



# The St. Helena Government Gazette

## EXTRAORDINARY

Vol. LXI

Published by Authority

No. 51

Present Issue

5 May 2025

No. 87

### **Guidance from the Chief Justice on Applying for Variations or Exemptions to the Code of Practice**

This guidance is issued pursuant to rule 4(4) of the Courts (Rights of Practising and Representation of Persons in Proceedings) Rules, 2025 (the ‘rules’).

All those who practise before the courts in St Helena, be they enrolled, licensed or exempt from enrolment or licensing, must comply with the Basic Principles and Code of Practice as required by the rules. The Chief Justice may however vary or exempt the application of the Code of Conduct for any person who makes such an application (“the applicant”).

This guidance is given for the benefit of applicants and is without prejudice to the specific circumstances of any application. Each application will be determined on its own merits on a case by case basis. Variation or exemption may be justified in circumstances where an applicant can demonstrate that they are already bound by existing and identical or comparable codes of practice in their primary jurisdiction of operation which would also apply to their operation in St Helena and that they can demonstrate that a referral or complaint may be made by any relevant person in St Helena (such as client, judge, legal officer or other lawyer) to their domestic regulator.

This guidance may be updated and varied from time to time as the need arises.

### **The Application for Variation or Exemption**

The application for variation or exemption is to be made in writing to the Chief Justice and sent via email to the Registrar of the Supreme Court, Yvonne Williams - [yvonne.williams@judicialservices.sh](mailto:yvonne.williams@judicialservices.sh)

The application can be made at any time including before the rules come into force on the 1<sup>st</sup> of July 2025.

The application must specify which rule or rules the applicant seeks to be varied or exempted from and the reasons why such a variation or exemption is sought.

Applications can be made on behalf of a number of persons (for example, should a firm of solicitors with multiple lawyers practising in St Helena seek variations for all their lawyers, then this can be the subject of one application).

### **Code 1 Maintaining Trust and Acting Fairly**

Variations to this code would only be allowed in exceptional circumstances.

### **Code 2 Conduct to Others and Before the Courts**

Variations to this code would only be allowed in exceptional circumstances.

### **Code 3 Service and Competence**

Variations to this code would only be allowed in exceptional circumstances.

### **Code 4 Client Money and Assets**

Variations to this code would only be allowed in exceptional circumstances.

### **Code 5 Business Requirements**

#### Referral fees

Applications to vary or exempt the rules on referral fees are very unlikely to be permitted. Such conduct by solicitors (or barristers directly instructed) is very unlikely to be compatible with the way in which the community of St Helena conducts itself, may give rise to financial conflicts in the manner in which advice and representation are given or reduce the likelihood that firms are purely operating in their clients' best interests. Such fees are also likely to undermine fair competition based on price and quality of service and distort the operation of legal practice in a small jurisdiction and market place.

In relation to personal injury cases such fees are prohibited in England and Wales by sections 56 and 57 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) and a similar approach is likely to be adopted. If referral fees were permitted on a variation application written conditions would be stipulated requiring that solicitors would have to ensure they are transparent with clients about any referral fees and that they are acting in the client's best interests. Regard may also be had to stipulations that the SRA (Solicitors Regulatory Authority of England and Wales) or the BSB (Bar Standards Board), might impose.

---

### Insurance

Applications for variation of, or exemption from, the insurance requirements are likely to be permitted for those who are employed directly by Saint Helena Government ('SHG') in posts provided for by statute and where Saint Helena Government indemnifies their employees by virtue of their employment.

It is anticipated that those working for the Attorney General's Chambers ("AGC") will not be required to be insured when undertaking work on behalf of their employer, their sole client being SHG.

The Public Solicitors Office ('PSO') is funded primarily by SHG and its solicitors are employees of SHG. The Public Solicitor is a Public Officer. The Public Solicitor is required to bid for funding for his office from Saint Helena Government, employs non-SHG staff as CILEx trainees to undertake legal work and carries out litigation on behalf of individuals and businesses. However, ultimately, SHG is responsible for ensuring that the PSO can function and to a degree the PSO is indemnified by SHG. Any large claims against the PSO will have to be funded by SHG to ensure the continuation of the service but smaller claims would almost certainly come from the PSO's budget.

The PSO does not have access to the UK market for obtaining insurance and so is expected to insure itself to the highest possible level available through the local insurance market. Variations of the requirement to obtain insurance at £2 million a claim may be granted on receipt of proof of the maximum value of insurance available.

Written proof of employment by the AGC or PSO and the extent of indemnification may still be required following any application.

Solicitors or Barristers that are not indemnified in any way save through insurance are unlikely to be granted an exemption or variation to the code without good reason. Any policy that is in place will have to extend to St Helena unless the Chief Justice, for good reason, directs otherwise. Professional indemnity insurance may be obtained from any provider, wherever located.

### On Island Address/Ability to Contact Solicitor

Compliance with the requirement to have an on island address for correspondence and service and the ability to contact a solicitor are the basics of good client care and variations to this requirement are unlikely to be granted save for good reason.

### **Code 6 Conflict, Confidentiality and Disclosure**

Variations to this code are unlikely to be granted save for good reason.

### **Code 7 Cooperation and Accountability**

Variations to this code are unlikely to be granted save for good reason.

**Code 8 Practising Certificates and Continuing Professional Development**

Variations to this code are unlikely to be granted save for good reason.

Rupert Jones  
Chief Justice

5 May 2025