

## To come to effect on 31 January 2021

### Standards for solicitor higher court advocates in civil proceedings Evidence Unit



No.	Assessment outcome: what candidates with higher rights will be able to do:	Assessment criteria: what successful candidates will have shown they can do	Indicative syllabus content
	<p><b>General note:</b> These evidence standards cover civil advocacy generically. They apply to all civil proceedings but do not extend to specialist areas of law, for instance family courts. Advocates should ensure they are familiar with the particular rules of evidence, practice and procedure for the courts in which they practise.</p> <p>Advocates must be able to apply the rules of evidence to a set of facts, determine what evidence is relevant and understand its admissibility in the context of case and cost management.</p>		
1.	Apply the burden and standard of proof to the factual analysis of a dispute.	1 a. Apply the burden of proof in civil proceedings including the incidence of the reverse burden. 1 b. Distinguish the evidential from the persuasive burden of proof. 1 c. Apply the standard of proof in civil proceedings and show how that standard applies to allegations of criminal or dishonest behaviour.	<ul style="list-style-type: none"><li>• The burden of proof.</li><li>• The incidence of the reverse burden.</li><li>• The evidential and the persuasive burden</li><li>• The standard of proof and the balance of probabilities.</li><li>• Admissions of fact and notices to admit.</li><li>• Admissions, denials and requirement of proof in statements of case.</li><li>• Withdrawing admissions.</li><li>• Presumptions of fact and law including the doctrine of <i>res ipsa loquitur</i>.</li><li>• Adverse inferences.</li></ul>

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2.	Apply the rules of disclosure and inspection of documents (or a suite of documents) in civil proceedings.	2 a. Differentiate between disclosure and inspection. 2 b. Apply the rules governing disclosure and inspection. 2 c. Recognise and explain the different ways of claiming (and waiving) privilege from inspection and how privilege may be waived. 2 d. Apply the rules governing inadvertent inspection. 2 e. Apply the rules governing pre-action and non-party disclosure.	CPR 31 and especially the provisions governing: <ul style="list-style-type: none"> <li>• The procedure for disclosure and inspection and the meaning of ‘document’ and ‘control’ of documents.</li> <li>• The continuing duty and scope of disclosure and the search for documents.</li> <li>• Specific disclosure.</li> <li>• Documents which are privileged from inspection and the grounds for claiming privilege.</li> <li>• Waiver of privilege, express and implied.</li> <li>• Pre-action disclosure.</li> <li>• Non-party disclosure.</li> <li>• The SRA Code of Conduct for Solicitors, RELs and RFLs and inadvertent inspection.</li> <li>• Electronic disclosure.</li> </ul>
3.	Distinguish between the different categories of evidence in civil proceedings.	3 a. Identify what evidence is and is not admissible and for what purpose. 3 b. Recognise hearsay evidence and explain how it can be adduced in civil proceedings. 3 c. Demonstrate an understanding of how the court evaluates the weight of hearsay evidence.	<ul style="list-style-type: none"> <li>• The difference between witnesses of fact and expert witnesses.</li> <li>• CPR 32 (Evidence generally).</li> <li>• In the Civil Evidence Act 1995 the provisions dealing with:               <ul style="list-style-type: none"> <li>○ The definition of hearsay evidence.</li> <li>○ The weight to be attached to hearsay evidence.</li> <li>○ The credibility of hearsay evidence.</li> <li>○ Previous statements.</li> <li>○ Hearsay notices.</li> </ul> </li> </ul>

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4.	Adduce admissible evidence from witnesses of fact.	4 a. Differentiate between factual and opinion evidence. 4 b. Apply the different rules governing factual evidence (i) in preliminary proceedings and (ii) at trial. 4 c. Prepare and evaluate the advocate's own witness statements. 4 d. Analyse and evaluate the opponent's witness statements.	<ul style="list-style-type: none"> <li>• The competence and compellability of witnesses.</li> <li>• The use of witness summonses.</li> <li>• The formal requirements for the content and service of witness statements.</li> <li>• Witness statements in case management proceedings.</li> <li>• The rules governing evidence in chief, cross examination and re-examination and the role of each.</li> <li>• Live evidence given remotely, eg by video link.</li> </ul>
5.	Adduce admissible expert evidence.	5 a. Apply the rules governing expert witnesses, the preparation of their evidence and their duty to the court. 5 b. Make or resist an application for permission to adduce expert evidence. 5 c. Obtain and submit expert evidence in the proper form. 5 d. Analyse and evaluate the opponent's expert evidence.	<ul style="list-style-type: none"> <li>• The role of expert evidence in civil procedure.</li> <li>• Obtaining permission to rely on expert evidence and the factors the court will consider when giving or refusing permission.</li> <li>• The protocol for the instruction of experts in civil proceedings.</li> <li>• CPR 35 and PD 35: the form and content of an expert report.</li> <li>• Joint experts and meetings of experts.</li> <li>• Opinion evidence given by witnesses of fact.</li> <li>• Cost implications of expert witnesses.</li> </ul>

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6.	Utilise other categories of evidence.	6 a. Make appropriate use of 'real' evidence and exhibits. 6 b. Recognise and manage similar fact evidence. 6 c. Recognise and manage bad character evidence. 6 d. Adduce other forms of evidence. 6 e. Apply the rules governing late evidence and relief from sanctions.	<ul style="list-style-type: none"> <li>• The definition of 'real' evidence.</li> <li>• The use of photographs, models, visual aids, and site visits.</li> <li>• The relevance and importance of photographs, models, visual aids, and site visits.</li> <li>• The two-stage test for similar fact evidence.</li> <li>• 'PD 16.8.1: Using the defendant's previous convictions.</li> <li>• Cross examining a witness on their bad character.</li> <li>• In the Civil Evidence Act 1995 provisions dealing with public records, works of reference, business and public authority records.</li> <li>• Late evidence, sanctions and relief from sanctions.</li> </ul>

**Standards for solicitor higher court advocates in civil proceedings  
Advocacy Unit**

<b>No.</b>	<b>Assessment outcome: what advocates with higher rights will be able to do</b>	<b>Assessment criteria: what successful candidates will have shown they can do</b>	<b>Indicative syllabus content</b>
	<p><b>Introduction:</b> Advocacy in the higher courts requires demanding standards of skill and knowledge. To meet those standards a solicitor must demonstrate that they are competent to undertake both trial and interim advocacy at a level commensurate with the reasonable expectations of the client, the judge and other court users.</p>	<p><b>Introduction:</b> As with any examination or assessment, it is not anticipated that every candidate will be tested on every criterion. A flexible assessment will test a representative selection of knowledge and skills.</p> <p>However, a candidate will fail the assessment if he commits an egregious error meaning an error which, had it been replicated in practice would have justified disciplinary or regulatory proceedings or a wasted costs order or would inevitably have caused serious and irreparable harm to the client’s case.</p> <p>By way of example only, a candidate may commit an egregious error if they attempt to mislead the court by inventing helpful, or suppressing unhelpful, evidence, if they significantly misrepresents the law, if their advocacy, taken as a whole, demonstrably harms their client’s case or if they are grossly discourteous to the court or a witness.</p>	<p><b>Introduction:</b> The syllabus will, as a matter of course, be adapted to include any significant future changes in the law, procedure or practice.</p>
<p><b>Knowledge: to be assessed primarily in a written assessment</b></p>			
	<p>Successful candidates will be able to:</p>	<p>The successful candidate can:</p>	<p>The syllabus will include:</p>
<p>1. Advise on the alternatives to litigation and the essential preliminaries for litigation in the higher courts.</p>		<p>1 a. Advise on a negotiated settlement and the various types of alternative dispute resolution and offers to compromise.</p>	<ul style="list-style-type: none"> <li>• An overview of the various types of alternative dispute resolution eg arbitration, mediation and judicial evaluation.</li> </ul>

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1.	<i>(continued)</i>	<p>1 b. Advise on and comply with the pre-action protocols.</p> <p>1 c. Advise on the law and practice relating to offers to compromise.</p>	<ul style="list-style-type: none"> <li>• An overview of the pre-action protocols, eg the personal injury and professional negligence protocols.</li> <li>• The requirements of the pre-action Practice Direction when no protocol is prescribed.</li> <li>• Sanctions for non-compliance.</li> <li>• Costs implications.</li> <li>• Limitation deadlines.</li> <li>• Part 36 offers and their costs consequences.</li> <li>• Calderbank letters and their costs implications.</li> </ul>
2.	Advise on and conduct the interim and preparatory stages of litigation in the higher courts.	2 a. Demonstrate a good working knowledge of the Civil Procedure Rules generally and a detailed knowledge of the more important Rules and Practice Directions as specified in the syllabus.	<ul style="list-style-type: none"> <li>• The Civil Procedure Rules and Practice Directions and specifically those dealing with: <ul style="list-style-type: none"> <li>○ Time limits and service of documents</li> <li>○ Statements of case.</li> <li>○ Default and summary judgments and striking out.</li> <li>○ Interim remedies and injunctions.</li> <li>○ Costs, including costs budgeting, security for costs and interim costs orders.</li> <li>○ Disclosure, inspection of documents and privilege.</li> <li>○ Preparation for trial and trial procedures.</li> <li>○ Appeals.</li> <li>○ Pre-action disclosure.</li> <li>○ Non-party disclosure.</li> </ul> </li> </ul>

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		2 b. Demonstrate familiarity with the Queen's Bench Guide.	<ul style="list-style-type: none"> <li>• An overview of the Queen's Bench Guide.</li> <li>• Rules of allocation and venue.</li> <li>• Case management.</li> </ul>
2. <i>(continued)</i>		2 c. Revise, correct and improve a defective or incomplete draft of a statement of case, court order, or witness statement: alternatively draft the entire document.	<ul style="list-style-type: none"> <li>• The function and importance of statements of case, including requests for further information, and the rules which govern them.</li> <li>• The rules applicable in certain types of case eg contract and personal injury claims.</li> <li>• Pleading the appropriate remedy.</li> <li>• The form and content of a witness statement.</li> <li>• The distinction between evidence and statements of case.</li> <li>• The use of precedents and conventional wording.</li> <li>• Consent and Tomlin orders.</li> </ul>
		2 d. Demonstrate an understanding of how to prepare for and/or conduct an effective cost and case management conference.	<ul style="list-style-type: none"> <li>• The rules governing case management conferences. including telephone hearings.</li> <li>• Case summaries.</li> </ul>
		2 e. Advise on case management directions and the sanctions and costs consequences of non-compliance.	<ul style="list-style-type: none"> <li>• Standard and special directions.</li> <li>• Time limits.</li> <li>• Sanctions, and the consequences of non-compliance, including orders for costs: relief from sanctions.</li> </ul>
<b>Skills: to be assessed primarily in a practical assessment</b>			
	Successful candidates will be able to:	The successful candidate can:	The syllabus will include:

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3.	Conduct an effective examination in chief (and re-examination) in the higher courts.	<p>3 a. Conduct an effective examination in chief in compliance with the rules</p> <p>3 b. Demonstrate an understanding of the practice in relation to additional or supplementary questions to a witness who has verified their written statement;</p> <p>3 c. Demonstrate an understanding of the practice in relation to the examination of a hostile witness;</p> <p>3 d. Demonstrate an understanding of the practice in relation to the examination of expert witnesses</p> <p>3 e. Understand when re-examination is required.</p>	<ul style="list-style-type: none"> <li>• The rules governing examination in chief.</li> <li>• The verification of witness statements.</li> <li>• Additional and supplementary questions.</li> <li>• Relevance and objectives.</li> <li>• Young or vulnerable witnesses</li> <li>• Hostile witnesses.</li> <li>• Opinion evidence and expert witnesses</li> <li>• The rules and technique of re-examination.</li> </ul>
4.	Write a concise and accurate case theory setting out the most plausible explanation, consistent with the evidence, as to why their client(s) should succeed.	<p>4 a. Identify and analyse disputed and undisputed facts and, as to disputed facts, how the evidence stands and what further evidence might be obtained.</p> <p>4 b. Identify and analyse 'good' (favourable) and 'bad' (unfavourable) facts.</p> <p>4 c. Analyse and advise on any relevant issues of law.</p> <p>4 d. Explain how, in the light of those analyses, the court might best be persuaded to give a favourable judgment.</p>	<ul style="list-style-type: none"> <li>• The definition of a case theory.</li> <li>• Its importance in preparing for trial.</li> <li>• Identifying the issues of fact and law.</li> <li>• Identifying gaps and weaknesses in the evidence.</li> <li>• Addressing the opponent's evidence.</li> <li>• Good fact / bad fact analysis.</li> <li>• Finding an 'angle' on the case.</li> </ul>



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5.	Write a persuasive skeleton argument and use it to support a legal submission in the higher courts.	<p>5 a. Write a concise, accurate and persuasive skeleton argument.</p> <p>5 b. Support a persuasive skeleton argument with accurate and up-to-date legal research.</p> <p>5 c. Comply with the Civil Procedure Rules and the relevant Practice Directions and Practice Notes when producing a skeleton argument.</p> <p>5 d. Explain, within the skeleton argument, the issues and what findings and/or order(s) the court is asked to make.</p> <p>5 e. Use the skeleton argument effectively in the course of a legal submission</p> <p>5 f. Maintain professional standards throughout.</p>	<ul style="list-style-type: none"> <li>• The role and importance of written advocacy.</li> <li>• The conventional form of a skeleton argument.</li> <li>• The content of a skeleton argument.</li> <li>• Introductions.</li> <li>• Chronologies.</li> <li>• Cross-references to the evidence.</li> <li>• Citation of authorities and legislation.</li> <li>• Conclusions.</li> <li>• Using a written skeleton to support an oral submission.</li> </ul>

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6.	Make an effective legal submission in the higher courts.	<p>6 a. Manage preliminary matters ('housekeeping').</p> <p>6 b. Outline the background of the case.</p> <p>6 c. Set out the issue(s) for the court's decision and the order(s) sought.</p> <p>6 d. Persuasively apply the evidence to the law.</p> <p>6 e. Address unfavourable and missing evidence.</p> <p>6 f. Cite relevant and helpful authority and address unhelpful authority</p> <p>6 g. Manage time effectively complying with any time limits imposed by the court.</p> <p>6 h. Assist the court generally.</p> <p>6 i. Maintain professional standards throughout.</p>	<ul style="list-style-type: none"> <li>• The conventional format of a legal submission.</li> <li>• The papers before the court.</li> <li>• The correct use of evidence.</li> <li>• The research and citation of authority whether binding or persuasive.</li> <li>• Proportionate use of authorities in submissions.</li> <li>• The significance of time limits.</li> <li>• The overriding objective and the powers of the court.</li> </ul>

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7.	Prepare and deliver effective opening and closing speeches in the higher courts.	<p>7 a. Prepare and deliver an effective opening speech.</p> <p>7 b. Prepare and deliver an effective and persuasive closing speech.</p> <p>7 c. Maintain professional standards throughout.</p>	<ul style="list-style-type: none"> <li>• The purpose of an opening speech and how it differs from a legal submission and a closing speech.</li> <li>• Opening the statements of case and outlining the evidence.</li> <li>• The use of the trial bundle.</li> <li>• The purpose of a closing speech: how it differs from a legal submission and an opening speech.</li> <li>• The structure of a persuasive speech.</li> <li>• The importance of an accurate note.</li> <li>• Reviewing and evaluating the evidence on both sides, and how it was given.</li> <li>• Using the evidence and the law to persuade the court.</li> <li>• Inviting specific findings of fact and specific conclusions on disputed points of law, and</li> <li>• Specifying precisely what orders the court is invited to make.</li> </ul>

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8.	Conduct a cross examination in which skilful questioning effectively advances the client's case or undermines the opponent's case in the higher courts.	<p>8 a. Conduct an effective cross examination in compliance with the rules.</p> <p>8 b. Select appropriate topics and adopt a logical structure.</p> <p>8 c. Lay the foundation for the questions in sufficient detail.</p> <p>8 d. Elicit useful information.</p> <p>8 e. Introduce and use exhibits correctly.</p> <p>8 f. Put the client's case, directly challenging adverse evidence.</p> <p>8 g. Undermine the opponent's case, when appropriate by impeaching or attacking the credibility of the witness.</p> <p>8 h. Control the evidence by using short, closed and leading questions, one at a time, in clear, precise and professional English.</p> <p>8 i. Listen to answers and formulate and/or adapt questions appropriately</p> <p>8 j. Focus on essentials, using patience and persistence when necessary.</p> <p>8 k. Control the direction and pace of the examination, without quarrelling with the witness.</p> <p>8 l. Maintain professional standards throughout.</p>	<ul style="list-style-type: none"> <li>• The rules governing cross examination.</li> <li>• The requirement to put the client's case.</li> <li>• What other essential challenges there may be.</li> <li>• Previous inconsistent statements.</li> <li>• Questions going only to credit.</li> <li>• Opinion evidence and expert witnesses.</li> </ul> <ul style="list-style-type: none"> <li>• The techniques of cross examination.</li> <li>• The use and importance of leading questions.</li> <li>• Brevity, style and pace.</li> <li>• Thinking on your feet.</li> <li>• Listening and responding appropriately to a change in direction.</li> <li>• Avoiding discussion and digression.</li> <li>• Dealing with quarrelsome, prolix, un-cooperative, young or vulnerable witnesses.</li> </ul>

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9.	Use presentational skills in the higher courts both when addressing the court and examining a witness.	<p>9 a. Adopt a persuasive and professional manner dressing appropriately and speaking clearly and audibly at an appropriate pace and with appropriate emphasis.</p> <p>9 b. Use correct, plain and professional English.</p> <p>9 c. Avoid distracting language or behaviour.</p> <p>9 d. Maintaining suitable posture and body language.</p> <p>9 e. Convey authority by displaying a command of the documents and evidence.</p> <p>9 f. Always be accurate</p> <p>9 g. Deal appropriately with judicial intervention.</p>	<ul style="list-style-type: none"> <li>• Presentational skills.</li> <li>• The importance of preparation.</li> <li>• Precision and brevity.</li> <li>• The management of documents</li> <li>• The techniques of persuasion.</li> <li>• Engaging the court.</li> <li>• Stress management.</li> <li>• Addressing the court</li> <li>• Court dress</li> <li>• Etiquette</li> </ul>

**Standards for solicitor higher court advocates in civil proceedings  
Ethics and Professional Conduct Unit**

No.	Assessment outcome: what advocates with higher rights will be able to do	Assessment criteria: what successful candidates will have shown they can do	Indicative syllabus content
<p><b>General note:</b> The standards of professional conduct and ethical behaviour set out below are applicable to all solicitor advocates at whatever level but will be specifically assessed for the Higher Rights qualification.</p>			<p><b>Introduction:</b> The syllabus will, as a matter of course, be adapted to include any significant changes in the law, procedure or practice.</p>
<p>1. Comply with the professional duties and responsibilities of a solicitor advocate.</p>	<p>1 a. Comply with the statutory and other rules of professional conduct. 1 b. Comply with the Civil Procedure Rules applicable to professional conduct. 1 c. Comply with the SRA Code of Conduct for Solicitors, RELs and RFLs</p>	<ul style="list-style-type: none"> <li>• The Civil Procedure Rules and especially:               <ul style="list-style-type: none"> <li>○ Part 1. The overriding objective.</li> <li>○ Part 3. The court’s case management powers.</li> <li>○ Part 16. Statements of case.</li> <li>○ Part 22. Statements of truth.</li> <li>○ Part 31. Disclosure</li> <li>○ Part 32. Witness statements</li> <li>○ Part 35. Expert evidence</li> </ul> </li> <li>• The SRA Code of Conduct for Solicitors, RELs and RFLs and especially but not limited to:               <ul style="list-style-type: none"> <li>○ The Principles</li> <li>○ Maintaining trust and acting fairly</li> <li>○ Dispute resolution and proceedings before courts, tribunals and inquiries</li> <li>○ Service and competence</li> <li>○ Co-operation and accountability</li> <li>○ Acting with integrity.</li> </ul> </li> </ul>	

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2.	Comply with the duties of a solicitor advocate towards the court.	<p>2 a. Act in accordance with the advocate's overriding duty to the court.</p> <p>2 b. Act with honesty and integrity in the presentation of a case before the court.</p> <p>2 c. Assist the court in the effective management of litigation and pursuance of the overriding objective.</p>	<ul style="list-style-type: none"> <li>• The SRA Code of Conduct for Solicitors, RELs and RFLs and especially: <ul style="list-style-type: none"> <li>○ Dealing with wasted costs orders and indemnity costs orders.</li> <li>○ Never construct facts to support the client's case</li> <li>○ Never knowingly, recklessly, directly or indirectly mislead the court</li> <li>○ How to correct any errors at the first opportunity</li> </ul> </li> <li>• Inform the court of all relevant legislation and case law of which the advocate is aware, whether or not adverse to the advocate's case.</li> <li>• Avoid advancing any contention which the advocate does not consider to be properly arguable.</li> <li>• Client intending to or committing perjury</li> <li>• Promoting equality, diversity and inclusion.</li> </ul>

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3.	Comply with the duties of a solicitor advocate towards the client.	3 a. Assert the advocate's independence in fearlessly advancing the client's case. 3 b. Keep the client's information and documents confidential, except when disclosure is permitted or required. 3 c. Maintain any legitimate claim to confidentiality or legal professional privilege. 3 d. Disclose all material information to the client except where disclosure is forbidden. 3 e. Assert the advocate's duty as owed expressly to the client and not to any intermediary or third-party funder.	The SRA Code of Conduct for Solicitors, RELs and RFLs and especially: <ul style="list-style-type: none"> <li>• Client care.</li> <li>• Equality and diversity.</li> <li>• Conflicts of interest.</li> <li>• Confidentiality and disclosure.</li> </ul>
4.	Act with honesty and integrity in the preparation and presentation of evidence.	4 a. Avoid attempting to influence a witness after taking a statement from him as to the contents of that statement. 4 b. Avoid seeking to persuade a witness to change their evidence. 4 c. Avoid encouraging a witness to give misleading or untruthful evidence. 4 d. Avoid rehearsing or coaching a witness in respect of their evidence. 4 e. Avoid attempting to suppress or conceal unhelpful evidence. 4 f. How to correct any errors properly	The SRA Code of Conduct for Solicitors, RELs and RFLs and especially: <ul style="list-style-type: none"> <li>• Chapter 5: Your client and the court.</li> <li>• Expert witness.</li> <li>• Lay witness.</li> </ul>



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5.	Exercise professional discipline in advancing the client's case and questioning witnesses.	<p>5 a. Avoid alleging fraud (unless pleaded and instructed to do so and given material which the advocate reasonably believes to show, on the face of it, a case of fraud).</p> <p>5 b. Avoid making statements or asking questions merely to insult, humiliate or annoy a witness or any other person.</p> <p>5 c. Avoid making any serious allegation against a witness whom the advocate is able to cross examine without putting the allegation to the witness.</p> <p>5 d. Avoid alleging any crime, fraud or misconduct (unless the allegation goes to a matter in issue material to the advocate's case and appears to be supported by reasonable grounds).</p> <p>5 e. Avoid putting questions, making statements or advancing arguments which are misleading or vexatious.</p>	<p>The SRA Code of Conduct for Solicitors, RELs and RFLs and especially:</p> <ul style="list-style-type: none"> <li>• Common law authorities.</li> </ul>
6.	Advise on and where possible reconcile the advocate's concurrent duties to the client, the rule of law and the administration of justice.	<p>6 a. Identify any actual or potential conflict of interest.</p> <p>6 b. Recognise when conflict requires the advocate to withhold information from the client or disclose confidential information.</p> <p>6 c. Recognise when any such conflict requires the advocate to decline instructions or withdraw from the case.</p> <p>6 d. Managing a client where a conflict arises or there is a breach of the rules.</p>	<p>The SRA Code of Conduct for Solicitors, RELs and RFLs and especially:</p> <ul style="list-style-type: none"> <li>• Conflicts of interest.</li> <li>• Confidentiality and disclosure.</li> </ul>