

Faculty of Advocates Service Standards

“An Advocate in undertaking the conduct of a cause in this Court enters into no contract with his client, but takes on himself an office in the performance of which he owes a duty, not to his client only, but also to the Court, to the members of his own profession, and to the public...(T)he nature of the Advocate’s office makes it clear that in the performance of his duty he must be entirely independent, and act according to his own discretion and judgment in the conduct of the cause for his client.” Batchelor v Pattison and Mackersy (1986) 3 R 914

Members of the Faculty of Advocates are part of an independent referral bar. Their services are available to anyone. Most often Advocates are instructed by a solicitor, but certain other persons are also entitled to instruct Advocates. The Advocate will be instructed by the solicitor or other person to provide advice or to appear in court on behalf of a client. Once that work is finished, the Advocate will usually return the papers to the solicitor or other person who provided the instructions. That Advocate may or may not be instructed again in the case. The relationship between the Advocate and the client is usually managed by a solicitor. Generally, there would not be direct contact between the Advocate and the Client.

Advocates are bound by the Faculty of Advocates’ Guide to the Professional Conduct of Advocates. This sets out the standards to be expected of Advocates. Advocates are expected to observe the following general principles:

- Independence
- Trust and Personal Integrity
- Confidentiality

Advocates must:

- Observe his or her duty to the Court – this is an important duty and one which may override an Advocate’s other duties. It means that an Advocate must not mislead or lie to the Court or waste the Court’s time.
- Observe duties in relation to the client – an Advocate must always act in the best interests of their client provided this does not cause him or her to breach their duty to the Court.
- Observe duties in relation to the Faculty and other Advocates – this is a wide-ranging duty which is covered by the Faculty’s Guide To Professional Conduct
- Observe duties to the instructing agent – an agent or solicitor is more likely to have continuing relationship with the client and an Advocate must respect this. Usually an Advocate will ask the agent to be present on each occasion that he or she meets the client.
- When available, accept instructions to appear in court when those instructions are accompanied by a reasonable fee (or the obligation of a Scottish solicitor to pay such a fee)
- Not, without good cause, return instructions once accepted.

Standards of service are based on broad principles recognising the range and variety of work which can be undertaken by Advocates. The importance of the client's needs and interests means that an Advocate should be:

- Competent – thorough and adequately prepared
- Diligent
- Courteous and respectful, including recognising different cultures and values

and should communicate with the instructing agent (and the client if direct communication is required in exceptional circumstances) using clear and understandable language.