



ACCEPTING GIFTS FROM CLIENTS

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When I was an articled clerk it was not uncommon for a grateful client to include a legacy for their solicitor in their will. Although we do not see this practice so often now it can still cause regulatory problems.

Rule 3.04 of the Solicitors Code of Conduct 2007 is not restricted to gifts on death. It also covers lifetime gifts and applies where the recipient is a solicitor or manager, owner or employee of the firm or a family member of any of these. The rule requires that the client must be advised to seek independent legal advice about the gift and if the client refuses the solicitor must stop acting for the client in relation to the gift.

However this rule only applies where *“the gift is of a significant amount either in itself or having regard to the size of the client’s estate and the reasonable expectations of the prospective beneficiaries”*.

Guidance at paragraph 58 states that a *“significant amount”* cannot be quantified because the particular circumstances must be taken into account. The guidance further provides that *“anything more than a token gift will be considered significant”* and if accepted will expose the recipient to allegations of misconduct. There is a limited exception for drawing up wills for family members but not for co-habitees.

I was called upon recently in a case before the SDT to consider whether a particular gift in a will was or was not *“significant”*. The twin definitions in the Code of *“significant amount”* and *“token gift”* appear contradictory. Enquiries with the Law Society Private Client Committee and other experienced practitioners revealed that there was no further guidance on a definition of *“significant amount”*.

The case was investigated on the basis that it was a matter for the SRA as to what was or was not *“significant”*. During the investigation the solicitor was also asked to identify all wills that he had made where either he had received or was due to receive a legacy. The SRA then decided whether each of these was of a *“significant amount”*. Any refusal to provide such information would have constituted a breach of Rule 20.05 i.e failure to co-operate with the regulator.

This is presently an area of uncertainty for practitioners. The only safe course is to refuse the gift unless the client takes independent legal advice. There is no safe limit for the size of the gift. A solicitor cannot rely upon the *“significant amount”* test as a defence to any criticism that the client should have been advised to seek independent legal advice.

For lifetime gifts practitioners should be aware of the Bribery Act 2010 due to come into force in April 2011. It will be an offence to receive a financial advantage which results in improper performance. Definitions are widely drafted so some business practices could be caught. There is also a new provision for commercial organisations failing to prevent bribery. The defence is to have *“adequate procedures”* in place. There is no definition for *“adequate procedures”*. Some law firms are already taking advice on their procedures in advance of the new legislation.

Going forward in the draft Code for 2011 gifts are covered in the chapter on client care as an indicative behaviour. If practitioners refuse to act when a client proposes to make a gift of *“significant value”* unless the client takes independent legal advice, then all is well. However no guidance is provided on what constitutes a gift of *“significant value”*. To most *“significant value”* means a larger sum than *“significant amount”* or *“token gift”*.

Whilst outcomes-focused regulation and the new Code have been welcomed this brief consideration of the rules surrounding gifts proves that it can be difficult for the profession to practice without adequate guidance. ■

