

Solicitors' Practice Rules 1990

Professional Ethics

Last amended 12 January 2007

Contents:

| | |
|--|-----------|
| Solicitors' Practice Rules 1990 | 1 |
| Rule A (Scope of the rules) | 3 |
| Rule 1 (Basic principles) | 3 |
| Rule 2 (Publicity) | 4 |
| Rule 3 (Introductions and referrals) | 4 |
| Rule 4 (Employed solicitors) | 4 |
| Rule 5 (Providing services other than as a solicitor) | 6 |
| Rule 6 (Avoiding conflicts of interest in conveyancing, property selling and mortgage related services) | 6 |
| (1) (General)..... | 6 |
| (2) (Solicitor acting for seller and buyer) | 8 |
| (3) (Solicitor acting for lender and borrower)..... | 9 |
| Rule 6A (Seller's solicitor dealing with more than one prospective buyer) | 19 |
| Rule 7 (Fee sharing, partnership and corporate practice) | 21 |
| (1) (Fee sharing – the general rule)..... | 21 |
| (1A) (Fee sharing – exception for introducing capital or providing services) | 21 |
| (2) (Fee sharing – exception for solicitor property seller's sub-agent) | 22 |
| (3) (Fee sharing – exception for employed solicitors) | 22 |
| (4) (Fee sharing – exception for voluntary work) | 22 |
| (5) (Fee sharing – exception for retired or deceased director, shareowner or member)..... | 23 |
| (6) (Partnership)..... | 23 |
| (7) (Corporate practice)..... | 24 |
| Rule 8 (Contingency fees) | 24 |
| Rule 9 (Claims assessors) | 24 |
| Rule 10 (Receipt of commissions from third parties) | 24 |
| Rule 11 | 25 |
| Rule 12 (Investment business) | 25 |
| Rule 13 (Supervision and management of a practice) | 26 |
| Rule 14 (Structural surveys and formal valuations) | 30 |
| Rule 15 (Costs information and client care) | 30 |
| Rule 16 (European cross-border activities) | 31 |
| Rule 16A (Solicitors acting as advocates) | 32 |
| Rule 16B (Choice of advocate) | 32 |
| Rule 16C (Powers of the Law Society) | 32 |

| | |
|---|-----------|
| Rule 16D (Conflict of interests) | 33 |
| (1) (Introduction) | 33 |
| (2) (Duty not to act) | 33 |
| (3) (Exceptions to duty not to act) | 34 |
| (4) (Conflict when already acting) | 34 |
| (5) (Accepting gifts from clients) | 35 |
| (6) (Public office or appointment leading to conflict) | 35 |
| (7) (Waivers) | 35 |
| Rule 16E (Confidentiality and disclosure) | 35 |
| (1) (Introduction) | 35 |
| (2) (Duty of confidentiality) | 35 |
| (3) (Duty of disclosure) | 36 |
| (4) (Duty not to put confidentiality at risk by acting) | 36 |
| (5) (Exception to duty not to put confidentiality at risk by acting – where clients consent) | 36 |
| (6) (Exception to duty not to put confidentiality at risk by acting – where no clients consent) | 37 |
| (7) (Waivers) | 37 |
| Rule 17 (Waivers) | 37 |
| Rule 18 (Application and interpretation) | 37 |
| (1) (Application to foreign lawyers) | 37 |
| (2) (Interpretation) | 41 |
| Rule 19 (Repeal and commencement) | 42 |

Solicitors' Practice Rules 1990

Last amended 12 January 2007

Rules dated 18th July 1990

made by the Council of the Law Society,

with the concurrence of the Master of the Rolls under section 31 of the Solicitors Act 1974 and section 9 of the Administration of Justice Act 1985

and the approval of the Lord Chancellor under Part II of Schedule 4 to the Courts and Legal Services Act 1990,

- ◆ *regulating the English and Welsh practices of solicitors, registered European lawyers, registered foreign lawyers and recognised bodies;*
- ◆ *and, in respect of Rule 12 only, regulating:*
 - the practices of solicitors and recognised bodies in any part of the world;*
 - the practices of registered European lawyers in any part of the United Kingdom; and*
 - the practices of registered foreign lawyers in England and Wales;**in the conduct of investment business in, into or from the United Kingdom.*

Rule A (Scope of the rules)

- (1) These rules apply to all forms of practice of a solicitor of the Supreme Court.
- (2) The rules also extend to all regulated individuals and all regulated practices – see Rule 18(2) (interpretation).
- (3) The rules do not apply to practice from an office outside England and Wales – except for Rule 12 (investment business), the geographical scope of which is set out in the rule.

Rule 1 (Basic principles)

A solicitor shall not do anything in the course of practising as a solicitor, or permit another person to do anything on his or her behalf, which compromises or impairs or is likely to compromise or impair any of the following:

- (a) the solicitor's independence or integrity;
- (b) a person's freedom to instruct a solicitor of his or her choice;
- (c) the solicitor's duty to act in the best interests of the client;
- (d) the good repute of the solicitor or of the solicitor's profession;
- (e) the solicitor's proper standard of work;
- (f) the solicitor's duty to the Court.

Rule 2 (Publicity)

Solicitors may at their discretion publicise their practices, or permit other persons to do so, or publicise the businesses or activities of other persons, provided there is no breach of these rules and provided there is compliance with a Solicitors' Publicity Code promulgated from time to time by the Council of the Law Society with the concurrence of the Master of the Rolls.

Rule 3 (Introductions and referrals)

[See also guidance [Disclosure of funding, fee sharing and referral arrangements](#) issued in March 2004 and [Referral fees – Guidance](#) issued on 21 December 2005.]

Solicitors may accept introductions and referrals of business from other persons and may make introductions and refer business to other persons, provided there is no breach of these rules and provided there is compliance with a Solicitors' Introduction and Referral Code promulgated from time to time by the Council of the Law Society with the concurrence of the Master of the Rolls.

Note

Article 5.4 of the CCBE Code prohibits the payment of referral fees in a solicitor's "European cross-border activities" (see Rule 16). It is therefore prohibited for solicitors to pay referral fees to a non-lawyer introducer situated in a CCBE state other than the UK. Article 5.4 does not prevent fee-sharing arrangements between lawyers on a proper basis.

Rule 4 (Employed solicitors)

- (1) (a) Solicitors who are employees of non-solicitors shall not as part of their employment do for any person other than their employer work which is or could be done by a solicitor acting as such, save as permitted by an Employed Solicitors Code promulgated from time to time by the Council of the Law Society with the concurrence of the Master of the Rolls.
 - (b) In sub-paragraph (a) above, "employee" includes a solicitor of the Supreme Court or registered European lawyer practising in house as the director of a company which is not a recognised body, and "employer" and "employment" shall be construed accordingly.
 - (c) Solicitors who are employees of:
 - (i) a registered European lawyer practising as sole principal;
 - (ii) a lawyers' partnership which includes a solicitor of the Supreme Court, registered European lawyer or recognised body; or
 - (iii) a recognised body;are not "employees of non-solicitors" for the purpose of this rule, and are therefore not subject to paragraph (1) of the rule.
- (2) (a) Solicitors of the Supreme Court or registered European lawyers who are employees of a registered European lawyer practising as sole principal shall not draw or prepare any instrument or papers, or make any application or lodge any document, relating to the conveyancing of land

- or the administration of estates, which is reserved to qualified persons by the Solicitors Act 1974, or supervise or assume responsibility for any such work, unless the principal is a registered European lawyer qualified to do the work under regulation 12 or 13 of the European Communities (Lawyer's Practice) Regulations 2000.
- (b) Solicitors of the Supreme Court or registered European lawyers who are employees of a regulated practice which is a partnership all of whose members are foreign lawyers and/or European lawyers' recognised bodies shall not do or supervise or assume responsibility for any of the work referred to in paragraph (2)(a) of this rule unless the partnership has at least one member who or which is
- (i) a registered European lawyer qualified to do the work under regulation 12 or 13 of the European Communities (Lawyer's Practice) Regulations 2000; or
 - (ii) a company (a recognised body) with a director who is such a person; or
 - (iii) a limited liability partnership (a recognised body) with a member who is such a person.
- (c) Registered European lawyers who are directors of a European lawyers' recognised body which is a company, or solicitors of the Supreme Court or registered European lawyers who are employees of such a company, shall not do or supervise or assume responsibility for any of the work referred to in paragraph (2)(a) of this rule unless the company has at least one director who is a registered European lawyer qualified to do the work under regulation 12 or 13 of the European Communities (Lawyer's Practice) Regulations 2000.
- (d) Registered European lawyers who are members of a European lawyers' recognised body which is a limited liability partnership, or solicitors of the Supreme Court or registered European lawyers who are employees of such a limited liability partnership, shall not do or supervise or assume responsibility for any of the work referred to in paragraph (2)(a) of this rule unless the limited liability partnership has at least one member who or which is:
- (i) a registered European lawyer qualified to do the work under regulation 12 or 13 of the European Communities (Lawyer's Practice) Regulations 2000; or
 - (ii) a company (a recognised body) with a director who is such a person; or
 - (iii) another limited liability partnership (a recognised body) with a member who is such a person.
- (e) In sub-paragraphs (b) to (d) above, "European lawyers' recognised body" means:
- (i) a recognised body which is a company and which has no director who is a solicitor of the Supreme Court; or
 - (ii) a recognised body which is a limited liability partnership and has no member who or which is:
 - (A) a solicitor of the Supreme Court; or
 - (B) a company (a recognised body) with a director who is a solicitor of the Supreme Court; or

- (C) another limited liability partnership (a recognised body) with a member who is a solicitor of the Supreme Court.

Rule 5 (Providing services other than as a solicitor)

Solicitors must comply with the Solicitors' Separate Business Code in controlling, actively participating in or operating (in each case alone, or by or with others) a business which:

- (a) provides any service which may properly be provided by a solicitor's practice, and
- (b) is not itself:
 - (i) a regulated practice as defined in Rule 18(2) of these rules; or
 - (ii) a practice permitted to solicitors of the Supreme Court under the Solicitors' Overseas Practice Rules; or
 - (iii) a practice in Scotland or Northern Ireland permitted to registered European lawyers under the Solicitors' Overseas Practice Rules.

Rule 6 (Avoiding conflicts of interest in conveyancing, property selling and mortgage related services)

(1) (General)

This rule sets out circumstances in which a solicitor may act for more than one party in conveyancing, property selling or mortgage related services, in connection with:

- (i) the transfer of land for value at arm's length;
- (ii) the grant or assignment of a lease, or some other interest in land, for value at arm's length; or
- (iii) the grant of a mortgage of land.

The rule must be read in the light of the notes.

Notes

- (i) **"Solicitor"** (except where the notes specify otherwise) **means a regulated individual or regulated practice, and any associated practice, and includes a SEAL; and**
 - *"associated practices" are practices with at least one principal in common;*
 - *a "principal" is an individual or body corporate who or which is:*
 - (a) *a sole practitioner,*
 - (b) *in the case of a practice which is a partnership*
 - (A) *a partner in the practice (including a partner who is not qualified to do conveyancing, such as a registered foreign lawyer),*
 - (B) *a director of or shareowner in a company which has a share capital and which is a partner in the practice,*

- (C) a director or member of a company which does not have a share capital and which is a partner in the practice, and
 - (D) a member of a limited liability partnership which is a partner in the practice,
 - (c) in the case of a practice which is a company with a share capital, a director of or shareowner in the company, and the company itself,
 - (d) in the case of a practice which is a company without a share capital, a director or member of the company, and the company itself,
 - (e) in the case of a practice which is a limited liability partnership:
 - (A) a member of the practice,
 - (B) the limited liability partnership itself,
 - (C) a director of or shareowner in a company which has a share capital and which is a member of the practice,
 - (D) a director or member of a company which does not have a share capital and which is a member of the practice, and
 - (E) a member of another limited liability partnership which is a member of the practice;
- a "**SEAL**" (**Solicitors' Estate Agency Limited**) means a recognised body which:
- (a) does not undertake conveyancing;
 - (b) is owned jointly by at least four participating practices which do not have any principals in common and none of which has majority control; and
 - (c) is conducted from accommodation physically divided from, and clearly differentiated from that of any participating practice; and
- a "participating practice" means a solicitor's private practice one or more of whose principals is a shareowner in the SEAL (if the SEAL is a company with a share capital) or a member of the SEAL (if the SEAL is a company without a share capital or a limited liability partnership).
- (ii) "Property selling" means negotiating the sale for the seller.
- (iii) "Mortgage related services" means advising on or arranging a mortgage, or providing mortgage-related financial services, for a buyer; and
- "seller" and "buyer" include lessor and lessee.
- (iv) Whether a transaction is "at arm's length" will depend on the relationship between the parties and the context of the transaction, and will not necessarily follow from the fact that a transaction is at market value, or is stated to be on arm's length terms.

A transaction would not usually be at arm's length, for example, if the parties are:

- related by blood, adoption or marriage;
- the settlor of a trust and the trustees;
- the trustees of a trust and its beneficiary or the beneficiary's relative;
- personal representatives and a beneficiary;
- the trustees of separate trusts for the same family;
- a sole trader or partners and a limited company set up to enable the business to be incorporated;

This document applies to conduct issues occurring before 1 July 2007. For rules governing conduct after 1 July 2007, see www.rules.sra.org.uk.

- *associated companies (i.e. where one is a holding company and the other is its subsidiary within the meaning of the Companies Act 1985, or both are subsidiaries of the same holding company); or*
- *a local authority and a related body within the meaning of paragraph 6(b) of the Employed Solicitors' Code 1990.*
- (v) *"Mortgage" includes a remortgage.*
- (vi) *Nothing in the rule allows a solicitor to act in breach of Rule 6A(5) (acting for seller and one of two prospective buyers), or any other rule or principle of professional conduct.*
- (vii) *Nothing in the rule allows a registered foreign lawyer or a registered European lawyer to undertake conveyancing unless, in the case of a registered European lawyer, he or she is authorised to do so under regulation 12 of the European Communities (Lawyer's Practice) Regulations 2000 – see Rule 4(2), note (ja) to Rule 13, Rule 18(1)(b)(iv) and note (ii) to Rule 18(1) of these rules, and Rule 2(3) of the Solicitors' Incorporated Practice Rules.*

(2) (Solicitor acting for seller and buyer)

- (a) A solicitor must not act for seller and buyer:
 - (i) without the written consent of both parties;
 - (ii) if a conflict of interest exists or arises; or
 - (iii) if the seller is selling or leasing as a builder or developer.
- (b) Otherwise, a solicitor may act for seller and buyer, but only if:
 - (i) both parties are established clients; or
 - (ii) the consideration is £10,000 or less and the transaction is not the grant of a lease; or
 - (iii) there is no other qualified conveyancer in the area whom either the seller or the buyer could reasonably be expected to consult; or
 - (iv) seller and buyer are represented by two separate offices in different localities, and:
 - (A) different solicitors, who normally work at each office, conduct or supervise the transaction for seller and buyer; and
 - (B) no office of the practice (or an associated practice) referred either client to the office conducting his or her transaction; or
 - (v) the only way in which the solicitor is acting for the buyer is in providing mortgage related services; or
 - (vi) the only way in which the solicitor is acting for the seller is in providing property selling services through a SEAL.
- (c) When a solicitor's practice (including a SEAL) acts in the property selling for the seller and acts for the buyer, the following additional conditions must be met:
 - (i) different individuals must conduct the work for the seller and the work for the buyer; and if the individuals conducting the work need supervision, they must be supervised by different solicitors; and
 - (ii) the solicitor must inform the seller in writing, before accepting instructions to deal with the property selling, of any services which might be offered to a buyer, whether through the same practice or any practice associated with it; and

- (iii) the solicitor must explain to the buyer, before the buyer gives consent to the arrangement:
 - (A) the implications of a conflict of interest arising; and
 - (B) the solicitor's financial interest in the sale going through; and
 - (C) if the solicitor proposes to provide mortgage related services to the buyer through a SEAL which is also acting for the seller, that the solicitor cannot advise the buyer on the merits of the purchase.

Notes

- (i) *If a builder or developer acquires a property in part exchange, and sells it on without development, he or she is not, for the purpose of this rule, selling "as a builder or developer".*
- (ii) *The test of whether a person is an "established client" is an objective one; that is, whether a reasonable solicitor would regard the person as an established client.*
 - *A seller or buyer who is instructing the solicitor for the first time is not an established client.*
 - *An individual related by blood, adoption or marriage to an established client counts as an established client.*
 - *A person counts as an established client if selling or buying jointly with an established client.*
- (iii) *The consideration will only count as £10,000 or less if the value of any property given in exchange or part exchange is taken into account.*
- (iv) *Even where none of the other exceptions apply, a SEAL may act for the seller, and provide mortgage related services to the buyer; one of the participating practices may do the buyer's conveyancing, and another participating practice may do the seller's conveyancing.*
- (v) *"Solicitor"*
 - *in paragraph (2)(b)(iv)(A), means any solicitor of the Supreme Court or registered European lawyer who is conducting or supervising the transaction; and*
 - *in paragraph (2)(c)(i), means the solicitor of the Supreme Court or registered European lawyer who is supervising the transaction;*

and if the work is conveyancing, the registered European lawyer must in each case be qualified to do conveyancing under regulation 12 of the European Communities (Lawyer's Practice) Regulations 2000 – see Rule 18(1)(b)(iv) and note (ii) to Rule 18(1).

(3) (Solicitor acting for lender and borrower)

- (a) A solicitor must not act for both lender and borrower on the grant of a mortgage of land:
 - (i) if a conflict of interest exists or arises;
 - (ii) on the grant of an individual mortgage of land at arm's length;
 - (iii) if, in the case of a standard mortgage of property to be used as the borrower's private residence only, the lender's mortgage instructions extend beyond the limitations contained in paragraphs (3)(c) and (3)(e), or do not permit the use of the certificate of title required by paragraph (3)(d); or

- (iv) if, in the case of any other standard mortgage, the lender's mortgage instructions extend beyond the limitations contained in paragraphs (3)(c) and (3)(e).
- (b) A solicitor who proposes to act for both lender and borrower on the grant of a standard mortgage of land, must first inform the lender in writing of the circumstances if:
 - (i) the solicitor or a member of his or her immediate family is a borrower; or
 - (ii) the solicitor proposes to act for seller, buyer, and lender in the same transaction.
- (c) A solicitor acting for both lender and borrower in a standard mortgage may only accept or act upon instructions from the lender which are limited to the following matters:
 - (i) taking reasonable steps to check the identity of the borrower (and anyone else required to sign the mortgage deed or other document connected with the mortgage) by reference to a document or documents, such as a passport, precisely specified in writing by the lender;

following the guidance in the Law Society's "green card" warning on property fraud and "blue card" warning on money laundering;

checking that the seller's solicitors or licensed conveyancers (if unknown to the solicitor) appear in a current legal directory or hold practising certificates issued by their professional body;

and, in the case of a lender with no branch office within reasonable proximity of the borrower, carrying out the money laundering checks precisely specified in writing by the lender;
 - (ii) making appropriate searches relating to the property in public registers (for example, local searches, commons registration searches, mining searches), and reporting any results specified by the lender or which the solicitor considers may adversely affect the lender; or effecting search insurance;
 - (iii) making enquiries on legal matters relating to the property reasonably specified by the lender, and reporting the replies;
 - (iv) reporting the purchase price stated in the transfer and on how the borrower says that the purchase money (other than the mortgage advance) is to be provided; and reporting if the solicitor will not have control over the payment of all the purchase money (other than a deposit paid to an estate agent or a reservation fee paid to a builder or developer);
 - (v) reporting if the seller or the borrower (if the property is already owned by the borrower) has not owned or been the registered owner of the property for at least six months;
 - (vi) if the lender does not arrange insurance, confirming receipt of satisfactory evidence that the buildings insurance is in place for at least the sum required by the lender and covers the risks specified by the lender; giving notice to the insurer of the lender's interest and requesting confirmation that the insurer will notify the lender if the policy is not renewed or is cancelled; and supplying particulars of the insurance and the last premium receipt to the lender;

- (vii) investigating title to the property and appurtenant rights; reporting any defects revealed, advising on the need for any consequential statutory declarations or indemnity insurance, and approving and effecting indemnity cover if required by the lender; and reporting if the solicitor is aware of any rights needed for the use or enjoyment of the property over other land;
- (viii) reporting on any financial charges (for example, improvement or repair grants or Housing Act discounts) secured on the property revealed by the solicitor's searches and enquiries which will affect the property after completion of the mortgage;
- (ix) in the case of a leasehold property, confirming that the lease contains the terms stipulated by the lender and does not include any terms specified by the lender as unacceptable; obtaining a suitable deed of variation or indemnity insurance if the terms of the lease are unsatisfactory; enquiring of the seller or the borrower (if the property is already owned by the borrower) as to any known breaches of covenant by the landlord or any superior landlord and reporting any such breaches to the lender; reporting if the solicitor becomes aware of the landlord's absence or insolvency; making a company search and checking the last three years' published accounts of any management company with responsibilities under the lease; if the borrower is required to be a shareholder in the management company, obtaining the share certificate, a blank stock transfer form signed by the borrower and a copy of the memorandum and articles of association; obtaining any necessary consent to or prior approval of the assignment and mortgage; obtaining a clear receipt for the last payment of rent and service charge; and serving notice of the assignment and mortgage on the landlord;
- (ixA) in the case of a commonhold unit, confirming receipt of satisfactory evidence that common parts insurance is in place for at least the sum required by the lender and covers the risks specified by the lender; confirming that the commonhold community statement contains the terms specified by the lender and does not include any restrictions on occupation or use specified by the lender as unacceptable; enquiring of the seller (or the borrower if the property is already owned by the borrower) and the commonhold association as to any known breaches of the commonhold community statement by the commonhold association or any unit-holder, and reporting any such breaches to the lender; making a company search to verify that the commonhold association is in existence and remains registered, and that there is no registered indication that it is to be wound up; obtaining the last three years' published accounts of the commonhold association and reporting any apparent problems with the association to the lender; obtaining a commonhold unit information certificate; and serving notice of the transfer and mortgage of the commonhold unit on the commonhold association;
- (x) if the property is subject to a letting, checking that the type of letting and its terms comply with the lender's requirements;
- (xi) making appropriate pre-completion searches, including a bankruptcy search against the borrower, any other person in whom the legal estate is vested and any guarantor;

- (xii) receiving, releasing and transmitting the mortgage advance, including asking for any final inspection needed and dealing with any retentions and cashbacks;
- (xiii) procuring execution of the mortgage deed and form of guarantee as appropriate by the persons whose identities have been checked in accordance with any requirements of the lender under paragraph (3)(c)(i) as those of the borrower, any other person in whom the legal estate is vested and any guarantor; obtaining their signatures to the forms of undertaking required by the lender in relation to the use, occupation or physical state of the property; and complying with the lender's requirements if any document is to be executed under a power of attorney;
- (xiv) asking the borrower for confirmation that the information about occupants given in the mortgage instructions or offer is correct; obtaining consents in the form required by the lender from existing or prospective occupiers of the property aged 17 or over specified by the lender, or of whom the solicitor is aware;
- (xv) advising the borrower on the terms of any document required by the lender to be signed by the borrower;
- (xvi) advising any other person required to sign any document on the terms of that document or, if there is a conflict of interest between that person and the borrower or the lender, advising that person on the need for separate legal advice and arranging for him or her to see an independent conveyancer;
- (xvii) obtaining the legal transfer of the property to the mortgagor;
- (xviii) procuring the redemption of (A) existing mortgages on property the subject of any associated sale of which the solicitor is aware, and (B) any other mortgages secured against a property located in England or Wales made by an identified lender where an identified account number or numbers or a property address has been given by the lender;
- (xix) ensuring the redemption or postponement of existing mortgages on the property, and registering the mortgage with the priority required by the lender;
- (xx) making administrative arrangements in relation to any collateral security, such as an endowment policy, or in relation to any collateral warranty or guarantee relating to the physical condition of the property, such as NHBC documentation;
- (xxi) registering the transfer and mortgage;
- (xxii) giving legal advice on any matters reported on under this paragraph (3)(c), suggesting courses of action open to the lender, and complying with the lender's instructions on the action to be taken;
- (xxiii) disclosing any relationship specified by the lender between the solicitor and borrower;
- (xxiv) storing safely the title deeds and documents pending registration and delivery to or as directed by the lender;
- (xxv) retaining the information contained in the solicitor's conveyancing file for at least six years from the date of the mortgage.

- (d) In addition, a solicitor acting for both lender and borrower in a standard mortgage of property to be used as the borrower's private residence only:
 - (i) must use the certificate of title set out in the Appendix, or as substituted from time to time by the Council with the concurrence of the Master of the Rolls, ("the approved certificate"); and
 - (ii) unless the lender has certified that its mortgage instructions are subject to the limitations contained in paragraphs (3)(c) and (3)(e), must notify the lender on receipt of instructions that the approved certificate will be used, and that the solicitor's duties to the lender are limited to the matters contained in the approved certificate.(See also note (iii) below.)
- (e) The terms of this rule will prevail in the event of any ambiguity in the lender's instructions, or discrepancy between the instructions and paragraph (3)(c) or the approved certificate.

Anti-avoidance

- (f) (i) Subject to paragraph (3)(f)(ii), a solicitor who is acting only for the borrower in a standard mortgage of property must not accept or act upon any requirements by way of undertaking, warranty, guarantee or otherwise of the lender, the lender's solicitor or other agent which extend beyond the limitations contained in paragraph (3)(c).
- (ii) Provided the property is not to be used solely as the borrower's private residence, paragraph (3)(f)(i) does not prevent the borrower's solicitor from giving any form of certificate of title recognised from time to time by the Council of the Law Society (a "recognised certificate"). Additions or amendments which arise from the individual transaction may be made to the text of a recognised certificate but, to the extent to which they create an increased or additional obligation, must not extend beyond the limitations contained in paragraph (3)(c).

Notes

- (i) *A mortgage is a "standard mortgage" where (1) it is provided in the normal course of the lender's activities; (2) a significant part of the lender's activities consists of lending; and (3) the mortgage is on standard terms. An "individual mortgage" is any other mortgage.*
 - *A mortgage will not be on standard terms if material terms in any of the documents relating to the mortgage transaction are negotiated between the lender's solicitor and the borrower's solicitor contemporaneously with effecting the mortgage. In commercial transactions, the element of negotiation will often relate to the facility letter or facility agreement rather than the mortgage deed itself.*
 - *Provided there has been no contemporaneous negotiation of material terms between the parties' solicitors, a mortgage will be on standard terms where the lender uses a prescribed form of mortgage deed. Minor variations, such as the usual clause limiting the liability of trustee mortgagors, are not regarded as material and do not alter the nature of these terms as standard.*

- *In addition to its normal standard terms, a lender may have a different set or sets of standard terms applicable to specialised types of borrower, such as registered social landlords. Provided these terms are applied by the lender to all equivalent specialist borrowers or have been agreed between the lender and a specialist borrower as applicable to all transactions between them, they will constitute standard terms for the purposes of the rule.*
 - *The lender and the borrower must be separately represented on the grant of an individual mortgage at arm's length (see paragraph (3)(a)(ii)). The rest of the rule is not then applicable.*
 - *A solicitor may act for both lender and borrower in a standard mortgage, provided (1) there is no conflict of interests; (2) the mortgage instructions do not go beyond the limits set out in paragraph (3)(c); and (3) in the case of a property to be used solely as the borrower's private residence, the approved certificate of title set out in the Appendix is used (see paragraphs (3)(a)(iii)–(iv) and note (iv)).*
 - *The limitations of paragraph (3)(c) also apply to a standard mortgage where the lender and the borrower are separately represented (see paragraph (3)(f)(i) which includes certificates of title). However, paragraph (3)(f)(ii) allows the borrower's solicitor, in a transaction where the property is not to be used solely as the borrower's private residence, to give a certificate of title in any form recognised by the Law Society. A solicitor also remains free to give any other form of certificate which complies with the rule.*
 - *There may be cases where the lapse of time between the mortgage offer and completion (for example, when new properties are added) results in use of an earlier edition of a recognised certificate. That is acceptable.*
- (ii) *A solicitor will not be in breach of paragraphs (3)(a)(iii)–(iv) or (c) if the lender has certified that its mortgage instructions and documents sent pursuant to those instructions are subject to the limitations set out in paragraphs (3)(c) and (e), and certifies any subsequent instructions and documents in the same way. If there is no certification, a solicitor acting in a transaction involving the charge of property to be used solely as the borrower's private residence must notify the lender that the approved certificate of title will be used and that the solicitor's duties to the lender will be limited accordingly (see paragraph (3)(d)(ii)). In other types of transaction, the solicitor should draw the lender's attention to the provisions of paragraphs (3)(c) and (e) and state that he or she cannot act on any instructions which extend beyond the matters contained in paragraph (3)(c).*
- (iii) *As an alternative to printing the approved certificate for each transaction, it is acceptable for a lender to use a short form certificate of title which incorporates the approved certificate by reference. The form must include in the following order:*
- *the title "Certificate of Title";*
 - *the contents of the details box in the order set out in the approved certificate (use of two columns is acceptable) but with details not required shaded out or stated not to be required; and*
 - *the wording "We, the conveyancers named above, give the Certificate of Title set out in the Appendix to Rule 6(3) of the Solicitors' Practice Rules 1990 as if the same were set out in full, subject to the limitations contained in it."*

Administrative details, such as a request for cheque, may follow the Certificate of Title.

- (iv) *The approved certificate is only required for a transaction where the property is to be used solely as the borrower's private residence. The approved certificate need not, therefore, be used for investment properties such as blocks of flats, business premises such as shops (even if living accommodation is attached), or "buy to let mortgages" on properties which are not intended for owner-occupation.*
- (v) *"Solicitor" in paragraph (3)(b)(i) means any principal in the practice (or an associated practice), and any solicitor of the Supreme Court or registered European lawyer who is conducting or supervising the transaction, whether or not he or she is a principal; and*
 - *"immediate family" means spouse, children, parents, brothers and sisters.**"Solicitor" in sub-paragraphs (i)–(xxv) of paragraph (3)(c) means the practice instructed and any solicitor of the Supreme Court or registered European lawyer conducting or supervising the transaction.*
- (vi) *The lender must be informed of the circumstances, in accordance with paragraph (3)(b) so that the lender can decide whether or not to instruct the solicitor.*
- (vii) *A lender's instructions (see paragraph (3)(c)(xxiii)) may require a wider disclosure of a solicitor's circumstances than paragraph (3)(b) requires; and a solicitor must assess whether the circumstances give rise to a conflict. For example, there will be a conflict between lender and borrower if the solicitor becomes involved in negotiations relating to the terms of the loan. A conflict might arise from the relationship a solicitor has with the borrower – for example, if the solicitor is the borrower's creditor or debtor or the borrower's business associate or co-habitant.*
- (viii) *In relation to paragraph (3)(f)(ii), the limitations contained in paragraph (3)(c) will not apply to the insertion into a recognised certificate of any information required by that certificate. For example, where the recognised certificate requires details of the parties' repairing obligations under a lease of the property, the borrower's solicitor may provide a summary of the relevant terms of the lease despite the general limitation contained in paragraph (3)(c)(ix). However, any additions or amendments to the text of a recognised certificate to suit a particular transaction must not, to the extent to which they create an increased or additional obligation, extend beyond the limitations contained in paragraph (3)(c)*
- (ix) *Many lenders require their solicitor to check the vires of corporate borrowers and that the correct procedures have been followed to ensure the validity of the mortgage. Paragraph (3)(c)(xiii) enables lenders to impose duties on solicitors in relation to the execution of the mortgage and guarantee. Within this context it is perfectly proper for a lender to require a solicitor to obtain such information as the circumstances may require in relation to the capacity of, or execution of documents by, the borrower, third party mortgagor or guarantor; for instance, by way of certified copy minutes or an opinion from a foreign lawyer as to the validity and enforceability of the security or guarantee given by a foreign registered company. There is no reason why solicitors should not assist corporate clients by drafting minutes or board resolutions. Solicitors should not, however, themselves certify the validity or passing of resolutions unless they were present at the meeting and have verified that it was convened and held strictly in accordance with all relevant requirements.*
- (x) *Paragraph (3)(c)(xx) allows a solicitor to accept instructions from a lender to carry out administrative arrangements in relation to any collateral security. This expression includes associated debentures, collateral warranties, second charges, rent assignments, charges over rent income and deeds of priority. The administrative arrangements necessarily include the preparation and execution of the relevant documents and subsequent registration.*

Appendix

Certificate of title

Details box

| |
|---|
| TO: (Lender) |
| Lender's Reference or Account No: |
| The Borrower: |
| Property: |
| Title Number: |
| Mortgage Advance: |
| Price stated in transfer: |
| Completion Date: |
| Conveyancer's Name & Address: |
| Conveyancer's Reference: |
| Conveyancer's bank, sort code and account number: |
| Date of instructions: |

WE THE CONVEYANCERS NAMED ABOVE CERTIFY as follows:

- (1) If so instructed, we have checked the identity of the Borrower (and anyone else required to sign the mortgage deed or other document connected with the mortgage) by reference to the document or documents precisely specified in writing by you.
- (2) Except as otherwise disclosed to you in writing:
 - (i) we have investigated the title to the Property, we are not aware of any other financial charges secured on the Property which will affect the Property after completion of the mortgage and, upon completion of the mortgage, both you and the mortgagor (whose identity has been checked in accordance with paragraph (1) above) will have a good and marketable title to the Property and to appurtenant rights free from prior mortgages or charges and from onerous encumbrances which title will be registered with absolute title;
 - (ii) we have compared the extent of the Property shown on any plan provided by you against relevant plans in the title deeds and/or the description of the Property in any valuation which you have supplied to us, and in our opinion there are no material discrepancies;
 - (iii) the assumptions stated by the valuer about the title (its tenure, easements, boundaries and restrictions on use) in any valuation which you have supplied to us are correct;
 - (iv) if the Property is leasehold the terms of the lease accord with your instructions, including any requirements you have for covenants by the Landlord and/or a management company and/or by a deed of mutual covenant for the insurance, repair and maintenance of the structure, exterior and common parts of any building of which the Property forms part, and we have or will obtain on or before completion a clear receipt for the last payment of rent and service charge;

- (ivA) if the property is a commonhold unit, the commonhold community statement contains the terms specified by you and does not include any restrictions on occupation or use specified by you as unacceptable, and we have or will obtain on or before completion a commonhold unit information certificate;
- (v) we have received satisfactory evidence that the buildings insurance is in place, or will be on completion, for the sum and in the terms required by you;
- (vi) if the Property is to be purchased by the Borrower:
 - (a) the contract for sale provides for vacant possession on completion;
 - (b) the seller has owned or been the registered owner of the Property for not less than six months;
 - (c) we are not acting on behalf of the seller;
- (vii) we are in possession of: (A) either a local search or local search insurance and (B) such other searches or search insurance as are appropriate to the Property, the mortgagor and any guarantor, in each case in accordance with your instructions;
- (viii) nothing has been revealed by our searches and enquiries which would prevent the Property being used by any occupant for residential purposes;
- (ix) neither any principal nor any other solicitor or registered European lawyer in the practice giving this certificate nor any spouse, child, parent, brother or sister of such a person is interested in the Property (whether alone or jointly with any other) as mortgagor.

WE:

- (a) undertake, prior to use of the mortgage advance, to obtain in the form required by you the execution of a mortgage and a guarantee as appropriate by the persons whose identities have been checked in accordance with paragraph (1) above as those of the Borrower, any other person in whom the legal estate is vested and any guarantor; and, if required by you:
 - to obtain their signatures to the forms of undertaking required by you in relation to the use, occupation or physical state of the Property;
 - to ask the Borrower for confirmation that the information about occupants given in your mortgage instructions or offer is correct; and
 - to obtain consents in the form required by you from any existing or prospective occupier(s) aged 17 or over of the Property specified by you or of whom we are aware;
- (b) have made or will make such Bankruptcy, Land Registry or Land Charges Searches as may be necessary to justify certificate no. (2)(i) above;
- (c) will within the period of protection afforded by the searches referred to in paragraph (b) above:
 - (i) complete the mortgage;
 - (ii) arrange for the issue of a stamp duty land tax certificate if appropriate;
 - (iii) deliver to the Land Registry the documents necessary to register the mortgage in your favour and any relevant prior dealings;

This document applies to conduct issues occurring before 1 July 2007. For rules governing conduct after 1 July 2007, see www.rules.sra.org.uk.

- (iv) effect any other registrations necessary to protect your interests as mortgagee;
- (d) will despatch to you such deeds and documents relating to the Property as you require with a list of them in the form prescribed by you within ten working days of receipt by us of the title information document from the Land Registry;
- (e) will not part with the mortgage advance (and will return it to you if required) if it shall come to our notice prior to completion that the Property will at completion be occupied in whole or in part otherwise than in accordance with your instructions;
- (f) will not accept instructions, except with your consent in writing, to prepare any lease or tenancy agreement relating to the Property or any part of it prior to despatch of the Charge Certificate to you;
- (g) will not use the mortgage advance until satisfied that, prior to or contemporaneously with the transfer of the Property to the mortgagor, there will be discharged (A) any existing mortgage on property the subject of an associated sale of which we are aware and (B) any other mortgages made by a lender identified by you secured against a property located in England or Wales where you have given either an account number or numbers or a property address;
- (h) will notify you in writing if any matter comes to our attention before completion which would render the certificate given above untrue or inaccurate and, in those circumstances, will defer completion pending your authority to proceed and will return the mortgage advance to you if required;
- (i) we confirm that we have complied, or will comply, with your instructions in all other respects to the extent that they do not extend beyond the limitations contained in paragraph (3)(c) of rule 6 of the Solicitors' Practice Rules 1990.

OUR duties to you are limited to the matters set out in this certificate and we accept no further liability or responsibility whatsoever. The payment by you to us (by whatever means) of the mortgage advance or any part of it constitutes acceptance of this limitation and any assignment to you by the Borrower of any rights of action against us to which the Borrower may be entitled shall take effect subject to this limitation.

Signature box

| |
|-------------------------------|
| SIGNED on behalf of |
| THE CONVEYANCERS |
| NAME |
| of Authorised Signatory..... |
| QUALIFICATION |
| of Authorised Signatory..... |
| DATE of Signature |

Rule 6A (Seller's solicitor dealing with more than one prospective buyer)

(1) This rule applies to the conveyancing of freehold (including commonhold) and leasehold property. The rule is to be interpreted in the light of the notes.

Notes

- (i) *Rule 6A applies to all conveyancing of land, whether the transaction is of a "commercial" or "domestic" nature.*
- (ii) *Rule 6A does not set terms for a contract race. It lays down requirements which must be met when a solicitor is instructed to deal with more than one prospective buyer. The rule imposes no obligation on the seller's solicitor to exchange contracts with the first buyer to deliver a signed contract and deposit. It will be a matter of law whether or not the seller has entered into a contractual obligation to exchange with the buyer "first past the post", or whether the whole matter remains "subject to contract".*

(2) Where a seller instructs a solicitor to deal with more than one prospective buyer, the solicitor (with the client's consent) shall immediately disclose the seller's decision, if possible by telephone or fax, to the solicitor or other conveyancer acting for each prospective buyer or direct to the prospective buyer if acting in person. Such disclosure, if made by telephone, shall at once be confirmed by letter or fax. If the seller refuses to authorise disclosure, the solicitor shall immediately cease to act. Each prospective buyer must be notified each time a decision is taken to deal with any further prospective buyer.

Notes

- (i) *It is the seller's decision to deal with more than one prospective buyer which must be notified. The seller's solicitor must not wait until contracts are actually submitted but must notify the appropriate parties immediately upon receiving instructions to deal with a prospective buyer (other than the first).*
- (ii) *A solicitor will have been instructed to deal with a prospective buyer where the solicitor is asked to submit a draft contract or to provide any other documentation or information (e.g. a plan or a note of the Land Registry title number) in order to facilitate the conveyancing of the premises to the prospective buyer. The rule does not, however, cover activities normally performed by an estate agent, such as issuing particulars of sale, showing prospective buyers round the property, and negotiating the price.*
- (iii) *The rule will apply where the contracts are to contain non-identical terms (e.g. where one contract is to include additional land). It will also apply where the contracts are to relate to different interests in the same property where the sale of one such interest would affect the sale of the other. For example, a party negotiating to take a lease of premises will be affected by another party negotiating to buy the freehold with vacant possession, since the sale of one precludes the sale of the other. On the other hand, the rule would not apply where the seller is proposing to grant a lease and to effect a simultaneous sale of the freehold reversion subject to that lease, since neither transaction precludes the other.*
- (iv) *Where a prospective buyer has retained an unqualified conveyancer, solicitors are reminded to consult the Council guidance on dealing with unqualified conveyancers (Annex 25A in the 1999 edition of "The Guide to the Professional Conduct of Solicitors"). However, so far as Rule 6A is concerned, the obligations*

in paragraph (2) will be met by disclosure either to the prospective buyer direct or to the unqualified conveyancer.

(3) The obligations in paragraph (2) of this rule apply where a seller client, to the solicitor's knowledge, deals (whether directly or through another solicitor or other conveyancer) with another prospective buyer (or with that buyer's solicitor or other conveyancer).

Note

"Deals with another prospective buyer" should be interpreted in the light of note (ii) to paragraph (2).

(4) A solicitor shall not act for more than one of the prospective buyers.

Notes

- (i) *"Prospective buyers" should be interpreted in the light of note (ii) to paragraph (2)*
- (ii) *This part of the rule recognises the inevitable conflict of interest which makes it impossible for a solicitor to act for more than one of the prospective buyers.*

(5) A solicitor shall not act for both the seller and one of the prospective buyers, even in a case which would fall within Rule 6(2)(b) of these rules.

Notes

- (i) *"Prospective buyers" should be interpreted in the light of note (ii) to paragraph (2).*
- (ii) *Clearly a solicitor must not act for both where it is known at the time of taking instructions on behalf of the buyer that there is more than one prospective buyer. In addition, this part of the rule does not permit a solicitor to continue to act for both in a case falling within Rule 6(2), where another prospective buyer is introduced during the course of the transaction because of the significant inherent conflict; the solicitor would find it impossible to reconcile the interests of both clients if, for example, it was in the seller's best interests to exchange with the other prospective buyer.*

(6) For the purposes of this rule a prospective buyer shall continue to be treated as such until either the prospective buyer or the seller gives written notice (either by letter or by fax) of withdrawal from the transaction, such notice to be between solicitors or other conveyancers save where such notice is given by or to a prospective buyer acting in person.

Notes

- (i) *Solicitors should take particular care where a contract has been submitted but nothing has been heard from the prospective buyer's solicitor for some time. If the seller decides to deal with another buyer, the rule must still be complied with unless the seller's solicitor has already given notice of withdrawal.*
- (ii) *Where a prospective buyer has retained an unqualified conveyancer, the provisions of paragraph (6) should be interpreted in the light of note (iv) to paragraph (2).*

(7) This rule does not apply to a proposed sale by auction or tender. The rule does, however, apply to require disclosure to a prospective buyer by private treaty of instructions to offer the property by auction or tender.

Rule 7 (Fee sharing, partnership and corporate practice)

(1) (Fee sharing – the general rule)

A solicitor shall not share or agree to share his or her professional fees with any person except:

- (a) a practising solicitor;
- (b) a practising lawyer of another jurisdiction (other than a lawyer who has been struck off the register of foreign lawyers or the register of European lawyers, or whose registration has been suspended);
- (ba) a non-registered European lawyer partner in a partnership permitted by paragraph (6)(c) of this rule;
- (bb) a body corporate wholly owned and controlled, for the purpose of practising law, by lawyers within sub-paragraph (b) above, but without the involvement of registered European lawyers or registered foreign lawyers practising as such as directors, members or owners of shares;
- (bc) a body corporate permitted under Rule 9(1)(a) of the Solicitors' Overseas Practice Rules;
- (c) the solicitor's *bona fide* employee, which provision shall not permit under the cloak of employment a partnership prohibited by paragraph (6) of this rule; or
- (d) a retired partner or predecessor of the solicitor or the dependants or personal representatives of a deceased partner or predecessor; or
- (e) a charity (as defined in Rule 18(2)(aa) of these rules), provided
 - (i) there is compliance with Rule 1(a) and (c) relating to independence and integrity and best interests of clients; and
 - (ii) if requested by the Law Society to do so, the solicitor supplies details of all agreements to share fees with a charity; and
 - (iii) the operation of any agreement does not result in a partnership prohibited by paragraph (6) of this rule; and
 - (iv) the fee sharing agreement does not involve a breach of the Solicitors' Introduction and Referral Code.

(1A) (Fee sharing – exception for introducing capital or providing services)

Notwithstanding paragraph (1) of this rule a solicitor may share his or her professional fees with a third party ("the fee sharer") provided that:

- (a) the purpose of the fee sharing arrangement is solely to facilitate the introduction of capital and/or the provision of services to a practice;

- (b) neither the fee sharing agreement between the solicitor and a fee sharer, nor the extent of the fees the solicitor shares with fee sharers, permits any fee sharer to influence or constrain the solicitor's professional judgement in relation to the advice given to any client;
- (c) the operation of the agreement does not result in a partnership prohibited by paragraph (6) of this rule;
- (d) if requested by the Law Society to do so, the solicitor supplies details of all agreements between the solicitor and fee sharers and the percentage of the annual gross fees of the practice which has been paid to each fee sharer; and
- (e) the fee sharing agreement does not involve a breach of the Solicitors' Introduction and Referral Code.

"Fee sharer" means a person who or which shares a solicitor's fees in reliance on the exception contained in this paragraph, and the expression includes any person connected to or associated with the fee sharer.

Note

Because of article 3.6 of the CCBE Code, the exemptions in paragraphs (1)(e) and (1A) of this rule do not apply to a solicitor's "European cross-border activities" (see Rule 16). Article 3.6 prohibits solicitors from sharing fees with a non-lawyer fee sharer situated in a CCBE state other than the UK.

(2) (Fee sharing – exception for solicitor property seller's sub-agent)

Notwithstanding paragraph (1) of this rule a solicitor who instructs an estate agent as sub-agent for the sale of properties may remunerate the estate agent on the basis of a proportion of the solicitor's professional fee.

(3) (Fee sharing – exception for employed solicitors)

The exceptions set out in paragraphs 1A and 2 to 9 of the Employed Solicitors Code shall where necessary also operate as exceptions to this rule but only to permit fee sharing with

- (a) the solicitor's employer (as defined in Rule 4(1) of these rules); or
- (b) a charity, where the work is undertaken in accordance with paragraph 1A of the Employed Solicitors Code.

(4) (Fee sharing – exception for voluntary work)

A solicitor who works as a volunteer in a law centre or advice service operated by a charitable or similar non-commercial organisation may pay to the organisation any fees or costs that he or she receives

- (a) under the legal aid scheme; or
- (b) where the organisation indemnifies the client in relation to the solicitor's costs insofar as they are not recoverable from any other source.

(5) (Fee sharing – exception for retired or deceased director, shareowner or member)

For the purposes of sub-paragraph (1)(d) above, the references to a retired or deceased partner shall be construed,

- (a) in relation to a recognised body which is a company with a share capital, as meaning a retired or deceased director of or shareowner in that body,
- (b) in relation to a recognised body which is a company without a share capital, as meaning a retired or deceased director or member of the body, and
- (c) in relation to a recognised body which is a limited liability partnership, as meaning
 - (i) a retired or deceased member of the body, or
 - (ii) a retired or deceased director of or shareowner in a company which is or was a member of the body, or
 - (iii) a retired or deceased member of a limited liability partnership which is or was a member of the body.

(6) (Partnership)

Solicitors of the Supreme Court, registered European lawyers and recognised bodies are permitted to practise in the following types of partnership only:

- (a) a partnership consisting of solicitors of the Supreme Court and/or registered European lawyers and/or recognised bodies;
- (b) a partnership consisting of solicitors of the Supreme Court and/or registered European lawyers, together with registered foreign lawyers;
- (c) a partnership consisting of registered European lawyers and non-registered European lawyers, with or without solicitors of the Supreme Court and/or registered foreign lawyers; and
- (ca) a partnership consisting of registered European lawyers, non-registered European lawyers and recognised bodies, with or without solicitors of the Supreme Court.
- (d) In paragraph (6)(c) and (ca) above:

“non-registered European lawyer” means a member of a legal profession which is covered by the Establishment of Lawyers Directive 98/5/EC, but who is not:

 - (A) a solicitor of the Supreme Court, registered European lawyer or registered foreign lawyer,
 - (B) a barrister of England and Wales, Northern Ireland or the Irish Republic, or
 - (C) a Scottish advocate; andwho is not based at an office in England and Wales.

(7) (Corporate practice)

A solicitor of the Supreme Court or registered European lawyer shall not practise through any body corporate except a recognised body, or save as permitted under Rule 4 of these rules.

Rule 8 (Contingency fees)

[See also guidance [Disclosure of funding, fee sharing and referral arrangements](#) issued in March 2004 and [Referral fees – Guidance](#) issued on 21 December 2004.]

(1) A solicitor who is retained or employed to prosecute or defend any action, suit or other contentious proceeding shall not enter into any arrangement to receive a contingency fee in respect of that proceeding, save one permitted under statute or by the common law.

(2) Paragraph (1) of this rule shall not apply to an arrangement in respect of an action, suit or other contentious proceeding in any country other than England and Wales to the extent that the local lawyer would be permitted to receive a contingency fee in respect of that proceeding.

Rule 9 (Claims assessors)

(1) A solicitor shall not, in respect of any claim or claims arising as a result of death or personal injury, either enter into an arrangement for the introduction of clients with or act in association with any person (not being a solicitor) whose business or any part of whose business is to make, support or prosecute (whether by action or otherwise, and whether by a solicitor or agent or otherwise) claims arising as a result of death or personal injury and who in the course of such business solicits or receives contingency fees in respect of such claims.

(2) The prohibition in paragraph (1) of this rule shall not apply to an arrangement or association with a person who solicits or receives contingency fees only in respect of proceedings in a country outside England and Wales, to the extent that a local lawyer would be permitted to receive a contingency fee in respect of such proceedings.

Rule 10 (Receipt of commissions from third parties)

(1) Solicitors shall account to their clients for any commission received of more than £20 unless, having disclosed to the client in writing the amount or basis of calculation of the commission or (if the precise amount or basis cannot be ascertained) an approximation thereof, they have the client's agreement to retain it.

(2) Where the commission actually received is materially in excess of the amount or basis or approximation disclosed to the client the solicitor shall account to the client for the excess.

(3) This rule does not apply where a member of the public deposits money with a solicitor who is acting as agent for a building society or other financial institution and the solicitor has not advised that person as a client as to the disposition of the money.

Rule 11

[repealed]

Rule 12 (Investment business)

(1) Without prejudice to the generality of the principles embodied in Rule 1 of these rules, solicitors shall not in connection with investment business:

- (a) be appointed representatives; or
- (b) have any arrangement with other persons under which the solicitors could be constrained to recommend to clients or effect for them (or refrain from doing so) transactions in some investments but not others, with some persons but not others, or through the agency of some persons but not others; or to introduce or refer clients or other persons with whom the solicitors deal to some persons but not others.

(2) Solicitors shall not alone, or by or with others, control, actively participate in or operate any separate business which is an appointed representative, unless it is the appointed representative of an independent financial adviser.

(3) [deleted]

(4) This rule shall have effect in relation to the conduct of investment business in, into or from the United Kingdom by:

- (a) a solicitor of the Supreme Court or recognised body practising from an office anywhere in the world;
- (b) a registered European lawyer practising from an office anywhere in the United Kingdom; or
- (c) a registered foreign lawyer practising from an office in England and Wales.

(5) In this rule "investment business" means any "regulated activity" as defined in the Financial Services and Markets Act 2000; and "appointed representative" and "investment" have the meanings given in that Act.

(6) Paragraph (1)(b) of this rule shall not apply to arrangements in connection with any of the following types of investments:

- (a) regulated mortgage contracts;
- (b) general insurance contracts; or
- (c) pure protection contracts;

and the terms in (a), (b) and (c) above have the meanings given in rule 8(1) of the Solicitors' Financial Services (Scope) Rules 2001.

Rule 13 (Supervision and management of a practice)

[See also [Former version of rule 13, Solicitors' Practice Rules 1990.](#)]

In this rule, words in italics are defined in the notes.

- (1) The *principals* in a practice must ensure that their practice is supervised and managed so as to provide for:
- (a) compliance with *principal* solicitors' duties at law and in conduct to exercise proper *supervision* over their admitted and unadmitted staff;
 - (b) adequate *supervision* and direction of clients' matters;
 - (c) compliance with the requirements of sections 22(2A) and 23(3) of the Solicitors Act 1974, section 9(4) of the Administration of Justice Act 1985 and section 84(2)(e) of the Immigration and Asylum Act 1999 as to the direction and *supervision* of unqualified persons;
 - (d) effective *management* of the practice generally.
- (2) Every practice must have at least one *principal* who is a solicitor *qualified to supervise*.
- (3) (a) Except as provided in (b) below, every office of the practice must have at least one solicitor *qualified to supervise*, for whom that office is his or her *normal place of work*.
- (b) Without prejudice to the requirements of paragraph (1) of this rule, an office which undertakes only property selling and ancillary mortgage related services as defined in rule 6 of these rules, survey and valuation services, must be managed and supervised to the following minimum standards:
- (i) the day-to-day control and administration must be undertaken by a suitably qualified and experienced office manager who is a fit and proper person to undertake such work; and for whom that office is his or her normal place of work; and
 - (ii) the office must be supervised and managed by a solicitor *qualified to supervise*, who must visit the office with sufficient frequency and spend sufficient time there to allow for adequate control of and consultation with staff, and if necessary consultation with clients.
- (4) This rule is to be interpreted in the light of the notes, and is subject to the transitional provisions set out in note (k).
- (5) (a) This rule applies to private practice, and to solicitors employed by a law centre.
- (b) The rule also applies to other employed solicitors, but only:
- (i) if they advise or act for members of the public under the legal aid scheme; or
 - (ii) if, in acting for members of the public, they exercise any *right of audience* or *right to conduct litigation*, or supervise anyone exercising those rights.

Notes

(a) Principals' responsibility for the practice

Principals are responsible at law and in conduct for their practices, and compliance with the rule does not derogate from this responsibility. Under rule 6 of these rules, property selling or mortgage related services to one party to a conveyance, and conveyancing services for the other party, may not be supervised by the same solicitor.

(b) "Supervision" and "management"

- (i) *"Supervision" refers to the professional overseeing of staff and the professional overseeing of clients' matters.*
- (ii) *"Management" is a wider concept, which encompasses the overall direction and development of the practice and its day-to-day control and administration. Management functions include business efficiency as well as professional competence.*
- (iii) *Operationally, supervision and management may be delegated within an established framework for reporting and accountability. However, the responsibility under paragraph (1)(a) of the rule, and the responsibility referred to in note (a) above, remain with the principals.*
- (iv) *"With sufficient frequency" in paragraph (3)(b)(ii) would normally mean daily; but if the office is open at weekends it may be possible to defer consultations with clients until a weekday and be available only at need to staff.*

(c) Evidence of effective supervision and management

Where a question arises as to compliance with paragraph (1) of the rule, principals will be expected to be able to produce evidence of a systematic and effective approach to the supervision and management of the practice. Such evidence may include the implementation by the practice of one or more of the following:

- (i) *guidance on the supervision and execution of particular types of work issued from time to time by the Law Society including guidance on solicitors' responsibilities for the supervision of clerks exercising rights of audience under section 27(2)(e) of the Courts and Legal Services Act 1990;*
- (ii) *the practice's own properly documented management standards and procedures;*
- (iii) *practice management standards promoted from time to time by the Law Society;*
- (iv) *accounting standards and procedures promoted from time to time by the Law Society;*
- (v) *external quality standards such as BS EN ISO 9000 or Investors in People; and*
- (vi) *in the case of solicitors employed by a law centre, any management standards or procedures laid down by its management committee.*

(d) "Qualified to supervise"

A solicitor is qualified to supervise if he or she:

- (i) *has held practising certificates for at least 36 months within the last ten years; and*
- (ii) *has completed the training specified from time to time by the Law Society for the purpose of the rule.*

(e) "Normal place of work"

- (i) *A solicitor's "normal place of work" is the office from which he or she normally works, even though the day-to-day demands of practice may often take the solicitor out of the office.*
- (ii) *If a solicitor normally works from a particular office for a part of the working week, that office is his or her "normal place of work" for that part of the week. The solicitor may have a different "normal place of work" for another part of the week.*
- (iii) *A solicitor who has a different "normal place of work" for different parts of the week could be the sole solicitor qualified to supervise at different offices at*

different times in the week. However, no solicitor can be the sole solicitor qualified to supervise at two different offices for the same part of the week.

- (iv) *For compliance with paragraph (3) of the rule, an office must, for every part of the working week, have a solicitor qualified to supervise for whom that office is his or her "normal place of work" for that part of the week. This could be a different solicitor for different parts of the week.*
- (v) *The working week of an office includes early mornings, late evenings and weekends if work is carried on, and if so the office must have a solicitor qualified to supervise for those times. However, it is not required that the solicitor qualified to supervise normally works at those times, provided that he or she:*
 - (A) *is available for emergency consultation, and*
 - (B) *pays occasional visits to the office during such times.*

(f) Working away from the office

It is particularly important that systems of supervision and management encompass the work of:

- (i) *those persons from time to time working away from the office – e.g. at home, visiting clients, at court, at a police station, at a consulting room open only for a few hours per week, or staffing a stand at an exhibition;*
- (ii) *any person who normally works away from the office, such as a teleworker or homeworker.*

(g) Absence of solicitor qualified to supervise, or office manager

- (i) *When the solicitor qualified to supervise at an office is away on holiday, on sick leave, etc., suitable arrangements must be in place to ensure that any duties to clients and others are fully met. A similar standard applies to the absence of an office manager with responsibility for the day-to-day control and administration of a property selling office.*
- (ii) *If the solicitor qualified to supervise will be away for a month or more, the arrangements will normally need to include the provision of another solicitor qualified to supervise at that office. A similar standard applies to the absence of an office manager with responsibility for the day-to-day control and administration of a property selling office.*

(h) "Right of audience" and "right to conduct litigation"

"Right of audience" and "right to conduct litigation" are to be interpreted in accordance with Part II and section 119 of the Courts and Legal Services Act 1990 – see Rule 18(2)(fe).

(i) "Principals"

- (i) *"Principal", in Rule 13(1) and notes (a)–(c), means:*
 - (A) *a sole practitioner;*
 - (B) *if the practice is a partnership, an individual or recognised body who or which is a partner in the practice;*
 - (C) *if the practice is a recognised body which is a company, the company and its directors;*
 - (D) *if the practice is a recognised body which is a limited liability partnership, the limited liability partnership and its members.*
- (ii) *"Principal", in Rule 13(2) and note (j), means an individual who is:*
 - (A) *a sole practitioner;*
 - (B) *if the practice is a partnership, a partner in the practice;*
 - (C) *if the practice is a recognised body which is a company, a director of the company;*
 - (D) *if the practice is a recognised body which is a limited liability partnership:*

- (I) a member of the body; or
- (II) a director of a company (a recognised body) which is a member of the body; or
- (III) a member of a limited liability partnership (a recognised body) which is a member of the body.

(ia) Registered European lawyers

- (i) A registered European lawyer may fulfil the role of a "solicitor qualified to supervise" for the purpose of paragraph (2) or (3) of the rule or note (k)(ii)(C) below, provided that he or she has:
 - (A) practised as a lawyer for at least 36 months within the last ten years; and
 - (B) completed any training specified from time to time by the Law Society under note (d)(ii) above.
- (ii) A solicitor of the Supreme Court who was formerly a registered European lawyer will be a "solicitor qualified to supervise" if he or she has:
 - (A) practised as a lawyer for at least 36 months within the last ten years; and
 - (B) completed the training specified from time to time by the Law Society under note (d)(ii) above.

(j) Registered foreign lawyers

- (i) A registered foreign lawyer who is a principal in the practice may fulfil the role of a "solicitor qualified to supervise" for the purpose of paragraph (2) of the rule, provided that:
 - (A) the practice has at least one principal who is a solicitor of the Supreme Court or registered European lawyer; and
 - (B) the practice does not exercise or assume responsibility for any right of audience or any right to conduct litigation; and
 - (C) the registered foreign lawyer has practised as a lawyer for at least 36 months within the last ten years; and
 - (D) he or she has completed the training specified under note (d)(ii) above.
- (ii) A registered foreign lawyer who is a principal in the practice may fulfil the role of a "solicitor qualified to supervise" for the purpose of paragraph (3) of the rule or note (k)(ii)(C) below, provided that:
 - (A) no right of audience or right to conduct litigation is exercised or supervised from that office; and
 - (B) the practice has at least one principal who is a solicitor of the Supreme Court or registered European lawyer; and
 - (C) the registered foreign lawyer has practised as a lawyer for at least 36 months within the last ten years; and
 - (D) he or she has completed the training specified under note (d)(ii) above.

(ja) Conveyancing and probate

A registered foreign lawyer, or a registered European lawyer (unless qualified to do conveyancing or probate work under regulation 12 or 13 of the European Communities (Lawyer's Practice) Regulations 2000), may not supervise conveyancing or probate work for the purposes of section 22(2A) or 23(3) of the Solicitors Act 1974 or section 9(4) of the Administration of Justice Act 1985, but may, subject to the requirements of the rule, fulfil the role of a "solicitor qualified to supervise" in a practice or at an office where such work is done.

(k) Transitional provisions

For a period of 10 years from 23rd December 1999:

- (i) a solicitor of the Supreme Court, registered European lawyer or registered foreign lawyer who would not satisfy the requirements for a solicitor qualified to

supervise can nevertheless fulfil that role for the purpose of paragraph (2) of the rule or note (k)(ii)(C) below, provided that:

- (A) *immediately before 12th December 1996 he or she was qualified to supervise an office under Practice Rule 13(1)(a) as it then stood, or any waiver of that rule; and*
- (B) *any requirements of that rule or of any waiver continue to be met;*
- (ii) *a person who would not satisfy the requirements for a solicitor qualified to supervise can nevertheless fulfil that role for the purpose of paragraph (3) of the rule, provided that:*
 - (A) *immediately before 12th December 1996 he or she was managing or employed to manage an office in compliance with Practice Rule 13(1)(b) as it then stood, or any waiver of that rule; and*
 - (B) *any requirements of that rule or of any waiver continue to be met; and*
 - (C) *the office is attended on a daily basis by a solicitor qualified to supervise.*

Rule 14 (Structural surveys and formal valuations)

Solicitors may not provide structural surveys or formal valuations of property unless the work is carried out by a principal, director, member (in the case of a limited liability partnership) or employee who is a chartered surveyor or who holds another professional qualification approved by the Council.

Rule 15 (Costs information and client care)

Solicitors shall:

- (a) give information about costs and other matters, and
- (b) operate a complaints handling procedure,

in accordance with a Solicitors' Costs Information and Client Care Code made from time to time by the Council of the Law Society with the concurrence of the Master of the Rolls, but subject to the notes.

Notes

- (i) *A serious breach of the code, or persistent breaches of a material nature, will be a breach of the rule, and may also be evidence of inadequate professional services under section 37A of the Solicitors Act 1974.*
- (ii) *Material breaches of the code which are not serious or persistent will not be a breach of the rule, but may be evidence of inadequate professional services under section 37A.*
- (iii) *The powers of the Law Society on a finding of inadequate professional services include:*
 - (a) *disallowing all or part of the solicitor's costs; and*
 - (b) *directing the solicitor to pay compensation to the client up to a limit of £15,000.*
- (iv) *Non-material breaches of the code will not be a breach of the rule, and will not be evidence of inadequate professional services under section 37A.*

- (v) *Registered foreign lawyers practising in partnership with solicitors of the Supreme Court or registered European lawyers, or as members of recognised bodies which are limited liability partnerships, or as directors of recognised bodies which are companies, although subject to Rule 15 as a matter of professional conduct, are not subject to section 37A. However, such solicitors, registered European lawyers and recognised bodies are subject to section 37A for professional services provided by the firm.*

Rule 16 (European cross-border activities)

[See also the [CCBE Code of Conduct \(relevant extracts\)](#).]

(1) In relation to European cross-border activities solicitors shall, without prejudice to their other obligations under these rules or any other rules, principles or requirements of conduct, observe the rules codified in articles 2 to 5 of the CCBE's Code of Conduct for European Lawyers adopted on 19th May 2006, to be interpreted in the light of:

- (a) article 1 of the Code;
- (b) the CCBE's explanatory memorandum dated 19th May 2006; and
- (c) the notes to this rule.

(2) In this rule:

- (a) "European cross-border activities" means:
 - (i) all professional contacts with lawyers of CCBE states other than the United Kingdom; and
 - (ii) the professional activities of the solicitor in a CCBE state other than the United Kingdom, whether or not the solicitor is physically present in that CCBE state;
- (b) "lawyers" means members of legal professions represented on the CCBE either as full members or as observer members; and
- (c) "CCBE state" means a state whose legal profession is represented on the CCBE, either as a full member or as an observer member.

Notes

- (i) *The CCBE is the Council of Bars and Law Societies of Europe.*
- (ii) *[deleted]*
- (iii) *The view of the Council of the Law Society is that solicitors will fulfil their obligations under articles 2 to 5 of the Code by observing the corresponding rules, principles and requirements of conduct otherwise applicable to solicitors and, in addition, the following articles of the Code which have no such corresponding provision or which impose additional restrictions:*
 - *article 2.5 (incompatible occupations);*
 - *article 3.6 (fee sharing with non-lawyers);*
 - *article 5.2 (co-operation among lawyers of different member states);*
 - *article 5.3 (correspondence between lawyers);*
 - *article 5.4 (referral fees); and*
 - *article 5.9 (disputes amongst lawyers in different member states).*

This view is subject to any authoritative ruling to the contrary at European level.

- (iv) *A list of the legal professions covered by the Code appears in the CCBE's explanatory memorandum under article 1.4.*
- (v) *For the purpose of Rule 16 professional contacts and professional activities taking place within a practice are not to be regarded as "European cross-border activities".*

Rule 16A (Solicitors acting as advocates)

Any solicitor of the Supreme Court or registered European lawyer acting as advocate shall at all times comply with the Law Society's Code for Advocacy.

Rule 16B (Choice of advocate)

(1) A solicitor shall not make it a condition of providing litigation services that advocacy services shall also be provided by that solicitor or by the solicitor's firm or the solicitor's agent.

(2) A solicitor who provides both litigation and advocacy services shall as soon as practicable after receiving instructions and from time to time consider and advise the client whether having regard to the circumstances including:

- (i) the gravity, complexity and likely cost of the case;
- (ii) the nature of the solicitor's practice;
- (iii) the solicitor's ability and experience;
- (iv) the solicitor's relationship with the client;

the best interests of the client would be served by the solicitor, another advocate from the solicitor's firm, or some other advocate providing the advocacy services.

Rule 16C (Powers of the Law Society)

(1) Any solicitor must at the time and place fixed by the Law Society produce any documents held by the solicitor or held under the solicitor's control:

- (a) in connection with the solicitor's practice; or
- (b) in connection with any trust of which the solicitor is or formerly was a trustee,

for inspection by a person appointed by the Society for the purpose of ascertaining whether the solicitor is complying with rules, codes or guidance made or issued by the Council of the Law Society.

(2) A requirement for production under paragraph (1) above must be in writing, and left at or sent by registered post or recorded delivery to the most recent address held by the Society's Registration Department, or delivered by the Society's appointee. If sent through the post, receipt will be deemed 48 hours (excluding Saturdays, Sundays and Bank Holidays) after posting.

- (3) Documents held electronically must be produced in the form required by the Society's appointee.
- (4) The Society's appointee is entitled to seek verification from clients, staff and the banks, building societies or other financial institutions used by the solicitor. The solicitor must, if necessary, provide written permission for the information to be given.
- (5) The Society's appointee is not entitled to take original documents away but must be provided with photocopies on request.
- (6) The Society may use any information obtained under this rule in proceedings before the Solicitors' Disciplinary Tribunal and, if the information indicates that the solicitor or an employee of the solicitor may have committed a serious criminal offence, may disclose the information for use in investigating the possible commission of a criminal offence and in any subsequent prosecution. In the case of a registered European lawyer or registered foreign lawyer, the information may also be sent to the competent authority in that lawyer's home state or states. In the case of a solicitor of the Supreme Court who is established in another state under the Establishment of Lawyers Directive 98/5/EC, the report may also be sent to the competent authority in the host state.
- (7) In paragraph (6) of this Rule, "an employee of the solicitor" includes a director of a recognised body which is a company, or a member of a recognised body which is a limited liability partnership.

Rule 16D (Conflict of interests)

[See also [guidance on Conflicts of interest and the duties of confidentiality and disclosure](#).]

(1) (Introduction)

- (a) This rule sets out provisions for dealing with conflicts of interest other than those conflicts in relation to conveyancing, property selling or mortgage related services which are dealt with in rule 6.
- (b) This rule applies to a regulated individual and a regulated practice.
- (c) Conflicts between the duty of confidence and duty of disclosure owed by an individual or a practice to two or more clients are dealt with in rule 16E.

(2) (Duty not to act)

- (a) You must not act if there is a conflict of interests (except in the limited circumstances dealt with in paragraph (3)).
- (b) There is a conflict of interests if:
 - (i) you owe, or your practice owes, separate duties to act in the best interests of two or more clients in relation to the same or related matters, and those duties conflict, or there is a significant risk that those duties may conflict; or
 - (ii) your duty to act in the best interests of any client in relation to a matter conflicts, or there is a significant risk that it may conflict, with your own interests in relation to that or a related matter.

- (c) For the purpose of paragraph (2)(b) above, a related matter will always include any other matter which involves the same asset or liability.

(3) (Exceptions to duty not to act)

- (a) You or your practice may act for two or more clients in relation to a matter in situations of conflict or possible conflict if:
 - (i) the different clients have a substantially common interest in relation to that matter or a particular aspect of it; and
 - (ii) all the clients have given in writing their informed consent to you or your practice acting.
- (b) Your practice may act for two or more clients in relation to a matter in situations of conflict or possible conflict if:
 - (i) the clients are competing for the same asset which, if attained by one client, will make that asset unattainable to the other client(s);
 - (ii) there is no other conflict, or significant risk of conflict, between the interests of any of the clients in relation to that matter;
 - (iii) the clients have confirmed in writing that they want your practice to act in the knowledge that your practice acts or may act for one or more other clients who are competing for the same asset; and
 - (iv) unless the clients specifically agree, no individual solicitor acts for, or is responsible for the supervision of, more than one of those clients.
- (c) When acting in accordance with paragraphs (3)(a) or (b) above it must be reasonable in all the circumstances for you or your practice to act for all those clients.
- (d) If you are relying on the exceptions in paragraphs (3)(a) or (b) above, you must:
 - (i) draw all the relevant issues to the attention of the clients before agreeing to act or, where already acting, when the conflict arises or as soon as is reasonably practicable, and in such a way that the clients concerned can understand the issues and the risks involved; and
 - (ii) have a reasonable belief that the clients understand the relevant issues; and
 - (iii) be reasonably satisfied that those clients are of full capacity.

(4) (Conflict when already acting)

If you act, or your practice acts for more than one client in a matter and, during the course of the conduct of that matter, a conflict arises between the interests of two or more of those clients, you, or your practice, may only continue to act for one of the clients (or a group of clients between whom there is no conflict) provided that the duty of confidentiality to the other client(s) is not put at risk.

(5) (Accepting gifts from clients)

Where a client proposes to make a lifetime gift or a gift on death to, or for the benefit of:

- (a) you;
- (b) any proprietor or employee of the practice; or
- (c) a family member of any of the above

and the gift is of a significant amount, in itself or having regard to the size of the client's estate and the reasonable expectations of the prospective beneficiaries, you must advise the client to take independent advice about the gift unless the client is a member of the beneficiary's family. If the client refuses, you must stop acting for the client in relation to the gift.

(6) (Public office or appointment leading to conflict)

You must decline to act where you, or another proprietor or employee in your practice, or a member of your family holds some public office or appointment as a result of which:

- (a) a conflict of interests, or a significant risk of a conflict, arises; or
- (b) the public might reasonably conclude that you, or your firm, had been able to make use of the office or appointment for the advantage of the client; or
- (c) your ability to advise the client properly and impartially is inhibited.

(7) (Waivers)

Notwithstanding Rule 17 of these rules, the Council of the Law Society shall not have power to waive any of the provisions of this rule.

Rule 16E (Confidentiality and disclosure)

[See also [guidance on Conflicts of interest and the duties of confidentiality and disclosure](#).]

(1) (Introduction)

- (a) This rule sets out provisions for dealing with the protection of clients' confidential information and the duty of disclosure owed to clients.
- (b) This rule applies to a regulated individual and a regulated practice.

(2) (Duty of confidentiality)

You and your practice must keep the affairs of clients and former clients confidential except where disclosure is required or permitted by law or by your client or former client.

(3) (Duty of disclosure)

You must disclose to a client all information of which you are aware which is material to that client's matter regardless of the source of the information unless:

- (i) there is a duty of confidentiality as referred to in paragraph (2) above, which always overrides the duty to disclose; or
- (ii) the following circumstances exist, as a consequence of which the duty does not apply:
 - (A) such disclosure is prohibited by law;
 - (B) it is agreed expressly that no duty to disclose arises or a different standard of disclosure applies; or
 - (C) you reasonably believe that serious physical or mental injury will be caused to any person if the information is disclosed to a client.

(4) (Duty not to put confidentiality at risk by acting)

If you hold, or if your practice holds, confidential information in relation to a client or former client, you must not risk breaching confidentiality by acting, or continuing to act, for another client on a matter where:

- (i) that information might reasonably be expected to be material; and
- (ii) that client has an interest adverse to the first-mentioned client or former client

except where proper arrangements can be made to protect that information in accordance with paragraph (5) below.

(5) (Exception to duty not to put confidentiality at risk by acting – where clients consent)

- (a) You may act, or continue to act, in the circumstances otherwise prohibited by paragraph (4) above with the informed consent of both clients but only if:
 - (i) the client for whom you act or are proposing to act knows that your practice, or a member of your practice, holds, or might hold, material information (in circumstances described in paragraph (4) above) in relation to their matter which you cannot disclose; and
 - (ii) you have a reasonable belief that both clients understand the relevant issues after these have been brought to their attention; and
 - (iii) both clients have agreed to the conditions under which you will be acting or continuing to act; and
 - (iv) it is reasonable in all the circumstances to do so.
- (b) "Both clients" in the context of paragraph (5) means:
 - (i) an existing or former client for whom your practice, or a member of your practice, holds confidential information; and
 - (ii) an existing or new client for whom you act or are proposing to act and to whom information held on behalf of the other client is material (in circumstances described in paragraph (4) above).

- (c) If you, or you and your practice, have been acting for two or more clients in reliance on rule 16D(3) (the conflict rule) and can no longer fulfil its requirements you may continue to act for one client with the consent of the other client provided you comply with paragraph (5).

(6) (Exception to duty not to put confidentiality at risk by acting – where no clients consent)

You may continue to act for a client on an existing matter, or on a matter related to an existing matter, in the circumstances otherwise prohibited by paragraph (4) above without the consent of the client for whom your practice, or a member of your practice, holds, or might hold, confidential information which is material to your client (in circumstances described in paragraph (4) above) but only if:

- (a) it is not possible to obtain informed consent under paragraph (5) above from the client for whom your practice, or a member of your practice, holds, or might hold, material confidential information; and
- (b) your client has agreed to your acting in the knowledge that your practice, or a member of your practice, holds, or might hold, information material to their matter which you cannot disclose; and
- (c) safeguards which comply with the standards required by law at the time they are implemented are put in place; and
- (d) it is reasonable in all the circumstances to do so.

(7) (Waivers)

Notwithstanding Rule 17 of these rules, the Council of the Law Society shall not have power to waive any of the provisions of this rule.

Rule 17 (Waivers)

In any particular case or cases the Council of the Law Society shall have power to waive in writing any of the provisions of these rules for a particular purpose or purposes expressed in such waiver, and to revoke such waiver.

Rule 18 (Application and interpretation)

(1) (Application to foreign lawyers)

- (a) For the avoidance of doubt, neither registration in the register of foreign lawyers, nor anything in these rules or in any other rules made under Part II of the Solicitors Act 1974 or section 9 of the Administration of Justice Act 1985, shall entitle any registered foreign lawyer:
 - (i) to exercise any right of audience or right to conduct litigation, or supervise or assume responsibility for the exercise of any such right, unless:
 - (A) the right is not reserved by law to any category of persons but is open to any individual; or
 - (B) the right is an immigration service which could have been provided by an individual who is neither a lawyer nor a legal

executive but is registered with the Office of the Immigration Services Commissioner, and the registered foreign lawyer is practising as a regulated individual; or

- (ii) to draw or prepare any instrument or papers, or make any application or lodge any document, whether relating to contentious proceedings, the conveyancing of land, the transfer of other property or the administration of estates, which is reserved to qualified persons by the Solicitors Act 1974, or to supervise or assume responsibility for any such work; unless he or she does the work
 - (A) as a director of a recognised body which is a company, at the direction and under the supervision of a director or employee of the body or
 - (B) as a member of a recognised body which is a limited liability partnership, at the direction and under the supervision of a member or employee of the body

in accordance with section 9(4) of the Administration of Justice Act 1985 and without breach of Rule 4(2) of these rules; or

- (iii) to hold him- or herself out as a registered foreign lawyer, or as regulated by or registered with the Law Society, in connection with a sole practice as a foreign lawyer, or any other practice or business where he or she is not practising as a regulated individual.
- (b) For the avoidance of doubt, neither registration in the register of European lawyers, nor anything in these rules or in any other rules made under Part II of the Solicitors Act 1974 or section 9 of the Administration of Justice Act 1985, shall entitle any registered European lawyer:
- (i) to exercise any right of audience, unless:
 - (A) the right of audience is one which a solicitor of the Supreme Court could exercise without a higher courts qualification, and the registered European lawyer is instructed with, and appears in conjunction with, a solicitor of the Supreme Court or a barrister in accordance with regulation 11 of the European Communities (Lawyer's Practice) Regulations 2000; or
 - (B) the right of audience is one which a solicitor of the Supreme Court could not exercise without a higher courts qualification, and the registered European lawyer has a relevant higher courts qualification, and he or she is instructed with, and appears in conjunction with, a solicitor of the Supreme Court who has a relevant higher courts qualification or a barrister in accordance with regulation 11 of the European Communities (Lawyer's Practice) Regulations 2000; or
 - (C) the registered European lawyer is exercising the right of audience as an employee, and the same right of audience could be exercised by an unqualified employee; or
 - (D) the right of audience is not reserved by law to any category of persons but is open to any individual; or

- (ii) to exercise any right to conduct litigation, or to supervise or assume responsibility for the exercise of any such right, unless:
 - (A) he or she is instructed with, and acts in conjunction with, a solicitor of the Supreme Court, or a barrister entitled to exercise the right to conduct that litigation, in accordance with regulation 11 of the European Communities (Lawyer's Practice) Regulations 2000; or
 - (B) the right to conduct the litigation is not reserved by law to any category of persons but is open to any individual; or
 - (C) the right to conduct litigation is an immigration service which could have been provided by an individual who is neither a lawyer nor a legal executive but is registered with the Office of the Immigration Services Commissioner; or
- (iii) to draw or prepare any instrument relating to contentious proceedings which is reserved to qualified persons by the Solicitors Act 1974, or to supervise or assume responsibility for any such work, unless:
 - (A) he or she is instructed with, and acts in conjunction with, a solicitor of the Supreme Court or barrister in accordance with regulation 11 of the European Communities (Lawyer's Practice) Regulations 2000; or
 - (B) he or she draws or prepares the instrument
 - (I) as an employee, at the direction and under the supervision of an employer or fellow employee in accordance with section 22(2A) of the Solicitors Act 1974 or
 - (II) as a director or employee of a recognised body which is a company, at the direction and under the supervision of a director or employee of the body in accordance with section 9(4) of the Administration of Justice Act 1985 or
 - (III) as a member or employee of a recognised body which is a limited liability partnership, at the direction and under the supervision of a member or employee of the body in accordance with section 9(4) of the Administration of Justice Act 1985; or
- (iv) to draw or prepare any instrument or papers, or make any application or lodge any document, relating to the conveyancing of land or the administration of estates, which is reserved to qualified persons by the Solicitors Act 1974, or to supervise or assume responsibility for any such work; unless:
 - (A) he or she is qualified to do so under regulation 12 or 13 of the European Communities (Lawyer's Practice) Regulations 2000; or
 - (B) he or she draws or prepares the instrument or papers, makes the application or lodges the document:
 - (I) as an employee, at the direction and under the supervision of an employer or fellow employee in accordance with section 22(2A) or 23(3) of the Solicitors Act 1974 or

- (II) as a director or employee of a recognised body which is a company, at the direction and under the supervision of a director or employee of the body in accordance with section 9(4) of the Administration of Justice Act 1985, and without breach of Rule 4(2) of these rules, or
 - (III) as a member or employee of a recognised body which is a limited liability partnership, at the direction and under the supervision of a member or employee of the body in accordance with section 9(4) of the Administration of Justice Act 1985, and without breach of Rule 4(2) of these rules.
- (c) All the principles and requirements of conduct affecting solicitors shall apply in all respects, *mutatis mutandis*:
- (i) to a registered European lawyer established in the United Kingdom; and
 - (ii) to a registered foreign lawyer practising as a partner in a partnership permitted by Rule 7(6)(b) or (c) or as a director of a recognised body which is a company or as a member of a recognised body which is a limited liability partnership;
- as they apply to a solicitor of the Supreme Court.
- (d) When a registered European lawyer becomes a solicitor of the Supreme Court, any separate practice which he or she may conduct in England and Wales as a lawyer of a state, other than the United Kingdom, to which the Establishment of Lawyers Directive 98/5/EC applies shall be deemed to be that of a solicitor of the Supreme Court practising as such, and these rules and all other rules, principles and requirements of conduct affecting solicitors shall apply in all respects, *mutatis mutandis*, to that practice.

Notes

- (i) *When a registered European lawyer exercises a right to conduct litigation in conjunction with a solicitor of the Supreme Court who is not in the same firm, it is essential that all concerned should be clear which of the two firms has overall responsibility for the conduct of the matter. Accordingly, it must be made clear to the court, the client and all other parties which is the correct address for correspondence. Only this address, and not the address of the other firm, should be used for all normal purposes. A similar situation may arise when a European lawyer conducts litigation in England and Wales under the Lawyers' Services Directive 77/249/EEC.*
- (ii) *Registered European lawyers qualified in Cyprus, the Czech Republic, Denmark, Finland, Hungary, Iceland, the Irish Republic, Liechtenstein, Norway, Slovakia and Sweden are entitled to do reserved conveyancing work in England and Wales.*
- (iii) *Registered European lawyers qualified in Austria, Cyprus, Denmark, Finland, Germany, Iceland, the Irish Republic, Liechtenstein, Norway, Slovakia and Sweden are entitled to do reserved probate work in England and Wales.*

(2) (Interpretation)

In these rules, except where the context otherwise requires:

- (a) "arrangement" (in the singular) means any express or tacit agreement between a solicitor and another person whether contractually binding or not;
- (aa) "charity" shall have the same meaning as in section 96(1) of the Charities Act 1993;
- (b) "contentious proceeding" is to be construed in accordance with the definition of "contentious business" in section 87 of the Solicitors Act 1974;
- (c) "contingency fee" means any sum (whether fixed, or calculated either as a percentage of the proceeds or otherwise howsoever) payable only in the event of success in the prosecution or defence of any action, suit or other contentious proceeding;
- (ca) "director" means the director of a company;
- (d) "firm" includes a sole practitioner or a recognised body;
- (da) "foreign lawyer" means an individual who is not a solicitor of the Supreme Court but is a member, and entitled to practise as such, of a legal profession regulated within a jurisdiction outside England and Wales;
- (db) "limited liability partnership" means a limited liability partnership formed by being incorporated under the Limited Liability Partnerships Act 2000;
- (dc) "partnership" means an unincorporated partnership, and does not include a limited liability partnership;
- (e) "person" includes a body corporate or unincorporated association or group of persons;
- (f) "recognised body" means a body corporate for the time being recognised by the Council under the Solicitors' Incorporated Practice Rules from time to time in force;
- (fa) "registered European lawyer" means an individual registered with the Law Society under regulation 17 of the European Communities (Lawyer's Practice) Regulations 2000; and "register of European lawyers" means the register maintained by the Society for that purpose;
- (fb) "registered foreign lawyer" means an individual registered with the Law Society under section 89 of the Courts and Legal Services Act 1990; and "register of foreign lawyers" means the register maintained by the Society for that purpose;
- (fc) "regulated individual" means:
 - (i) a solicitor of the Supreme Court;
 - (ii) a registered European lawyer who is established in the United Kingdom; or
 - (iii) a registered foreign lawyer practising as a partner in a partnership permitted by Rule 7(6)(b) or (c) or as a director of a recognised body which is a company or as a member of a recognised body which is a limited liability partnership;

- (fd) “regulated practice” means:
 - (i) the sole practice of a solicitor of the Supreme Court, or of a registered European lawyer who is established in the United Kingdom;
 - (ii) a partnership permitted by Rule 7(6);
 - (iii) a recognised body, whether practising alone or as a member of a partnership or as a member of a limited liability partnership; or
 - (iv) an in-house practice of solicitors of the Supreme Court, and/or of registered European lawyers who are established in the United Kingdom;
- (fe) “right of audience” and “right to conduct litigation” are to be construed in accordance with Part II and section 119 of the Courts and Legal Services Act 1990;
- (ff) “shareowner” means a member of a body corporate which is a company with a share capital, a beneficial owner of a share in the body held by a member as nominee, or a member of or beneficial owner of a share in a company holding or owning shares in the body;
- (g) “**solicitor**” includes any regulated individual and any regulated practice – except in the phrase “solicitor of the Supreme Court”, and except in Rule 6 (avoiding conflicts in conveyancing, etc.), which has its own definitions;
- (ga) “**solicitor of the Supreme Court**” means an individual who is a solicitor of the Supreme Court of England and Wales; and
- (h) words in the singular include the plural, words in the plural include the singular, and words importing the masculine or feminine gender include the neuter.

Rule 19 (Repeal and commencement)

- (1) The Solicitors' Practice Rules 1988 are hereby repealed.
- (2) These rules shall come into force on 1st September 1