



Acting on Both Sides Guidance

Assessment of circumstances

1. You should assess all relevant factors to determine if there is a conflict of interest between Clients. For instance, if there is an imbalance in bargaining power between the Clients, or a Client is vulnerable, or their interests are markedly different and cannot be reasonably reconciled.
2. You must consider carefully whether a conflict of interest arises or is likely to arise when the practice receives instructions to act for different Clients in the same matter where the seller is:-
 - a) a developer or builder; or
 - b) a lessor granting a lease.
3. You should assess all relevant factors to determine if there is a conflict of interest between yourself and a Client. For instance, if there is a financial interest or a personal or commercial relationship.
4. If there is a conflict of interest identified at the outset of the transaction then the practice should not act in the transaction.

Three stage test

5. In the absence of a conflict of interest identified at the outset, CLC practices are permitted to act on both sides of a transaction when all the following criteria have been fulfilled:
 - (a) The clients have provided their **informed written consent** to the practice acting in this capacity.
 - (b) The practice has sufficient measures in place ('**ethical walls**') to ensure that clients receive a service which operates as though two separate and distinct entities provide the service independently.
 - (c) The practice has **different authorised persons** acting for the clients or one of the other accepted scenarios in **Appendix A**.

Informed written consent

6. You should explain that you will be acting for both sides of the transaction and that each client will be treated as though they were clients of a separate and independent practice or firm.
7. The consent of the client must be in writing and recorded on file.

8. Any specific issues and risks which have been explained to the client must also be recorded on file.
9. You should advise the client at the outset that the issues and risks in a particular both sides transaction may change as the transaction progresses and if a conflict arises you will cease acting for either party.

Ethical walls

10. CLC practices must ensure that there are **effective barriers** in place to safeguard confidential information and to avoid situations which give rise to conflicts.
11. Some of the factors CLC practices should consider when constructing effective **ethical walls** are:
 - a) The size and physical layout of the practice.
 - b) How the effectiveness of the ethical walls will be monitored.
 - c) The nature of the arrangements in place (permanent arrangements are more likely to be effective as opposed to temporary arrangements).
 - d) Whether the fee earner acting on one side has any compliance roles which could pierce the walls of confidentiality (such as HOLP/HOFA/MLRO etc).
 - e) The risks inherent in shared mailboxes/servers/printers and other shared drives.
 - f) The disciplinary consequences for staff of breaching any ethical walls.
 - g) The quality and scope of training for those involved in acting on both sides.

Authorised persons

12. CLC practices must ensure that **different authorised persons** represent each side in an acting on both sides matter either themselves or in a supervisory capacity.¹
13. It is only permissible for non-authorised persons to have conduct of the matters where a practice acts on both sides when they are effectively supervised by **different** authorised persons.
14. Please see **Appendix A** of this guidance for the range of situations which the CLC considers to be compliant with the CLC Conflicts of Interest

¹ Either one of these two scenarios will be considered to be compliant with paragraph 6 of the Conflicts of Interest Code and the Code of Conduct's Ethical Principles.

Code.

15. For the avoidance of doubt Sole Practitioners are not able to act on both sides of a transaction.

Appendix A:

In principle, the CLC considers the following approaches to be compliant with paragraph 6 of the Conflicts of Interest Code:

Scenario 1*	
Authorised Person (A)	Authorised Person (B)

Scenario 2*	
A non-authorised person supervised by an Authorised Person (A)	A non-authorised person supervised by an Authorised Person (B)

Scenario 3*	
Authorised Person (A)	A Non-authorised person supervised by an Authorised Person (B)

*In all the scenarios, A & B are different individuals, and neither party must have supervisory responsibility over the other.