

- Owned and managed by a combination of different types of lawyers; i.e. approved persons supported by non-lawyers
- Services must be exclusively legal services
- Moorhead, Sherr and Paterson survey (2003): non-lawyers offered an improved quality of service but at greater cost; if one looks at the hourly rate for services, lawyers do indeed charge more than mediators or non-legal advisers. their survey showed that non-lawyer agencies took up to two-and-a-half hours more per matter than did solicitors. This meant that the total cost for a case dealt with by non-lawyers was, in fact, sometimes more than twice as expensive as one dealt with by lawyers

Future of Professional Ethics

- Arthurs: survival of professional ethics depends upon:
 - 'whether the profession's subcultures can remain sufficiently stable and long-lasting to enable them to continue to perform their traditional roles of instructing, mentoring, censuring, defending, nurturing and regulating, their members. If not, there will be a tendency to look to formal institutions – law schools, governing bodies, outside regulatory bodies – to perform this indispensable work of subcultures. There is no evidence that these institutions will be equal to the challenge'
 - Culture of institutions and organizations shapes individual behavior
- Compliance officers
- Boon:
 - All values under pressure due to developments in the legal services market
 - Firms must work harder to Produce a common professional culture
 - Convince the public this is worth preserving
- Kronman: law firms becoming more like businesses

Ch.5 Confidentiality and Legal Privilege

- Boon: legal professional privilege and doctrine of confidentiality are under increasing attack
- He believes there are Two justifications:
 - Proceedings relating to children are not really adversarial and thus no need to maintain privilege
 - Need to protect the public interest, legal privilege may sometimes need to give way to the need of protection of welfare of a child. Or prevention and detection of crimes

Relationship between lawyers and clients

- Some suggested: Client's interests should take precedence over those of the lawyer

Indeed; Dinerstein supported the views:

- Participatory approach: continual dialogue between lawyer and client

- At each stage progress of the work should be evaluated in the light of the client aim and interest
- The relationship between lawyer and client should be **Client centred** because Dinerstein stated:
- *'Client centred relationships entail shared decision-making responsibility and mutual participation by the lawyer and client. By avoiding the trap of either lawyer or client-dominance, these relationships provide greater opportunities for facilitating wise client decisions in a supportive atmosphere.'*
- It is clear here that the best interest of the client should always come first, and
- Dinerstein said client should be the heart of the relationship
- Lawyers should always think in the best interest of their clients

Traditional/paternalistic view:

- Lawyer should be left to take decisions in the best interests of the client
- Lawyer has superior knowledge, skills, and experience and therefore knows what is best hence should be the one making decision

Modern view:

- Lawyer acts as counsellor and adviser
- Client takes control of decision making

3 Models of Lawyer-Client Relationship

- Agency
 - Lawyer acting as agent; client as principal
 - Lawyer as agency needs to act in best interests of the client, the principal
- Contractual
 - Contract between lawyer and client
 - Both have rights and duties
 - E.g. the lawyer has the duties to advise the client and he has the right to be paid for the advice
 - Cf. client has the right to be advised and be represented by the lawyer, client got duty to pay for the advice
- Fiduciary (trust)
 - Lawyer has superior knowledge and skill, thus is a fiduciary
 - Lawyer must take special care to ensure that no advantage is taken of the client
 - It has been suggested that the fiduciary model is the best reflected in the SRA code of Conduct 2019

Professional Rules:

BSB Code of Conduct 2019

- **CD core duty**
- **CD2:** must act in the best interests of each client
- **CD6:** must keep the affairs of each client confidential
- **CD7:** must provide a competent standard of work and service to each client

SRA Code of Conduct 2019

- **Principle 7:** confirmed You act in the best interests of each *client*
- 2007, 2011, 2019 code → Encourage a greater flow of information between the solicitors and the client
- On the surface it appears the fiduciary model is favoured with a reasonably high level of client participation

CONFLICT OF INTERESTS

SRA Code of Conduct 2019

- Defined Conflict of Interest as ‘a situation where your separate duties to act in the best interests of **TWO OR MORE CLIENTS IN RELATION TO THE SAME OR A RELATED MATTERS** conflict.’
- **6.1:** ‘You **do not act if there is an own interest conflict or a significant risk of such a conflict.**’
- **6.2:** ‘You **do not act in relation to a matter or particular aspect of it if you have a conflict of interest or a significant risk of such a conflict** in relation to that matter or aspect of it, **UNLESS:**
 - a) the *clients have a substantially common interest* in relation to the matter of the aspect of it, *as appropriate*; or
 - b) the *clients are competing for the same objective*, and the *conditions below are met*, namely that:
 - i) **all the clients have given informed consent**, given or evidenced in writing, to you acting;
 - ii) where appropriate, **you put in place effective safeguards to protect your clients**’ confidential information; and
 - iii) you are satisfied it is reasonable for you to act for all the clients.’
- It is therefore precisely clear when can a solicitor act and what they can act

6.1: conflict with solicitor own interests:

This includes:

- Buying or selling property to client; lending client money; advising client on a venture from which the lawyer or the lawyer’s family would profit (lawyers is not prohibited to do these things, provided they revealed these to their clients)
- lawyer’s family or someone with whom the lawyer has an intimate relationship (*Richards v Law Society*), where the client is entering a transaction with the children of the solicitor
- *Solicitors Regulation Authority v Dennison*: CA agreed that that partner holding 1/3 of the shares gaining profit in the arrangement without notifying other partners should be struck off
- Fred West’s solicitor: Howard Ogden

BSB Code of Conduct 2019 – rule c21

- rC21: ‘You **must not accept instructions to act** in a particular matter if: