial conflicts – a firm may decline to assist a pro bono client because the other party is not a current or former client but is a potential commercial client in the future.
- ethical conflicts – whilst there is no legal impediment to assisting the client, the lawyer may have ethical grounds for not accepting instructions, for example disagreement with a client's cause or adversarial style

Confidentiality and disclosure

One type of conflict which might give rise to an obligation under The Code to cease acting is an irresolvable conflict between the duty to keep clients' information confidential and the duty to disclose material information to clients on the other.

Protecting confidential information is a fundamental feature of the relationship with clients. The duty extends beyond the end of the retainer and the death of the client. Clinics are also bound by a duty of disclosure, which requires disclosure of material information to clients. Where there is an irresolvable conflict of interest, the duty of disclosure takes precedence and you should cease to act for the client to whom you cannot disclose the confidential information.

There are limited exceptions where it might be possible to continue to act where there is a conflict between the duty of disclosure and the duty of confidentiality:

- where the client/former client authorises the disclosure;
- Pursuant to a statutory duty, e.g. Proceeds of Crime Act 2002;
- Where necessary to prevent the client or third party committing a criminal act which is likely to result in serious bodily harm;
- Under a court order or police warrant;
- If the information is already in the public domain.

Regulations

The relevant rules for conflict of interest in The Code are:

- A prohibition on acting in conflict situations, or situations where there is a significant risk of conflict; where 'conflict' can either be a conflict between your duty to act in the best interests of two or more different clients, or between your interests and those of a client.
- Having effective systems and controls in place to enable you to identify and assess both conflict situations.

Whilst there are exceptions to the prohibition on acting in a conflict situation, these are very limited in nature. The Code stresses that you must exercise caution when using these exceptions, with the Law Society recommending that you record your decision and your reason for it if you decide to act in these circumstances.

Clinics participating in the LawWorks Clinics Network under a Waiver issued by the SRA from the Professional Indemnity Insurance Rules are also required by that waiver to ensure that, "no work is to be done for persons or in situation in relation to which there is a considerable likelihood of a conflict of interest arising".

Conflict policy and training

In order to help staff and volunteers comply with these rules a clinic should have in place a policy setting out the approach to be taken with regard to conflicts.

All clinic staff and volunteers should receive training in the policy and its application. Furthermore, new staff and volunteers should receive induction on the policy.

Screening for conflicts

The clinic should have a system in place to ensure that a conflict check is undertaken prior to any person being provided with legal assistance.

This will involve checking the name and any aliases of the potential client and the other party to the legal matter against a list or database of current and previous clients of the clinic.

In cases where clients or other parties may have a common name (like "John Smith") further identifying details may be needed such as the person's date of birth.

The clinic will therefore need a readily searchable system for recording the name, alias and date of birth of former and current clients, as well as details of other parties.

Ideally, this should be done by using an electronic database or case management system to which previous party and other party details have been inputted. This is preferable to using a paper based conflict register or other electronic system (e.g. spreadsheet), however some clinics might not have access to such IT in which case an effective and searchable paper system should be maintained.

In order to ensure the accuracy of the conflict check it is important to promptly input details of any new clients receiving assistance into the system. Once a conflict check has been completed, a signed and dated record should be taken indicating that a conflict check has been undertaken. For a client who receives advice this may be done on the advice record, and for ongoing clients prominently on the client file.

Any potential conflict should be discussed with a clinic supervisor. If a volunteer identifies a conflict, they should consult a clinic supervisor before taking any action or giving advice. Should the clinic supervisor not be immediately contactable then, subject to the nature of the potential conflict, volunteers might need to consider making another appointment at a time when the conflict issue identified can be resolved.

Your conflict database(s) should provide an easily cross-searchable, up-to-date, and comprehensive index that allows you to identify:

- Current and former clients (including former, maiden and alternative names)
- People for whom the clinic has declined to act
- Clients previously represented by advisors and/or lawyers who have joined the clinic from elsewhere

Ideally, your database should include the following fields:

- Date opened
- Matter name
- File reference (if any)
- Client name (including former, maiden and alternative names, such as “also known as” name)
- Advisor
- Description of matter
- Conflict names: (names of related and adverse parties and their relationship to the client – including family members, common law spouses and others)
- Date closed: (date file was closed)
- Closed file number/name: (number/name assigned to closed file)
- Date destroyed: (the date when the file was destroyed)

What makes an effective conflicts-checking system?

- The system is integrated with other office systems;
- Access to conflicts data is easy and available to everyone in the office;
- Checks are conducted at three stages:
 - before the initial interview
 - before a new file is opened
 - when a new party enters the case/matter
- Searches should look for close matches in the spelling of names;
- Conflicts entries show the details of any relationship between parties;
- All parties connected with a case are entered onto the system; and,

- Conflict searches are documented in the file.
- Conflict searches should be undertaken whenever new members of staff/volunteers are taken on by the clinic.

The first conflicts check should help you determine whether or not to meet the client. Following the first meeting you will have more information about the client, the matter and any other interested parties in order to undertake a more detailed conflict check.

Ideally, clinics should assign responsibility for conflict checking to a single person who, ideally, would sign a conflicts form following each check.

For many clinics it will be feasible to circulate a list of new and existing clients and matters to all advisory staff/volunteers.

Anonymous clients

So that conflict check searches may be undertaken against all former clients it is important to receive client identifying details for all new clients. For this reason, a clinic is unable to provide advice to clients who are unwilling to provide their full name and other essential details such as a date of birth. It is also recommended that any aliases currently or previously used also be obtained.

Clients who are reluctant to provide their details will usually do so once care is taken by volunteers to explain the purpose of requesting the details.

When you are unable to assist

Where there is a conflict of interest or significant risk of a conflict arising then the clinic will normally be unable to advise or act for a client. Care should be taken when informing someone that your clinic is unable to assist in these circumstances. The fact that you have assisted the other party to a legal matter is confidential information and should not be disclosed.

In circumstances where you have learned certain details of the legal issue and in a context where alternative free legal help may be difficult to obtain, a clinic should offer to actively refer a client to another clinic or agency offering advice or assistance in the relevant area of law.

Clinics are encouraged to develop 'conflict protocols' with each other for the acceptance of referrals where a conflict arises. Technology such as web conferencing and Skype may be of assistance where there is some distance separating protocol partners. The LawWorks Clinics Team would be pleased to assist you to investigate potential protocol partners and systems to facilitate such arrangements.

Organisational governance and conflicts

Persons seeking assistance from a pro bono clinic may have a legal problem involving a member of the clinic's or host organisation's board of trustees.

To avoid a conflict of interest in these circumstances a system should be in place for screening for conflicts against trustees as well as clinic staff and volunteers. It may be easiest to input relevant details into the database or case management system that is used for other conflict screening.

Pro bono lawyers and conflicts

A further area in which a conflict may arise is where a lawyer volunteers for a clinic and their firm assists or has assisted the other party to the legal matter. Even where the lawyer does not have personal knowledge of the legal matter, it may be imputed to them and prevent them from advising or acting.

A step to be taken to avoid conflicts in these circumstances is to provide a list of clients who will be attending the clinic to the firm in advance of the session so that they are able to undertake conflict screening in advance.

The written volunteer agreement between clinic and volunteer should state that such details provided by the clinic to the firm be used confidentially.

For Further Information

The [SRA Code of Conduct is available from the SRA website](#).

The Law Society has published a [practice note on conflict of interests](#) on their website.