



# Safeguarding Client Confidentiality

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The protection of confidential information is a fundamental feature of the solicitor/client relationship. Outcome 4.1 of the SRA Code of Conduct 2011 requires that the affairs of clients are kept confidential unless disclosure is required or permitted by law, or if the client consents.

There is also a corresponding duty to disclose to clients all information material to the retainer of which the adviser has personal knowledge (O (4.2)). The duty of confidentiality must be reconciled with the duty of disclosure to clients and where these two duties conflict the duty of confidentiality takes precedence (O (4.3)).

The Code does envisage law firms acting against former or even current clients but only where the new client gives informed consent. In addition the former client must either give informed consent or information barriers will need to be put in place: it must also be reasonable to act with such safeguards in place. (O (4.4)).

A recent High Court decision in *Georgian American Alloys v White & Case LLP* [2014] EWHC 94 reminds us of the difficulties of acting in this way. The claimant companies (G) applied for an injunction to restrain the defendant law firm (W) from acting for or advising a client (P) in proceedings which he had brought in the Commercial Court against G's owners.

W had initially provided advice to P in a dispute with G's owners over an alleged joint venture. Believing the dispute to be settled, W had then agreed to act for G in implementing a corporate restructuring. Subsequently, when the original dispute re-emerged, W agreed to represent P.

W decided that there was no conflict of interest and put in place information barriers (also known as Chinese walls) to keep separate its representation of G and P. G applied for an injunction on the ground that there was a risk that in the commercial proceedings W might use confidential information that it had obtained when it had acted during the corporate restructuring.

In this case, the information which G had imparted to W was all confidential information which the latter was under a duty not to disclose and G had not consented to disclosure. G's interests were adversely affected by reason of their owners being affected by P's litigation action, and the information was relevant because W's knowledge of the assets of G's owners could be of significant use for enforcement purposes and could assist on issues of credibility.



It was held that there had been a real risk of disclosure in the period before the introduction of the information barriers. There was also a real risk that the confidential information might have come into the possession of some of W's team representing P and the use of that information, at least inadvertently, could have been or would be made in the Commercial Court action. An injunction was granted to prevent W acting for P in those proceedings.

W had used sophisticated industry-standard software for its information barriers which in turn were "policed and monitored by a global compliance team of more than 30 individuals reporting directly to the General Counsel's office". W's own internal policy stipulated that if information barriers were established, both clients should be notified unless W's

General Counsel ruled otherwise. No notice of the establishment of information barriers was given. The Judge could see no good reason why this notification was not given to the clients.

The morale of this story is that law firms can act against former (or even existing clients) but not in circumstances where they were given confidential information and there is a real (as opposed to a theoretical or fanciful) risk that the information will be misused. If wishing to do so there is a high evidential burden which law firms must discharge to show that was no real risk of misuse of the confidential information received from their former clients.

Whilst it is always tempting to try and retain a juicy litigation case, this case illustrates that it is better to take an early decision and withdraw gracefully from acting for one client against another client. In this case the law firm has by continuing to act risked damaging relations with two clients as opposed to one client. There will also be the costs of defending the injunction proceedings and the claimants' costs to discharge - an expensive exercise. ■

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