# Legal Services Act: New forms of practice and regulation

## Consultation paper 3

## Miscellaneous amendments to the Code of Conduct

11 February 2008

**Contents**

## Introduction – purpose of this consultation

1.1 An earlier consultation issued in November 2007 outlined our thoughts on the principles which should guide the SRA's development of the new regulatory framework – Legal Services Act: New forms of practice and regulation, and this provides useful background, including a glossary of terms, which you may find helpful when considering this consultation.

1.2 This consultation links with an overview paper which sets out the background to the changes to the rules in the Solicitors Code of Conduct which are necessary to allow legal disciplinary practice and entities regulation under the Legal Services Act. It is part of a series of consultations under that overview paper.

1.3 The purpose of this consultation is to look at amendments to the rules which are consequential to changes proposed to the "framework of practice" rules. The "framework of practice" rules govern the composition and structure of solicitors' firms. These are dealt with in another related consultation Changes to "Framework of Practice" rules: Consultation paper 2 under the overview paper. The "framework" consultation is also useful background reading as many of the terms used in the rules attached to this paper are explained in it. For example, the term "manager" is defined and means a partner, director of a company or member of an LLP.

1.4 The consequential changes affect nearly all the rules beyond those dealt with in the "framework" consultation and are necessary because these other rules need to be applied to the new forms of recognised bodies and authorised persons which the SRA will regulate under the "framework" rules. To give a simple example, "sole principals" must now generally be referred to as "recognised sole practitioners" and all references to "sole principals" throughout the rules amended accordingly.

1.5 There are, however, some consequential changes of a more significant nature which will be highlighted in this consultation where we would particularly welcome comments. For example, in rule 5, which deals with business management, we propose allowing the new lawyer managers, such as licensed conveyancers, to be "qualified to supervise" where they have done the appropriate management training and have the required experience of practice.

1.6 The rules requiring consequential amendments will be considered below together with a commentary on the changes. The final 2 sections of this document (1) set out questions on which we would particularly like you views and (2) explain how to respond to us.

## Rules requiring "consequential amendment"

2.1 The following rules are the subject of this consultation:

| | |
|---|---|
| Rule 1 | Core duties |
| Rule 2 | Client relations |
| Rule 3 | Conflict of interests |
| Rue 4 | Confidentiality and disclosure |

| | |
|---|---|
| Rule 5 | Business management in England and Wales |
| Rule 6 | Equality and diversity |
| Rule 7 | Publicity |
| Rule 8 | Fee sharing |
| Rule 9 | Referrals of business |
| Rule 10 | Relations with third parties |
| Rule 11 | Litigation and advocacy |
| Rule 17 | Insolvency practice |
| Rule 18 | Property selling |
| Rule 19 | Financial services |
| Rule 22 | Waivers |

They are **annexed** with their proposed amendments appearing in revision mode together with 24 (interpretation) which is the subject of the "framework rules" CP2 consultation. Rule 24 appears here as essential background to understanding the new terms used in the above rules.

2.2 For the purpose of this consultation these rules will be broken down into two sections. These are:

- Those where no change is required because the obligations are applied to "you" and this will appropriately apply the rules to the new authorised individuals and bodies.

- Those where there is proposed change. The vast majority of changes are insignificant. For example, where it is necessary to list the individuals and bodies to whom a particular rule, or section of a rule, applies this list will need to be changed to refer to the new authorised individuals and/or bodies. A few, however, raise policy issues which go beyond simply extending a rule to new individuals or bodies and where this occurs the issue is highlighted as being more fundamental.

## An examination of the proposed changes in the individual rules

3.1 As explained above, these are broken down into 2 sections.

***Rules where no need for change has been identified***

3.2 These require no comment from us but you are invited to consider whether we have overlooked any necessary change to deal with the new regulated individuals and recognised bodies. The rules falling into this category are:

- Rule 4 (confidentiality and disclosure)
- Rule 11 (litigation and advocacy)
- Rule 17 (insolvency practice)
- Rule 18 (property selling)
- Rule 19 (financial services)
- Rule 22 (waivers)

***Rules where change has been identified***

3.3.1. Rules which we have amended are set out below with a summary of the changes to each rule. The vast majority of amendments are insignificant and have been made to apply these rules in part or in whole to the authorised individuals and/or recognised bodies which the SRA will be able to regulate under the Legal Services Act. We would, nonetheless, appreciate your comments on whether we have identified all necessary amendments and dealt with them appropriately. A few changes are more significant and have policy implications on which we are keen to have your views. Again, these will be explained in the summary of changes to each rule.

- Rule 1 (core duties)

3.3.2 1.06 dealing with maintaining public confidence in the profession is amended to change "the profession" to "the legal profession". This reflects the fact that in future solicitors will be able to practice as partners in non SRA authorised firms and we believe it helpful to clarify that the rule will apply to solicitors' practice within the legal profession generally.

- Rule 2 (client relations)

3.3.3 Minor and identical changes are proposed to 2.05 (complaints handling), 2.06 (commissions) and 2.07 (limitation of liability) to recognise the inclusion of new "authorised persons" and "recognised bodies" as "managers".

- Rule 3 (conflicts of interest)

3.3.4 Limited changes are proposed to 3.04 (accepting gifts) and 3.05 (public office or appointment leading to conflict) applying these rules to the new authorised "managers".

3.3.5 3.12 (SEALs and participating firms) defines a Solicitors' Estate Agency Limited for the purposes of rule 3. A necessary amendment we propose is to widen "participating firm" to include all the new individuals and bodies who, and which, will be authorised by the SRA. Additionally, and this represents a more significant change of a policy nature, we propose to include authorised non-SRA firms as "participating firms". To ensure that the SRA cannot be put in the position of regulating a SEAL that is made up entirely of authorised non-SRA firms we have added a further requirement that at least one participating firm must be a recognised sole practitioner or recognised body – i.e. an entity regulated by the SRA. We would be particularly interested in views on these proposals.

- Rule 5 (business management)

3.3.6 The obligations in this rule have been appropriately applied to the new authorised individuals and recognised bodies. 5.02, however, raises an important policy issue of whether lawyers, such as licensed conveyancers and legal executives, and/or non-lawyers should be allowed to be "qualified to supervise". 5.02 requires that each firm must have one manager who is "qualified to supervise" which means that they must have had the relevant training and have been entitled to practise as a lawyer for 36 months. This requirement does not relate to the supervision of client matters, and is largely designed to ensure that there is at least one manager in a firm with both experience of legal practice and some training in management.

3.3.7 We see no problem with other lawyers being allowed to be "qualified to supervise" as they will have had a background of working in the same, or a similar, professional and regulatory environment and will be able to fulfil the requirements in 5.02.

3.3.8 In relation to non-lawyers, the position is more complicated. In order to become managers of LDPs, they will have to have been approved as suitable by the SRA. However, they will never be able to fulfil the requirement to have practised as lawyers for 36 months and this means that we would either have to incorporate another test of management experience into the rule or allow them to be "qualified to supervise" on the basis solely of having done the relevant training. The latter would mean that they would have to satisfy a lower test than lawyers. For these reasons we recommend that at present we allow only lawyers to be "qualified to supervise" but would be interested in your views.

3.3.9 There is, however, the wider question of whether, with the move to firm based regulation, the requirement to have a manager who is "qualified to supervise" is still necessary. Rule 5 already places very clear high level duties on firms and managers to have systems in place to deal with legal and other obligations relating to the supervision and management of a firm. In addition, a combination of rule 20 and the law sets out the requirements for those who can conduct and supervise reserved activities, including immigration work. In the light of these existing provisions, is the requirement to have at least one manager "qualified to supervise" in each firm now outdated? Your thoughts on this would be welcome.

- Rule 6 (equality and diversity)

3.3.10 Minor changes are proposed to 6.03 to apply the requirement to adopt and implement an equality and diversity policy more appropriately to "recognised sole practitioners" and "managers" of recognised bodies.

- Rule 7 (publicity)

3.3.11 There are changes to 7.03 (unsolicited visits and calls), 7.05 (responsibility for publicity) and 7.06 (application) applying these sections variously to "the firm" and its "manager".

3.3.12 7.07 (letterhead) contains more extensive changes setting out exactly what each different type of recognised body (including a recognised sole practitioner) must contain on its letterhead. We have taken the provisional view that partnerships should be recognised by the SRA under a single name, in the interests of transparency. We have, therefore, made it a requirement in rule 7 for this name to appear on the firm's letterhead along with its unique SRA number. A similar requirement should apply to recognised sole practitioners. In the case of an LLP or company, we have taken the view that its corporate name or number must be included. These changes are, therefore, reflected in the amendments and the intention is to enable consumers to be able to check easily on the public register whether a firm or individual is recognised.

3.3.13 7.07 also contains amendments dealing with how individuals must be identified in any list of managers and a requirement to identify the nature of a body corporate if this is not apparent from the name.

- Rule 8 (fee sharing)

3.3.14 The new regime will need to permit fee sharing with non-lawyer managers and owners. We have taken the view that fee sharing should also be permitted with all businesses carrying on the practice of lawyers, which will include the practices of those authorised by other approved regulators. We have made amendments to rule 8.01 (fee sharing with lawyers and colleagues) to reflect this.

- Rule 9 (referral arrangements)

3.3.15 9.01 (3) disapplies the rule to referrals between lawyers and "lawyer" will now include those authorised by other regulators and their practices. There is a minor amendment to extend this to the practices of lawyers.

- Rule 10 (relations with third parties)

3.3.16 10.04 (contacting other party to a matter) has been amended to change references to "lawyer" and "licensed conveyancer" to "legal representative" and in10.05 (undertakings) the reference to "principal in a firm" is changed to set out what and who this term now covers.

## Questions

We would be grateful to have your response to the questions below. In responding, you may find it helpful to refer back to the commentary on the proposed changes set out above in paragraph 3.

1. Have we overlooked any consequential amendments to the rules listed in paragraph 3.2 - i.e. those rules we have identified as not appearing to need amendment?

2. Do you have any comments on the minor changes to the rules listed in paragraph 3.3 – i.e. those changes where provisions have simply been applied to the authorised individuals and bodies the SRA will regulate under the LSA?

3. In relation to rule 3 and the proposed amendment to 3.12 dealing with conflicts in property selling, what are your views on the proposal to include non-SRA authorised firms in the definition of a "participating firm" in a SEAL? Do you agree that at least one "participating firm" should be SRA regulated? (paragraph 3.3.5.)

4. In relation to rule 5:
   - do you agree with our proposal to allow all lawyers (including those regulated by other regulators such as licensed conveyancers, costs draftsmen etc.) who have the relevant experience and training required by the rule to be "qualified to supervise"? (paragraphs 3.3.6. and 3.3.7)
   - what are your views on non-lawyer managers being allowed to be "qualified to supervise" – and should we devise a test which equates to that required of solicitors by 5.02 concerning practising experience? (paragraph 3.3.8.)
   - do you think that the requirement for firms to have someone "qualified to supervise" is no longer necessary? (paragraph 3.3.9.)

5. In relation to rule 7 we are proposing that all partnerships and sole practitioners must indicate on their letterhead their SRA recognised name and their unique SRA number. In the case of an LLP or company we propose that the corporate name and number

must be included. Do you agree that this would be helpful to the public and not be too burdensome to the profession? (paragraph 3.3.12.)

6. Do you agree with the proposal in relation to rule 8 to allow fee sharing with the practices of lawyers which are authorised non-SRA firms? (paragraph 3.3.14)

7. In rule 9, do you agree that the referral arrangement requirements should be disapplied to authorised non-SRA firms? (paragraph 3.3.15)

8. Are there any other points you would like to make with regard to the proposed consequential amendments? Please bear in mind that, as part of this exercise to amend the rules to allow legal disciplinary practice and entities regulation, we are not proposing to deal with any other issues which may indicate changes to any of the rules.

## How to respond

For information about How to respond, please visit our website.

- Go to www.consultations.sra.org.uk.
- Select **Legal Services Act: New forms of practice and regulation**.
- Click **How to respond**.
- Alternatively, go to www.sra.org.uk/consultations/429.article#respond.

## Annex: The Solicitors' Code of Conduct 2007

Rules dated 10 March 2007 commencing 1 July 2007 made under Part II of the Solicitors Act 1974 and section 9 of the Administration of Justice Act 1985 with the concurrence of the Master of the Rolls under that section and the approval of the Secretary of State for Constitutional Affairs under Schedule 4 to the Courts and Legal Services Act 1990, regulating the conduct of solicitors, registered European lawyers, registered foreign lawyers and recognised bodies.
The guidance printed with these rules is not mandatory and does not form part of the Solicitors' Code of Conduct.

## Rule 1 – Core duties

### 1.01 Justice and the rule of law

You must uphold the rule of law and the proper administration of justice.

### 1.02 Integrity

You must act with integrity.

### 1.03 Independence

You must not allow your independence to be compromised.

### 1.04 Best interests of clients

You must act in the best interests of each client.

### 1.05 Standard of service

You must provide a good standard of service to your clients.

### 1.06 Public confidence

You must not behave in a way that is likely to diminish the trust the public places in you or the legal profession.

# Rule 2 – Client relations

## Introduction

Rule 2 is designed to help both you and your clients understand each other's expectations and responsibilities. In particular, the purpose of 2.02 (Client care) and 2.03 (Information about the cost) is to ensure that clients are given the information necessary to enable them to make appropriate decisions about if and how their matter should proceed. Under rule 5 (Business management) ~~a principal in a firm, a director of a recognised body which is a company and a member of a recognised body which is an LLP,~~ a recognised body, a manager of a recognised body and a recognised sole practitioner must effect supervision and put in place management arrangements to provide for compliance with rule 2. The rule does not apply to your overseas practice but you must comply with 15.02.

# Rule 2 – Client relations

## 2.01 Taking on clients

(1) You are generally free to decide whether or not to take on a particular client. However, you must refuse to act or cease acting for a client in the following circumstances:

- (a) when to act would involve you in a breach of the law or a breach of the rules of professional conduct;
- (b) where you have insufficient resources or lack the competence to deal with the matter;
- (c) where instructions are given by someone other than the client, or by only one client on behalf of others in a joint matter, you must not proceed without checking that all clients agree with the instructions given; or
- (d) where you know or have reasonable grounds for believing that the instructions are affected by duress or undue influence, you must not act on those instructions until you have satisfied yourself that they represent the client's wishes.

(2) You must not cease acting for a client except for good reason and on reasonable notice.

## 2.02 Client care

(1) You must:

- (a) identify clearly the client's objectives in relation to the work to be done for the client;
- (b) give the client a clear explanation of the issues involved and the options available to the client;
- (c) agree with the client the next steps to be taken; and

(d) keep the client informed of progress, unless otherwise agreed.

(2) You must, both at the outset and, as necessary, during the course of the matter:

(a) agree an appropriate level of service;

(b) explain your responsibilities;

(c) explain the client's responsibilities;

(d) ensure that the client is given, in writing, the name and status of the person dealing with the matter and the name of the person responsible for its overall supervision; and

(e) explain any limitations or conditions resulting from your relationship with a third party (for example a funder, fee sharer or introducer) which affect the steps you can take on the client's behalf.

(3) If you can demonstrate that it was inappropriate in the circumstances to meet some or all of these requirements, you will not breach 2.02.

## 2.03 Information about the cost

(1) You must give your client the best information possible about the likely overall cost of a matter both at the outset and, when appropriate, as the matter progresses. In particular you must:

(a) advise the client of the basis and terms of your charges;

(b) advise the client if charging rates are to be increased;

(c) advise the client of likely payments which you or your client may need to make to others;

(d) discuss with the client how the client will pay, in particular:

(i) whether the client may be eligible and should apply for public funding; and

(ii) whether the client's own costs are covered by insurance or may be paid by someone else such as an employer or trade union;

(e) advise the client that there are circumstances where you may be entitled to exercise a lien for unpaid costs;

(f) advise the client of their potential liability for any other party's costs; and

(g) discuss with the client whether their liability for another party's costs may be covered by existing insurance or whether specially purchased insurance may be obtained.

(2) Where you are acting for the client under a conditional fee agreement, (including a collective conditional fee agreement) in addition to complying with 2.03(1) above and 2.03(5) and (6) below, you must explain the following, both at the outset and, when appropriate, as the matter progresses:

(a) the circumstances in which your client may be liable for your costs and whether you will seek payment of these from the client, if entitled to do so;

(b) if you intend to seek payment of any or all of your costs from your client, you must advise your client of their right to an assessment of those costs; and

(c) where applicable, the fact that you are obliged under a fee sharing agreement to pay to a charity any fees which you receive by way of costs from the client's opponent or other third party.

(3) Where you are acting for a publicly funded client, in addition to complying with 2.03(1) above and 2.03(5) and (6) below, you must explain the following at the outset:

(a) the circumstances in which they may be liable for your costs;

(b) the effect of the statutory charge;

(c) the client's duty to pay any fixed or periodic contribution assessed and the consequence of failing to do so; and

(d) that even if your client is successful, the other party may not be ordered to pay costs or may not be in a position to pay them.

(4) Where you agree to share your fees with a charity in accordance with 8.01(k) you must disclose to the client at the outset the name of the charity.

(5) Any information about the cost must be clear and confirmed in writing.

(6) You must discuss with your client whether the potential outcomes of any legal case will justify the expense or risk involved including, if relevant, the risk of having to pay an opponent's costs.

(7) If you can demonstrate that it was inappropriate in the circumstances to meet some or all of the requirements in 2.03(1) and (5) above, you will not breach 2.03.

## 2.04 Contingency fees

(1) You must not enter into an arrangement to receive a contingency fee for work done in prosecuting or defending any contentious proceedings before a court of England and Wales, a British court martial or an arbitrator where the seat of the arbitration is in England and Wales, except as permitted by statute or the common law.

(2) You must not enter into an arrangement to receive a contingency fee for work done in prosecuting or defending any contentious proceedings before a court of an overseas jurisdiction or an arbitrator where the seat of the arbitration is overseas except to the extent that a lawyer of that jurisdiction would be permitted to do so.

## 2.05 Complaints handling

(1) If you are a ~~principal in a firm~~ recognised body, a manager of a recognised body or a recognised sole practitioner, you must ensure:

(a) that the firm has a written complaints procedure and that complaints are handled promptly, fairly and effectively in accordance with it;

(b) that the client is told, in writing, at the outset:

(i) that, in the event of a problem, the client is entitled to complain; and

(ii) to whom the client should complain;

(c) that the client is given a copy of the complaints procedure on request; and

(d) that once a complaint has been made, the person complaining is told in writing:

(i) how the complaint will be handled; and

(ii) within what timescales they will be given an initial and/or substantive response.

(2) If you can demonstrate that it was inappropriate in the circumstances to meet some or all of these requirements, you will not breach 2.05.

(3) You must not charge your client for the cost of handling a complaint.

## 2.06 Commissions

If you are a ~~principal in a firm~~ recognised body, a manager of a recognised body or a recognised sole practitioner, you must ensure that your firm pays to your client commission received over £20 unless the client, having been told the amount, or if the precise amount is not known, an approximate amount or how the amount is to be calculated, has agreed that your firm may keep it.

## 2.07 Limitation of civil liability by contract

If you are a ~~principal in a firm~~ recognised body or a recognised sole practitioner, you must not exclude or attempt to exclude by contract all liability to your clients. However, you may limit your liability, provided that such limitation:

(a) is not below the minimum level of cover required by the Solicitors' Indemnity Insurance Rules for a policy of qualifying insurance;

(b) is brought to the client's attention; and

(c) is in writing.

# Rule 3 – Conflict of interests

## Introduction

Rule 3 sets out provisions for dealing with conflicts of interests. Conflicts between the duty of confidentiality and duty of disclosure owed by an individual or a firm to two or more clients are dealt with in rule 4 (Confidentiality and disclosure).
Subrules 3.01 to 3.03 deal with conflicts generally.
Subrules 3.04 to 3.06 deal with conflicts in particular high risk situations – gifts from clients, public offices and appointments leading to conflict, and alternative dispute resolution (ADR).
Subrules 3.07 to 3.22 deal with conflicts in conveyancing. Note the special meaning of "you" in 3.07 to 3.15 (acting for seller and buyer) and 3.16 to 3.22 (acting for lender and borrower). See also 18.03 which sets out additional requirements which apply to the provision of property selling services.
Subrule 3.23 sets out that there is no power to waive 3.01 to 3.05.
Subrules 3.07 to 3.22 do not apply to your overseas practice unless the land conveyed is situated in England and Wales.

# Rule 3 – Conflict of interests

## 3.01 Duty not to act

(1) You must not act if there is a conflict of interests (except in the limited circumstances dealt with in 3.02).

(2) There is a conflict of interests if:

(a) you owe, or your firm 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

(b) 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.

(3) For the purpose of 3.01(2), a related matter will always include any other matter which involves the same asset or liability.

## 3.02 Exceptions to duty not to act

(1) You or your firm may act for two or more clients in relation to a matter in situations of conflict or possible conflict if:

(a) the different clients have a substantially common interest in relation to that matter or a particular aspect of it; and

(b) all the clients have given in writing their informed consent to you or your firm acting.

(2) Your firm may act for two or more clients in relation to a matter in situations of conflict or possible conflict if:

(a) the clients are competing for the same asset which, if attained by one client, will make that asset unattainable to the other client(s);

(b) there is no other conflict, or significant risk of conflict, between the interests of any of the clients in relation to that matter;

(c) the clients have confirmed in writing that they want your firm to act in the knowledge that your firm acts, or may act, for one or more other clients who are competing for the same asset; and

(d) unless the clients specifically agree, no individual acts for, or is responsible for the supervision of, more than one of those clients.

(3) When acting in accordance with 3.02(1) or (2) it must be reasonable in all the circumstances for you or your firm to act for all those clients.

(4) If you are relying on the exceptions in 3.02(1) or (2), you must:

(a) 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;

(b) have a reasonable belief that the clients understand the relevant issues; and

(c) be reasonably satisfied that those clients are of full capacity.

## 3.03 Conflict when already acting

If you act, or your firm 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 firm, 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.

## 3.04 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 ~~principal~~ manager, owner or employee of your firm;

(c) a family member of any of the above,

and the gift is of a significant amount, either in itself or having regard to the size of the client's estate and the reasonable expectations of the prospective beneficiaries, 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.

## 3.05 Public office or appointment leading to conflict

You must decline to act where you, a member of your family, or a ~~principal~~ manager, owner or employee of your firm holds some public office or appointment as a result of which:

(a) a conflict of interests, or a significant risk of a conflict, arises;

(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.

## 3.06 Alternative dispute resolution (ADR)

If you provide ADR services you must not:

(a) advise or act for any party in respect of a dispute in which you or any person within your firm is acting, or has acted, as mediator;

(b) provide ADR services in connection with a matter in which you or any person within your firm has acted for any party; or

(c) provide ADR services where you or any person within your firm has acted for any of the parties in issues not relating to the mediation, unless that has been disclosed to the parties and they consent to your acting.

## 3.07 Acting for seller and buyer in conveyancing, property selling and mortgage related services

(1) 3.07 to 3.15 apply to the transfer of land for value, and the grant or assignment of a lease or some other interest in land for value. Both commercial and residential conveyancing transactions are covered. The terms “seller” and “buyer” include a lessor and lessee. “You” is defined in 23.01, but is to be construed in 3.07 to 3.15 as including an associated firm (see rule 24 (Interpretation) for the meaning of “associated firms”).

(2) You must not act for more than one party in conveyancing, property selling or mortgage related services other than as permitted by, and in accordance with, 3.08 to 3.15. “Property selling” means negotiating the sale for the seller. “Mortgage related services” means advising on or arranging a mortgage, or providing mortgage related financial services, for a buyer. “Mortgage” includes a remortgage.

## 3.08 Conveyancing transactions not at arm’s length

Subject to the prohibition in 10.06(3) and (4), you may act for seller and buyer when the transaction between the parties is not at arm’s length, provided there is no conflict or significant risk of conflict.

## 3.09 Conveyancing transactions at arm's length

Subject to the prohibition in 10.06(3) and (4), you may act for seller and buyer if the conditions set out in 3.10 below are satisfied and one of the following applies:

(a) both parties are established clients;

(b) the consideration is £10,000 or less and the transaction is not the grant of a lease; or

(c) seller and buyer are represented by two separate offices in different localities.

## 3.10 Conditions for acting under 3.09

In order to act for seller and buyer under 3.09 above, the following conditions must be met:

(a) the written consent of both parties must be obtained;

(b) no conflict of interests must exist or arise;

(c) the seller must not be selling or leasing as a builder or developer; and

(d) when the seller and buyer are represented by two separate offices in different localities:

(i) different individuals (either solicitors or RELs qualified to do conveyancing under regulation 12 of the European Communities (Lawyer's Practice) Regulations 2000 (SI 2000/1119)) who normally work at each office, conduct or supervise the transaction for seller and buyer; and

(ii) no office of the firm (or an associated firm) referred either client to the office conducting the transactions.

## 3.11 Property selling and mortgage related services

Subject to the prohibition in 10.06(3) and (4), you may act for seller and buyer if the conditions set out in 3.13 below are satisfied and one of the following applies:

(a) the only way in which you are acting for the buyer is in providing mortgage related services; or

(b) the only way in which you are acting for the seller is in providing property selling services through a Solicitors' Estate Agency Limited (SEAL).

## 3.12 SEALs and participating firms

A SEAL means a recognised body which:

(a) is a company

(ab) does not undertake conveyancing;

(~~b~~c) is owned jointly by at least four participating firms which are not associated firms ~~and none of which has majority control~~;

(~~c~~d) has no participating firm with majority control;

(e) has at least one participating firm which is a recognised body or recognised sole practitioner; and

(f) is conducted from accommodation physically divided from, and clearly differentiated from that of any participating firm~~; and~~

~~(d) a "participating firm" means a firm one or more of whose principals (or members if it is an LLP, or owners if it is a company) is part owner of the SEAL~~.

A "participating firm" means a recognised sole practitioner, recognised body or authorised non-SRA firm which is a manager or owner of the SEAL, or one or more of whose managers or owners is a manager or owner of the SEAL.

## 3.13 Conditions for acting under 3.11

In order to act for seller and buyer under 3.11 above, the following conditions must be met:

(a) the written consent of both parties must be obtained;

(b) no conflict of interests must exist or arise;

(c) the seller must not be selling or leasing as a builder or developer;

(d) different individuals must conduct the work for the seller and the work for the buyer and, if these individuals need supervision, they must be supervised by different solicitors or RELs who are qualified to do conveyancing under regulation 12 of the European Communities (Lawyer's Practice) Regulations 2000 (SI 2000/1119);

(e) you 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 firm or any associated firm; and

(f) you must explain to the buyer, before the buyer gives consent to the arrangement:

(i) the implications of a conflict of interests arising;

(ii) your financial interest in the sale going through; and

(iii) if you propose to provide mortgage related services to the buyer through a SEAL which is also acting for the seller, that you cannot advise the buyer on the merits of the purchase.

## 3.14 Special circumstances in property selling and conveyancing

If any of the circumstances set out in 3.09 apply (established clients; consideration of £10,000 or less; representation by two separate offices), you may sell the property, provide mortgage related services, and act for seller

and buyer in the conveyancing, subject to the prohibition in 10.06(3) and (4) and compliance with the conditions set out in 3.10 and 3.13 as appropriate.

## 3.15 Conflict arising when acting for seller and buyer

If a conflict arises during the course of a transaction in which you are acting for more than one party, you may continue to act for one of the parties only if the duty of confidentiality to the other party is not at risk.

## 3.16 Acting for lender and borrower in conveyancing transactions

(1) 3.16 to 3.22 cover the grant of a mortgage of land and are intended to avoid conflicts of interests. "Mortgage" includes a remortgage. Both commercial and residential conveyancing transactions are covered. "You" is defined in 23.01, but is to be construed in 3.16 to 3.22 as including an associated firm (see rule 24 (Interpretation) for the meaning of "associated firms").

(2) You must not act for both lender and borrower on the grant of a mortgage of land:

(a) if a conflict of interests exists or arises;

(b) on the grant of an individual mortgage of land at arm's length;

(c) 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 3.19 and 3.21, or do not permit the use of the certificate of title required by 3.20; or

(d) if, in the case of any other standard mortgage, the lender's mortgage instructions extend beyond the limitations contained in 3.19 and 3.21.

## 3.17 Standard and individual mortgages

(1) A mortgage is a "standard mortgage" where:

(a) it is provided in the normal course of the lender's activities;

(b) a significant part of the lender's activities consists of lending; and

(c) the mortgage is on standard terms.

An "individual mortgage" is any other mortgage.

(2) 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 and borrower's lawyers or licensed conveyancers 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.

(3) Provided there has been no contemporaneous negotiation of material terms between the parties' lawyers or licensed conveyancers, 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.

(4) 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 3.16 to 3.22.

(5) The lender and the borrower must be separately represented on the grant of an individual mortgage at arm's length (see 3.16(2)(b)). 3.16 to 3.22 are not then applicable.

(6) You may act for both lender and borrower in a standard mortgage (see 3.16(2)(c) to (d)), provided:

(a) there is no conflict of interests;

(b) the mortgage instructions do not go beyond the limits set out in 3.19; and

(c) 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 annex to rule 3 is used.

(7) The limitations of 3.19 also apply to a standard mortgage where the lender and the borrower are separately represented (see 3.22(1) which includes certificates of title). However, 3.22(2) allows the borrower's lawyer or licensed conveyancer, 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 Board of the Solicitors Regulation Authority. You also remain free to give any other form of certificate which complies with this rule.

(8) 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.

## 3.18 Notification of certain circumstances to lender

(1) If you wish to act for both lender and borrower on the grant of a standard mortgage of land, you must first inform the lender in writing of the circumstances if:

(a) the prospective borrower is:

(i) a principal in the firm (or a member if the firm is an LLP, or owner or director if the firm is a company), or a member of their immediate family;

(ii) a principal in an associated firm (or a member if the firm is an LLP, or owner or director if the firm is a company), or a member of their immediate family; and/or

(iii) the solicitor or REL conducting or supervising the transaction, or a member of their immediate family; or

(b) you propose to act for seller, buyer and lender in the same transaction.

(2) "Immediate family" means spouse, children, parents, brothers and sisters.

## 3.19 Types of instruction which may be accepted

If acting for both lender and borrower in a standard mortgage, you and the individual solicitor or REL conducting or supervising the transaction may only accept or act upon instructions from the lender which are limited to the following matters:

(a) (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;

(ii) following the guidance given by the Law Society or the Solicitors Regulation Authority on property fraud and on money laundering;

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

(iv) 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;

(b) 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 you consider may adversely affect the lender; or effecting search insurance;

(c) making enquiries on legal matters relating to the property reasonably specified by the lender, and reporting the replies;

(d) 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 you 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);

(e) 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;

(f) 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;

(g) 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 you are aware of any rights needed for the use or enjoyment of the property over other land;

(h) reporting on any financial charges (for example, improvement or repair grants or Housing Act discounts) secured on the property revealed by your searches and enquiries which will affect the property after completion of the mortgage;

(i) in the case of a leasehold property:

  (i) confirming that the lease contains the terms stipulated by the lender and does not include any terms specified by the lender as unacceptable;

  (ii) obtaining a suitable deed of variation or indemnity insurance if the terms of the lease are unsatisfactory;

  (iii) 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;

  (iv) reporting if you become aware of the landlord's absence or insolvency;

  (v) making a company search and checking the last three years' published accounts of any management company with responsibilities under the lease;

  (vi) 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;

  (vii) obtaining any necessary consent to or prior approval of the assignment and mortgage;

  (viii) obtaining a clear receipt for the last payment of rent and service charge; and

  (ix) serving notice of the assignment and mortgage on the landlord;

(j) in the case of a commonhold unit:

  (i) 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;

  (ii) 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;

(iii) 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;

(iv) 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;

(v) obtaining the last three years' published accounts of the commonhold association and reporting any apparent problems with the association to the lender;

(vi) obtaining a commonhold unit information certificate; and

(vii) serving notice of the transfer and mortgage of the commonhold unit on the commonhold association;

(k) if the property is subject to a letting, checking that the type of letting and its terms comply with the lender's requirements;

(l) 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;

(m) receiving, releasing and transmitting the mortgage advance, including asking for any final inspection needed and dealing with any retentions and cashbacks;

(n) 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 (a) above 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;

(o) 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 you are aware;

(p) advising the borrower on the terms of any document required by the lender to be signed by the borrower;

(q) advising any other person required to sign any document on the terms of that document or, if there is a conflict of interests between that person and the borrower or the lender, advising that person on the need for separate legal advice and arranging for them to see an independent conveyancer;

(r) obtaining the legal transfer of the property to the mortgagor;

(s) procuring the redemption of:

(i) existing mortgages on property the subject of any associated sale of which you are aware; and

(ii) 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;

(t) ensuring the redemption or postponement of existing mortgages on the property, and registering the mortgage with the priority required by the lender;

(u) 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;

(v) registering the transfer and mortgage;

(w) giving legal advice on any matters reported on under 3.19, suggesting courses of action open to the lender, and complying with the lender's instructions on the action to be taken;

(x) disclosing any relationship specified by the lender between you and the borrower;

(y) storing safely the title deeds and documents pending registration and delivery to or as directed by the lender; and

(z) retaining the information contained in your conveyancing file for at least six years from the date of the mortgage.

## 3.20 Using the approved certificate of title

In addition, if acting for both lender and borrower in a standard mortgage of property to be used as the borrower's private residence only:

(a) you must use the certificate of title set out in the annex to rule 3 (below) ("the approved certificate"); and

(b) unless the lender has certified that its mortgage instructions are subject to the limitations contained in 3.19 above and 3.21 below, you must notify the lender on receipt of instructions that the approved certificate will be used, and that your duties to the lender are limited to the matters contained in the approved certificate.

## 3.21 Terms of rule to prevail

The terms of 3.16 to 3.20 above will prevail in the event of any ambiguity in the lender's instructions, or discrepancy between the instructions and 3.19 above or the approved certificate.

## 3.22 Anti-avoidance

(1) Subject to (2) below, if acting only for the borrower in a standard mortgage of property you 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 3.19.

(2) Provided the property is not to be used solely as the borrower's private residence, (1) above does not prevent you 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 3.19.

## 3.23 Waivers

In spite of 22.01(1) (Waivers), the Board of the Solicitors Regulation Authority shall not have power to waive any of the provisions of 3.01 to 3.05.

## ANNEX

**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;

(v) 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;

(vi) 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;

(vii) 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; and

(c) we are not acting on behalf of the seller;

(viii) 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;

(ix) nothing has been revealed by our searches and enquiries which would prevent the Property being used by any occupant for residential purposes; and

(x) neither any principal nor any other solicitor or registered European lawyer in the firm 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:

(i) to obtain their signatures to the forms of undertaking required by you in relation to the use, occupation or physical state of the Property;

(ii) to ask the Borrower for confirmation that the information about occupants given in your mortgage instructions or offer is correct; and

(iii) 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; and

(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 title information document 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:

(i) any existing mortgage on property the subject of an associated sale of which we are aware; and

(ii) 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; and

(i) 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 the Solicitors' Code of Conduct 2007, 3.19 (Conflict of interests – types of instruction which may be accepted).

**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 4 – Confidentiality and disclosure

## Introduction

Rule 4 sets out provisions for dealing with the protection of clients' confidential information and the duty of disclosure owed to clients.

## Rule 4 – Confidentiality and disclosure

### 4.01 Duty of confidentiality

You and your firm 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).

### 4.02 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, subject to:

(a) the duty of confidentiality in 4.01 above, which always overrides the duty to disclose; and

(b) the following where the duty does not apply:

  (i) where such disclosure is prohibited by law;

  (ii) where it is agreed expressly that no duty to disclose arises or a different standard of disclosure applies; or

  (iii) where you reasonably believe that serious physical or mental injury will be caused to any person if the information is disclosed to a client.

### 4.03 Duty not to put confidentiality at risk by acting

If you hold, or your firm 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:

(a) that information might reasonably be expected to be material; and

(b) 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 4.04 and 4.05 below.

## 4.04 Exception to duty not to put confidentiality at risk by acting – with clients' consent

(1) You may act, or continue to act, in the circumstances otherwise prohibited by 4.03 above with the informed consent of both clients but only if:

(a) the client for whom you act or are proposing to act knows that your firm, or a member of your firm, holds, or might hold, material information (in circumstances described in 4.03) in relation to their matter which you cannot disclose;

(b) you have a reasonable belief that both clients understand the relevant issues after these have been brought to their attention;

(c) both clients have agreed to the conditions under which you will be acting or continuing to act; and

(d) it is reasonable in all the circumstances to do so.

(2) "Both clients" in the context of 4.04(1) means:

(a) an existing or former client for whom your firm, or a member of your firm, holds confidential information; and

(b) 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 4.03 above).

(3) If you, or you and your firm, have been acting for two or more clients in compliance with rule 3 (Conflict of interests) 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 4.04.

## 4.05 Exception to duty not to put confidentiality at risk by acting – without 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 4.03 above without the consent of the client for whom your firm, or a member of your firm, holds, or might hold, confidential information which is material to your client (in circumstances described in 4.03) but only if:

(a) it is not possible to obtain informed consent under 4.04 above from the client for whom your firm, or a member of your firm, holds, or might hold, material confidential information;

(b) your client has agreed to your acting in the knowledge that your firm, or a member of your firm, holds, or might hold, information material to their matter which you cannot disclose;

(c) any 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.

## 4.06 Waivers

In spite of 22.01(1) (Waivers), the Board of the Solicitors Regulation Authority shall not have power to waive any of the provisions of this rule.

# Rule 5 – Business management in England and Wales

## Introduction

Rule 5 deals with the supervision and management of a firm or in-house practice, the maintenance of competence, and the internal business arrangements essential to the proper delivery of services to clients. "Supervision" and "management" refer, respectively, to the professional overseeing of staff and clients' matters; and to the overall direction and development of the firm or in-house practice and its day-to-day administration. The rule does not apply to your overseas practice but you must comply with 15.05.
Broadly, the rule aims to set out:

(a) responsibility for the overall supervision and management framework of your firm or in-house practice;

(b) the minimum requirements to be met in order to be "qualified to supervise";

(c) the minimum standards applying to supervision of clients' matters; and

(d) the minimum requirements in relation to those business arrangements considered to be essential to good practice and integral to compliance with supervision and other duties to clients.

# Rule 5 – Business management in England and Wales

## 5.01 Supervision and management responsibilities

(1) If you are a ~~principal in a firm, a director of a recognised body which is a company, or a member of a recognised body which is an LLP,~~ recognised body, a manager of a recognised body or a recognised sole practitioner, you must make arrangements for the effective management of the firm as a whole, and in particular provide for:

(a) compliance by the firm and its managers with the duties of a principal, in law and conduct, to exercise appropriate supervision over all staff, and ensure ~~adequate~~ proper supervision and direction of clients' matters;

(b) compliance with the money laundering regulations, where applicable;

(c) compliance by the firm and individuals with key regulatory requirements such as certification, registration or recognition by the Solicitors Regulation Authority, compulsory professional indemnity cover, delivery of accountants' reports, and obligations to co-operate with and report information to the Authority;

(d) the identification of conflicts of interests;

(e) compliance with the requirements of rule 2 (Client relations) on client care, costs information and complaints handling;

(f) control of undertakings;

(g) the safekeeping of documents and assets entrusted to the firm;

(h) compliance with rule 6 (Equality and diversity);

(i) the training of individuals working in the firm to maintain a level of competence appropriate to their work and level of responsibility;

(j) financial control of budgets, expenditure and cashflow;

(k) the continuation of the practice of the firm in the event of absences and emergencies, with the minimum interruption to clients' business; and

(l) the management of risk.

(2) If you are a solicitor or REL employed as the head of an in-house legal department, you must effect supervision and management arrangements within your department to provide for:

(a) adequate supervision and direction of those assisting in your in-house practice;

(b) control of undertakings; and

(c) identification of conflicts of interests.

## 5.02 Persons who must be "qualified to supervise"

(1) The following persons must be "qualified to supervise":

(a) a recognised sole ~~principal~~ practitioner;

(b) one of the ~~partners of a partnership~~ lawyer managers of a recognised body or of a body corporate which is a manager of the recognised body;

~~(c) one of the members of a recognised body which is an LLP;~~

~~(d) one of the directors of a recognised body which is a company;~~

(e~~c~~) one of the solicitors or RELs employed by a law centre; or

(f~~d~~) one in-house solicitor or in-house REL in any department where solicitors and/or RELs, as part of that employment:

(i) do publicly funded work; or

(ii) ~~exercise or supervise the exercise of any right of audience or right to conduct litigation when advising or acting~~ do or supervise advocacy or the conduct of proceedings for members of the public before a court or immigration tribunal.

(2) To be "qualified to supervise" under this paragraph a person:

(a) must have completed the training specified from time to time by the Solicitors Regulation Authority for this purpose; and

(b) must have been entitled to practise as a lawyer for at least 36 months within the last ten years; and must be able to demonstrate this if asked by the Solicitors Regulation Authority.

## 5.03 Supervision of work for clients and members of the public

(1) If you are a ~~principal in a firm~~ recognised body, a manager of a recognised body or a recognised sole practitioner, you must ensure that your firm has in place a system for supervising clients' matters.

(2) If you are an in-house solicitor or in-house REL and you are required to be "qualified to supervise" under 5.02(1)(e) or (f) above, you must ensure that your law centre or in-house legal department has in place a system for supervising work undertaken for members of the public.

(3) The system for supervision under 5.03(1) and (2) must include appropriate and effective procedures under which the quality of work undertaken for clients and members of the public is checked with reasonable regularity by suitably experienced and competent persons within the firm, law centre or in-house legal department.

# Rule 6 – Equality and diversity

## Introduction

Rule 6 is designed to prevent discrimination within your firm or in-house practice. The rule does not apply to overseas practice but solicitors practising overseas must comply with 15.06 (Equality and diversity) and 1.02 (Integrity). The duties contained in this rule are in addition to, and not in substitution for, your obligations to comply with anti-discrimination legislation.

## Rule 6 – Equality and diversity

## 6.01 Duty not to discriminate

(1) You must not in your professional dealings with employees, partners, members, directors, barristers, other lawyers, clients or third parties discriminate, without lawful cause, against any person, nor victimise or harass them on the grounds of:

(a) race or racial group (including colour, nationality and ethnic or national origins);

(b) sex (including marital status, gender reassignment, pregnancy, maternity and paternity);

(c) sexual orientation (including civil partnership status);

(d) religion or belief;

(e) age; or

(f) disability.

(2) You must take such steps, and make such adjustments, as are reasonable in all the circumstances in order to prevent any of your employees, partners, members, directors or clients who are disabled from being placed at a substantial disadvantage in comparison with those who are not disabled.

## 6.02 Evidence of breach

Where there has been a decision of a court or tribunal of the United Kingdom in proceedings to which you are a party, that you have committed, or are to be treated as having committed, an unlawful act of discrimination then that finding shall be treated as evidence of a breach of this rule.

## 6.03 Equality and diversity policy

If you are ~~a principal in a firm, or a member or a director of~~ a recognised body, a manager of a recognised body or a recognised sole practitioner, you must adopt and implement an appropriate policy for preventing discrimination and harassment and promoting equality and diversity within your firm. You must take all reasonable steps to ensure that all employees, partners,

members and directors are aware of, and act in compliance with, its provisions and that it is made available to clients, the Solicitors Regulation Authority and other relevant third parties where required.

## 6.04 In-house practice

If you have management responsibilities in in-house practice you must use all reasonable endeavours to secure the adoption and implementation of an appropriate policy for preventing discrimination and promoting equality and diversity within your department. You must take all reasonable steps to ensure that all staff within that department are aware of, and act in accordance with, its provisions.

## 6.05 Waivers

In spite of 22.01(1), the Board of the Solicitors Regulation Authority shall not have power to waive any of the provisions of this rule.

## 6.06 Meaning of terms

For the avoidance of doubt, unless otherwise defined in the rules, the terms used in this rule shall have the meanings assigned to them in law.

## Rule 7 – Publicity

## Introduction

You are generally free to publicise your firm or practice ~~as a solicitor, REL or RFL~~, subject to the requirements of this rule. The rule as it applies to your overseas practice is modified by 15.07.

## Rule 7 – Publicity

### 7.01 Misleading or inaccurate publicity

Publicity must not be misleading or inaccurate.

### 7.02 Clarity as to charges

Any publicity relating to your charges must be clearly expressed. In relation to practice from an office in England and Wales it must be clear whether disbursements and VAT are included.

### 7.03 Unsolicited visits or telephone calls

(1) You must not publicise your practice by making unsolicited visits or telephone calls to a member of the public.

(2) "Member of the public" does not include:

(a) a current or former client;

(b) another ~~lawyer~~ firm or its manager;

(c) an existing or potential professional or business connection; or

(d) a commercial organisation or public body.

### 7.04 International aspects of publicity

Publicity intended for a jurisdiction outside England and Wales must comply with:

(a) the provisions of rule 7 (and 15.07, if applicable); and

(b) the rules in force in that jurisdiction concerning lawyers' publicity.

Publicity intended for a jurisdiction where it is permitted will not breach 7.04 through being incidentally received in a jurisdiction where it is not permitted.

### 7.05 Responsibility for publicity

You must not authorise any other person to conduct publicity for your firm or practice in a way which would be contrary to rule 7 (and 15.07, if applicable).

## 7.06 Application

(1) Rule 7 applies to any publicity you or your firm conduct(s) or authorise(s) in relation to:

(a) the firm or your practice;

(b) any other business or activity carried on by you or your firm; or

(c) any other business or activity carried on by others.

(2) 7.01 to 7.05 apply to all forms of publicity including the name or description of your firm, stationery, advertisements, brochures, websites, directory entries, media appearances, promotional press releases, and direct approaches to potential clients and other persons, and whether conducted in person, in writing, or in electronic form.

## 7.07 Letterhead

(1) The letterhead of a ~~firm~~ recognised body or recognised sole practitioner must bear the words "regulated by the Solicitors Regulation Authority".

~~(2) (a) The letterhead of:~~

~~(i) a sole principal must include the name of the sole principal;~~

~~(ii) a partnership of 20 or fewer persons must include a list of the partners; and~~

~~(iii) a recognised body which is a company with a sole director must include the name of the director, identified as director.~~

~~(b) The letterhead of:~~

~~(i) a partnership of more than 20 persons must include either a list of the partners;~~

~~(ii) a recognised body which is an LLP must include either a list of the members, identified as members; and~~

~~(iii) a recognised body which is a company with more than one director must include either a list of the directors, identified as directors,~~

~~or a statement that the list is open to inspection at the office.~~

~~(c) (i) On the letterhead of a recognised body which is an unlimited company; or~~

~~(ii) in the list of partners referred to in 7.07(2)(a) or (b) if a partnership has an unlimited company as a member; or~~

~~(iii) in the list of members referred to in 7.07(2)(b) if an LLP has an unlimited company as a member,~~

~~it must be stated, either as part of the unlimited company's name or otherwise, that the unlimited company is a body corporate.~~

(2) (a) The letterhead of a recognised sole practitioner must include:

(i) the name of the sole practitioner, and

(ii) the name and number under which the firm is recognised.

(b) The letterhead of a recognised body which is a partnership of 20 or fewer partners, must include:

(i) a list of the partners, and

(ii) the name and number under which the firm is recognised.

(c) The letterhead of a recognised body which is a partnership of more than 20 partners, must include:

(i) either a list of the partners, or a statement that a list of the partners is open to inspection at the office, and

(ii) the name and number under which the firm is recognised.

(d) The letterhead of a recognised body which is an LLP must, subject to (e) below, include:

(i) either a list of the members, identified as members, or a statement that a list of the members is open to inspection at the office, and

(ii) the LLP's corporate name and number.

(e) The letterhead of a recognised body which is an LLP practising under a name other than its corporate name and which has 20 or fewer members must include:

(i) a list of the members, identified as members, and

(ii) the LLP's corporate name and number.

(f) The letterhead of a recognised body which is a company with a sole director must include:

(i) the name of the director, identified as director, and

(ii) the company's corporate name and number.

(g) The letterhead of a recognised body which is a company with more than one director must include:

(i) either a list of the directors, identified as directors, or a statement that a list of the directors is open to inspection at the office, and

(ii) the company's corporate name and number.

(3) In a ~~firm~~ recognised body, if the ~~partners (or directors in the case of a company, or members in the case of an LLP) comprise both~~ managers include persons other than solicitors ~~and foreign lawyers and the~~, any list referred to in ~~7.07(2)(a) or (b)~~ this rule must:

(a) identify any solicitor as a solicitor;

(b) in the case of any lawyer or notary of an Establishment Directive state other than the UK:

(i) identify the jurisdiction(s) – local or national as appropriate – under whose professional title the lawyer or notary is practising;

(ii) give the professional title(s), expressed in an official language of the Establishment Directive state(s) concerned; and

(iii) if the lawyer is an REL, refer to that lawyer's registration with the Solicitors Regulation Authority; ~~and~~

(c) indicate the professional qualification(s) ~~as a~~ of any other lawyer and the country or jurisdiction of qualification of any RFL not included in (b) above;

(d) identify any non lawyer as a non lawyer; and

(e) identify the nature of any body corporate, if this is not clear from its name.

(4) Whenever an REL is named on the letterhead used by any firm or in-house practice, there must be compliance with 7.07(3)(b).

(5) In 7.07, "letterhead" includes a fax heading.

## Rule 8 – Fee sharing

## Introduction

Rule 8 restricts the persons and businesses with whom or with which you can share your professional fees. Broadly, you may not share fees with a non-lawyer unless the fee sharing is with ~~an~~ a non-lawyer employee or manager in your firm, ~~in the case of overseas practice, a partner,~~ or in the strictly defined circumstances set out in this rule. Its purpose is to protect your independence and professional judgement in these situations for the ultimate public benefit.
In relation to European cross-border practice the restrictions on fee sharing are more stringent and you will need to refer to rule 16.

## Rule 8 – Fee sharing

## 8.01 Fee sharing with lawyers and colleagues

Except as permitted under 8.02 below, you may only share or agree to share your professional fees with the following persons:

(a) practising ~~members of legal professions covered by the Establishment Directive (other than a member of the English Bar practising in England and Wales)~~ lawyers, and businesses carrying on the practice of lawyers;

(b) ~~practising members of other legal professions (other than a person who is struck off or suspended from the register of foreign lawyers)~~ non-lawyer managers or owners within your firm;

~~(c) bodies corporate wholly owned and directed by lawyers within (a) and (b) above for the purpose of practising law;~~

~~(d) your partner as permitted by rule 12 (Framework of practice), your retired partner or predecessor, or the dependants or personal representatives of your deceased partner or predecessor~~

(c) a retired manager, member, owner or predecessor, or the dependants or personal representatives of a deceased manager, member, owner or predecessor;

~~(e) in the case of a recognised body, a retired director, member or shareowner, or the dependants or personal representatives of a deceased director, member or shareowner.~~

(~~f~~d) your genuine employee (this does not allow you to disguise as "employment" what is in fact a partnership which rule 12 prohibits);

~~(g) a body corporate through which you practise as permitted by rule 12;~~

(~~h~~e) your non-lawyer employer, if you are ~~employed by a firm permitted under rule 12, or if you are~~ practising in-house and acting in accordance with rule 13 (In-house practice, etc.) or 15.13 (In-house practice overseas);

(~~i~~f) a law centre or advice service operated by a charitable or similar non-commercial organisation if you are working as a volunteer

and receive fees or costs from public funds or recovered from a third party; or

(jg) an estate agent who is your sub-agent for the sale of a property; or

(kh) a charity (as defined in rule 24 (Interpretation)), provided:

(i) you remain in compliance with 1.02 (Integrity), 1.03 (Independence) and 1.04 (Best interests of clients);

(ii) if requested by the Solicitors Regulation Authority to do so, you supply details of all agreements to share fees with a charity;

(iii) the operation of any such agreement does not result in a partnership;

(iv) any such agreement does not involve a breach of rule 9 (Referrals of business); and

(v) if you are employed in-house, you remain in compliance with 13.04 (Pro bono work).

## 8.02 Fee sharing with other non-lawyers

(1) ~~Except in relation to European cross-border practice, y~~You may share your professional fees with another person or business ("the fee sharer") if:

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

(b) neither the fee sharing agreement nor the extent of the fees shared permits any fee sharer to influence or constrain your professional judgement in relation to the advice which you give to any client;

(c) the operation of the agreement does not result in a partnership prohibited by rule 12 (Framework of practice);

(d) if requested by the Solicitors Regulation Authority to do so, you supply details of all agreements which you have made with fee sharers and the percentage of your firm's annual gross fees which has been paid to each fee sharer; and

(e) your fee sharing agreement does not involve a breach of rule 9 (Referrals of business) or 15.09 (Overseas practice – referrals of business).

(2) "Fee sharer" means a person or business who or which shares your fees in reliance on (1) above and the expression includes any person or business connected to or associated with the fee sharer.

# Rule 9 – Referrals of business

## Introduction

Rule 9 applies when you receive referrals of business from, or make referrals to, third parties. Its purpose is to protect your independence. Additional provisions apply when you have a financial arrangement with an introducer. In relation to European cross-border practice the restrictions on financial arrangements with introducers are more stringent and you will need to refer to rule 16.
The rule does not apply to your overseas practice but you must comply with 15.09.

# Rule 9 – Referrals of business

## 9.01 General

(1) When making or receiving referrals of clients to or from third parties you must do nothing which would compromise your independence or your ability to act and advise in the best interests of your clients.

(2) You must draw the attention of potential introducers to this rule and to the relevant provisions of rule 7 (Publicity).

(3) This rule does not apply to referrals between lawyers (including businesses carrying on the practice of lawyers).

(4) You must not, in respect of any claim arising as a result of death or personal injury, either:

(a) enter into an arrangement for the referral of clients with; or

(b) act in association with,

any person 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.

(5) The prohibition in 9.01(4) 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.

(6) In 9.01(4) and (5) “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 proceedings.

## 9.02 Financial arrangements with introducers

The following additional requirements apply when you enter into a financial arrangement with an introducer:

(a) The agreement must be in writing and be available for inspection by the Solicitors Regulation Authority.

(b) The introducer must undertake, as part of the agreement, to comply with the provisions of this rule.

(c) You must be satisfied that clients referred by the introducer have not been acquired as a result of marketing or publicity or other activities which, if done by a person regulated by the Solicitors Regulation Authority, would be in breach of any of these rules.

(d) The agreement must not include any provision which would:

  (i) compromise, infringe or impair any of the duties set out in these rules; or

  (ii) allow the introducer to influence or constrain your professional judgement in relation to the advice given to the client.

(e) The agreement must provide that before making a referral the introducer must give the client all relevant information concerning the referral, in particular:

  (i) the fact that the introducer has a financial arrangement with you; and

  (ii) the amount of any payment to the introducer which is calculated by reference to that referral; or

  (iii) where the introducer is paying you to provide services to the introducer's customers:

    (A) the amount the introducer is paying you to provide those services; and

    (B) the amount the client is required to pay the introducer.

(f) If you have reason to believe that the introducer is breaching any of the terms of the agreement required by this rule, you must take all reasonable steps to ensure that the breach is remedied. If the introducer continues to breach it you must terminate the agreement.

(g) Before accepting instructions to act for a client referred under 9.02 you must, in addition to the requirements contained in 2.02 (Client care), 2.03 (Information about the cost) or 2.05 (Complaints handling), give the client, in writing, all relevant information concerning the referral, in particular:

  (i) the fact that you have a financial arrangement with the introducer;

  (ii) the amount of any payment to the introducer which is calculated by reference to that referral; or

  (iii) where the introducer is paying you to provide services to the introducer's customers:

(A) the amount the introducer is paying you to provide those services; and

(B) the amount the client is required to pay the introducer;

(iv) a statement that any advice you give will be independent and that the client is free to raise questions on all aspects of the transaction; and

(v) confirmation that information disclosed to you by the client will not be disclosed to the introducer unless the client consents; but that where you are also acting for the introducer in the same matter and a conflict of interests arises, you might be obliged to cease acting.

(h) You must not enter into a financial arrangement with an introducer for the referral of clients in respect of criminal proceedings or any matter in which you will act for the client with the benefit of public funding.

(i) For the purpose of this rule:

(i) "financial arrangement" includes:

(A) any payment to a third party in respect of referrals; and

(B) any agreement to be paid by a third party introducer to provide services to the third party's customers; and

(ii) "payment" includes any other consideration but does not include normal hospitality, proper disbursements or normal business expenses.

## 9.03 Referrals to third parties

(1) If you recommend that a client use a particular firm, agency or business, you must do so in good faith, judging what is in the client's best interests.

(2) You must not enter into any agreement or association which would restrict your freedom to recommend any particular firm, agency or business.

(3) (2) above does not apply to arrangements in connection with any of the following types of contracts:

(a) regulated mortgage contracts;

(b) general insurance contracts; or

(c) pure protection contracts.

(4) The terms "regulated mortgage contracts", "general insurance contracts" and "pure protection contracts" in (3) above have the meanings given in 19.01(4).

(5) Where you refer a client to a firm, agency or business that can only offer products from one source, you must notify the client in writing of this limitation.

(6) If a client is likely to need an endowment policy, or similar life insurance with an investment element, you must refer them only to an independent intermediary authorised to give investment advice.

## Rule 10 – Relations with third parties

## Introduction

Rule 10 draws together a variety of obligations linked by the need to deal with third parties in a proper manner. The rule as it applies to your overseas practice is modified by 15.10.

## Rule 10 – Relations with third parties

## 10.01 Not taking unfair advantage

You must not use your position to take unfair advantage of anyone either for your own benefit or for another person's benefit.

## 10.02 Agreeing costs with another party

When negotiating the payment of your client's costs by another firm's client or a third party, you must give sufficient time and information for the amount of your costs to be agreed or assessed.

## 10.03 Administering oaths

You can administer oaths or affirmations or take declarations if you are a solicitor or an REL. You must not do so where you or your firm is acting for any party in the matter.

## 10.04 Contacting other party to a matter

You must not communicate with any other party who to your knowledge has retained a lawyer, ~~or licensed conveyancer~~ or a business carrying on the practice of lawyers, to act in a matter, except:

(a) to request the name and address of the other party's ~~lawyer or licensed conveyancer~~ legal representative;

(b) where it would be reasonable to conclude that the other party's ~~lawyer or licensed conveyancer~~ legal representative has refused or failed for no adequate reason either to pass on messages to their client or to reply to correspondence, and has been warned of your intention to contact their client direct;

(c) with that ~~lawyer or licensed conveyancer's~~ legal representative's consent; or

(d) in exceptional circumstances.

## 10.05 Undertakings

(1) You must fulfil an undertaking which is given in circumstances where:

(a) you give the undertaking in the course of practice;

(b) you are a ~~principal in a firm~~ recognised body, a manager of a recognised body or a recognised sole practitioner, and any person within the firm gives the undertaking in the course of practice;

(c) you give the undertaking outside the course of practice, but as a solicitor; or

(d) you are an REL based at an office in England and Wales, and you give the undertaking within the UK, as a lawyer of an Establishment Directive state, but outside your practice as an REL.

(2) You must fulfil an undertaking within a reasonable time.

(3) If you give an undertaking which is dependent upon the happening of a future event, you must notify the recipient immediately if it becomes clear that the event will not occur.

(4) When you give an undertaking to pay another's costs, the undertaking will be discharged if the matter does not proceed unless there is an express agreement that the costs are payable in any event.

## 10.06 Dealing with more than one prospective buyer in a conveyancing transaction

(1) Each time a seller of land, other than in a sale by auction or tender, either:

(a) instructs you to deal with more than one prospective buyer; or

(b) to your knowledge:

(i) deals directly with another prospective buyer (or their conveyancer); or

(ii) instructs another conveyancer to deal with another prospective buyer;

you must, with the client's consent, immediately inform the conveyancer of each prospective buyer, or the prospective buyer if acting in person.

(2) If the seller refuses to agree to such disclosure, you must immediately stop acting in the matter.

(3) You must not act for both the seller and any of the prospective buyers.

(4) You must not act for more than one of the prospective buyers.

## 10.07 Fees of lawyers of other jurisdictions

(1) If in the course of practice you instruct a lawyer of another jurisdiction you must, as a matter of professional conduct, pay the lawyer's proper fees unless the lawyer is practising as a solicitor or barrister of England and Wales; or

(a) you have expressly disclaimed that responsibility at the outset, or at a later date you have expressly disclaimed responsibility for any fees incurred after that date;

(b) the lawyer is an REL or is registered with the Bar of England and Wales under the Establishment Directive; or

(c) the lawyer is an RFL based in England and Wales and practising in a firm.

(2) If in the course of practice you instruct a business carrying on the practice of a lawyer of another jurisdiction you must, as a matter of professional conduct, pay the proper fees for the work that lawyer does, unless:

(a) you have expressly disclaimed that responsibility at the outset, or at a later date you have expressly disclaimed responsibility for any fees incurred after that date; or

(b) the business is a firm.

## Rule 11 – Litigation and advocacy

## Introduction

Rule 11 imposes additional duties on you if you are a solicitor, an REL or an RFL whenever you exercise a right to conduct litigation or act as an advocate. “Court” in this rule has a wide meaning – see rule 24 (Interpretation). References to appearing or acting as an advocate apply when you are exercising rights of audience before any court, not just if you have been granted rights of audience in the higher courts. The rule only applies in a modified form to overseas practice – see 15.11.

## Rule 11 – Litigation and advocacy

### 11.01 Deceiving or misleading the court

(1) You must never deceive or knowingly or recklessly mislead the court.

(2) You must draw to the court’s attention:

(a) relevant cases and statutory provisions;

(b) the contents of any document that has been filed in the proceedings where failure to draw it to the court’s attention might result in the court being misled; and

(c) any procedural irregularity.

(3) You must not construct facts supporting your client’s case or draft any documents relating to any proceedings containing:

(a) any contention which you do not consider to be properly arguable; or

(b) any allegation of fraud unless you are instructed to do so and you have material which you reasonably believe establishes, on the face of it, a case of fraud.

### 11.02 Obeying court orders

You must comply with any court order requiring you or your firm to take, or refrain from taking, a particular course of action.

### 11.03 Contempt of court

You must not become in contempt of court.

### 11.04 Refusing instructions to act as advocate

(1) You must not refuse to act as an advocate for any person on any of the following grounds:

(a) that the nature of the case is objectionable to you or to any section of the public;

(b) that the conduct, opinions or beliefs of the prospective client are unacceptable to you or to any section of the public; or

(c) that the source of any financial support which may properly be given to the prospective client for the proceedings is unacceptable to you.

(2) You are not required to act as an advocate:

(a) under a conditional fee agreement; or

(b) if you reasonably consider that you are not being offered a proper fee having regard to:

(i) the circumstances of the case;

(ii) the nature of your practice; or

(iii) your experience and standing.

## 11.05 Appearing as an advocate

If you are appearing as an advocate:

(a) you must not say anything which is merely scandalous or intended only to insult a witness or any other person;

(b) you must avoid naming in open court any third party whose character would thereby be called into question, unless it is necessary for the proper conduct of the case;

(c) you must not call into question the character of a witness you have cross-examined unless the witness has had the opportunity to answer the allegations during cross-examination; and

(d) you must not suggest that any person is guilty of a crime, fraud or misconduct unless such allegations:

(i) go to a matter in issue which is material to your client's case; and

(ii) appear to you to be supported by reasonable grounds.

## 11.06 Appearing as a witness

You must not appear as an advocate at a trial or act in the litigation if it is clear that you, or anyone within your firm, will be called as a witness, unless you are satisfied that this will not prejudice your independence as an advocate, or litigator, or the interests of your client or the interests of justice.

## 11.07 Payments to witnesses

You must not make, or offer to make, payments to a witness dependent upon the nature of the evidence given or upon the outcome of the case.

## 11.08 Recordings of child witnesses' evidence

If you are acting in the defence or prosecution of an accused and you have in your possession a copy of an audio or video recording of a child witness which has been identified as having been prepared to be admitted in evidence at a criminal trial in accordance with the relevant provisions of the Criminal Justice Act 1991 or the Youth Justice and Criminal Evidence Act 1999, you must:

(a) not make or permit any person to make a copy of the recording;

(b) not release the recording to the accused;

(c) not make or permit any disclosure of the recording or its contents to any person except when, in your opinion, it is necessary in the course of preparing the prosecution, defence or appeal against conviction and/or sentence;

(d) ensure that the recording is always kept in a locked, secure container when not in use; and

(e) return the recording when you are no longer instructed in the matter.

# Rule 17 – Insolvency practice

## Introduction

If you are a solicitor or an REL, and an insolvency practitioner in a firm, rule 17 applies to you when you accept appointments and act as an appointment holder. Rule 17 should be read in conjunction with The Practice of Insolvency: a Guide to Professional Conduct and Ethics produced by the Joint Insolvency Committee and adopted by all recognised professional bodies (RPBs) including the Solicitors Regulation Authority. The purpose of this Guide is to ensure your independence and objectivity when acting as an appointment holder and that you can identify and avoid conflicts of interest. The rule does not apply to your overseas practice except in relation to appointments appertaining to orders made in the courts of England and Wales.

## Rule 17 – Insolvency practice

## 17.01

If you are a solicitor, or an REL you must, when accepting an appointment or acting as an appointment holder as an insolvency practitioner, comply with The Practice of Insolvency: a Guide to Professional Conduct and Ethics produced by the Joint Insolvency Committee and adopted by the Board of the Solicitors Regulation Authority.

# Rule 18 – Property selling

## Introduction

This rule sets out requirements for providing property selling services through your firm. Requirements for providing property selling services through a separate business are dealt with under rule 21 (Separate businesses).
The seller is your client, and any property selling work you do is, in addition to this rule, subject to the same law and professional rules binding on you in relation to your other work.
The rule applies to your overseas practice from offices in Scotland or Northern Ireland but not to your overseas practice from offices outside the UK.

## Rule 18 – Property selling

## 18.01 Standards of property selling services

(1) When providing property selling services through your firm, you must:

(a) ensure that you, or the relevant staff, are competent to carry out the work;

(b) not seek from any prospective buyer a pre-contract deposit in excess of any prescribed limit; and

(c) promptly send to your client written accurate details of any offer you have received from a prospective buyer in respect of an interest in the property (other than those of a description which your client has indicated in writing that they do not want to receive).

(2) If you are the person who is responsible for marketing a residential property you must comply with any Home Information Packs regulations made under the Housing Act 2004.

(~~2~~3) (a) In 18.01(1) above:

(~~a~~i) "competent" includes meeting any standards of competence set by the Secretary of State under section 22 of the Estate Agents Act 1979; and

(~~b~~ii) "prescribed limit" means any limit prescribed by the Secretary of State under section 19 of the Estate Agents Act 1979.

(b) In 18.01(2) "the person who is responsible for marketing a residential property" has the meaning used in ss.151-153 of the Housing Act 2004.

## 18.02 Statement on the cost

(1) When accepting instructions to act in the sale of a property, you must, at the outset of communication between you and the client, or as soon

as is reasonably practicable, and before the client is committed to any liability towards you, give the client a written statement setting out your agreement as to:

(a) the identity of the property;

(b) the interest to be sold;

(c) the price to be sought;

(d) the amount of your fee or the method of its calculation;

(e) the circumstances in which your fee is to become payable;

(f) regarding any payments to be made to others, and charged separately:

(i) the amount, or the method by which they will be calculated; and

(ii) the circumstances in which they may be incurred; and

(g) the incidence of VAT.

(2) You must also, within the written statement:

(a) state whether or not you are to have "sole agency" or "sole selling rights". The statement must also include a clear explanation of the intention and effect of those terms, or any similar terms used; and

(b) if the statement refers to a "ready, willing and able" buyer (or similar term), include a clear explanation of the term.

## 18.03 Conflict of interests

(1) In addition to your duties under rule 3 (Conflict of interests), when selling property you must comply with the following requirements.

(a) If you or any connected person has, or is seeking to acquire, a beneficial interest in the property or in the proceeds of sale of any interest in the property, you must promptly inform your client in writing.

(b) If you act in the sale of property, even if not in the conveyancing, you must not act for the buyer in the negotiations.

(c) If a prospective buyer makes an offer for a client's property, you must promptly inform the client in writing if, to your knowledge, you or any connected person has been instructed, or is to be instructed by the buyer to sell an interest in land, and that sale is necessary to enable the buyer to buy from the client or results from that prospective purchase.

(d) If you have, or to your knowledge any connected person has, a beneficial interest in a property or in the proceeds of sale of any interest in it, you must promptly inform in writing any person negotiating to acquire or dispose of any interest in that property. You must make this disclosure before entering into any negotiations with a prospective buyer.

(e) You must not discriminate against a prospective buyer because they are unlikely to instruct you to sell an interest in land, which

sale is necessary to enable the buyer to buy from your client or results from that prospective purchase.

(f) When acting for a seller, you must restrict communication with the buyer to your property selling function. In particular:

(i) you must communicate about legal matters so far as possible only through the buyer's solicitor; and

(ii) you must not lead the buyer to believe that they are receiving legal advice from you.

(g) When acting for a seller, if you arrange for a mortgage to be available on the property in order to facilitate the sale, you may inform prospective buyers of the availability of the mortgage (subject to the buyer's status) but, unless exempted by rule 3 (Conflict of interests) you must also inform prospective buyers in writing:

(i) that you cannot advise or act for the prospective buyer in respect of the mortgage;

(ii) that the mortgage may not be the only one available; and

(iii) that the prospective buyer should consult their own lawyer or licensed conveyancer.

(2) In 18.03(1) above:

(a) "connected person" means:

(i) spouse, former spouse, reputed spouse, brother, sister, uncle, aunt, nephew, niece, direct descendant, parent or other direct ancestor;

(ii) any employee of your firm, and any member of your employee's family;

(iii) any owner or employee of an associated firm defined in rule 24 (Interpretation) or any member of their families;

(iv) any company of which you are a director or employee, or any LLP of which you are a member or employee, or any company in which you, either alone or with any other connected person or persons are entitled to exercise, or control the exercise of, one-third or more of the voting power at any general meeting;

(v) any company of which any of the persons mentioned in (i) to (iii) above is a director or employee, or any LLP of which any of them is a member or employee, or any company in which any of them, either alone or with any other connected person or persons, is entitled to exercise, or control the exercise of, one-third or more of the voting power at any general meeting; and

(vi) any other "associate" as defined in section 32 of the Estate Agents Act 1979; and

(b) "you" includes anyone with whom you carry on a joint property selling practice, and owners of an associated firm as defined in rule 24 (Interpretation).

## 18.04 Waivers

In spite of 22.01(1) (Waivers), the Board of the Solicitors Regulation Authority shall not have power to waive any of the provisions of this rule.

# Rule 19 – Financial services

## Introduction

This rule sets out the requirements for ensuring that your independence is preserved when acting in connection with the provision of financial services for clients, both through your firm and through a separate business.
The rule applies to your overseas practice in relation to regulated activities you conduct from an office in Scotland or Northern Ireland and to regulated activities you conduct into the UK from an office outside the UK.

## Rule 19 – Financial services

## 19.01 Independence

(1) You must not, in connection with any regulated activity:

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

(2) You must not have any active involvement in a separate business which is an appointed representative, unless it is the appointed representative of an independent financial adviser.

(3) (1)(b) and (c) above 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.

(4) In this rule:

- (a) “appointed representative” has the meaning given in the Financial Services and Markets Act 2000;
- (b) “general insurance contract” is any contract of insurance within Part l of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544);
- (c) “investment” means any of the investments specified in Part III of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544);

(d) “pure protection contract” has the meaning given in rule 8(1) of the Solicitors’ Financial Services (Scope) Rules 2001;

(e) “regulated activity” means an activity which is specified in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544); and

(f) “regulated mortgage contract” has the meaning given by article 61(3) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544).

## Rule 22 – Waivers

## 22.01

(1) In any particular case or cases the Board of the Solicitors Regulation Authority shall have power to waive in writing the provisions of these rules for a particular purpose or purposes expressed in such waiver, to place conditions on and to revoke such waiver.

(2) In spite of (1) above, the Board of the Solicitors Regulation Authority shall not have power to waive any of the provisions of the following rules:

(a) rule 1 (Core duties);

(b) 3.01 to 3.05 (conflict of interests, excluding provisions relating to alternative dispute resolution, conveyancing and property selling);

(c) rule 4 (Confidentiality and disclosure);

(d) rule 6 (Equality and diversity);

(e) 15.01, 15.03, 15.04, 15.18, 15.22, 15.23 and 15.24 (overseas practice provisions which apply provisions that cannot be waived for practice in England and Wales);

(f) rule 18 (Property selling);

(g) rule 22 (Waivers);

(h) rule 23 (Application); and

(i) rule 24 (Interpretation).

## Rule 24 – Interpretation

### 24.01

In these rules, unless the context otherwise requires, all references to legislation include existing and future amendments to that legislation and:

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| approved regulator | means a body listed in paragraph 1 of Schedule 4 to the Legal Services Act 2007 (whether or not that paragraph has been brought into force), or designated as an approved regulator by an order under paragraph 17 of that Schedule,<br>and reference to the Solicitors Regulation Authority as an approved regulator means the Solicitors Regulation Authority carrying out regulatory functions assigned to the Law Society as an approved regulator; |
| "arrangement" | in relation to financial services, fee sharing and the introduction of clients, means any express or tacit agreement between you and another person, whether contractually binding or not; |
| "associated companies" | means two companies which are subsidiary companies of the same holding company; |
| "associated firms" | means two or more partnerships with at least one partner in common; two or more companies without shares with at least one member in common; two or more LLPs with at least one member in common; two or more companies with shares with at least one owner in common, or any combination of these; |
| authorised "non-SRA firm" | means a sole practitioner, partnership, LLP or company authorised to practise by another approved regulator and not by the Solicitors Regulation Authority; |
| "body corporate" | means<br>(a) a company,<br>(b) an LLP, or<br>(c) a partnership which is a legal person in its own right, |
| "CCBE" | means the Council of the Bars and Law Societies of Europe; |
| "CCBE Code" | means the CCBE's Code of Conduct for European Lawyers; |
| "CCBE state" | means any state whose legal profession is a full member, |

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| | an associate member or an observer member of the CCBE; |
| “charity” | has the same meaning as in section 96(1) of the Charities Act 1993; |
| "claim for redress" | in rule 20, has the same meaning as in section 158 of the Legal Services Act 2007; |
| “client account” | in rule 15 (Overseas practice), means an account at a bank or similar institution, subject to supervision by a public authority, which is used only for the purpose of holding client money and/or controlled trust money, and the title or designation of which indicates that the funds in the account belong to the client or clients of a solicitor or REL or are held subject to a trust;<br>(for the definition of “client account” in relation to practice from an office in England and Wales, see the Solicitors’ Accounts Rules 1998); |
| “client money” | in rule 15 (Overseas practice), means money you receive or hold for or on behalf of a client or trust;<br>(for the definition of “client money” in relation to practice from an office in England and Wales, see the Solicitors’ Accounts Rules 1998); |
| “company” | in rule 14 (~~Incorporated practice~~Recognised bodies), means a company registered under Part I of the Companies Act 1985, ~~or~~ an overseas company incorporated in an Establishment Directive state and registered under section 690A or 691 of the Companies Act 1985, or a societas Europaea; |
| “contentious proceedings” | is to be construed in accordance with the definition of “contentious business” in section 87 of the Solicitors Act 1974; |
| “contingency fee” | except in 9.01(4) to (6), means any sum (whether fixed, or calculated either as a percentage of the proceeds or otherwise) payable only in the event of success; |
| ~~“controlled trust”~~ | ~~in rule 15 (Overseas practice), means a trust of which:<br>(a) you are the sole trustee; or<br>(b) you are co-trustee only with one of more of your, or your firm’s, employees, partners; officers (in the case of a company, including a recognised body); or members (in the case of an LLP, including a recognised body); or~~ |

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| | ~~(c) you are co-trustee only with your firm (in the case of a partnership with a separate legal identity, a company or LLP, including a recognised body);~~<br>~~(for the definition of "controlled trust" in relation to practice from an office in England and Wales, see the Solicitors' Accounts Rules 1998);~~ |
| ~~"controlled trust money"~~ | ~~in rule 15 (Overseas practice), means money which is subject to a controlled trust of which you are a trustee;~~<br>~~(for the definition of "controlled trust" in relation to practice from an office in England and Wales, see the Solicitors' Accounts Rules 1998);~~ |
| ~~"corporate firm"~~ | ~~means a body corporate which carries on the practice of a solicitor or an REL but is not an in-house practice;~~ |
| "court" | in rule 11 (Litigation and advocacy) means any court, tribunal or enquiry of England and Wales, or a British court martial, or any court of another jurisdiction; |
| "director" | means a director of a company, and includes the director of a recognised body which is a company; and in relation to a societas Europaea includes:<br>(a) in a two-tier system, a member of the management organ and a member of the supervisory organ; and<br>(b) in a one-tier system, a member of the administrative organ; |
| "documents" | in rule 20 (Requirements of practice) includes documents, whether written or electronic, relating to the solicitor's client and office accounts; |
| "eligible to be a member and eligible to be a shareowner" | in rule 14 (Incorporated practice), mean a person who falls within one of the following categories:<br>(a) a solicitor with a practising certificate;<br>(b) a registered European lawyer;<br>(c) a registered foreign lawyer;<br>~~(d) a non-registered European lawyer;~~<br>(d) a lawyer of an Establishment Directive state (including the UK), |

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| | (e) a lawyer of England and Wales,<br><br>(f) an individual approved under regulation X of the Solicitors' Recognised Bodies Regulations 2007 as suitable to be a manager of a recognised body<br>(g) a qualifying body (including another recognised body).<br><br>~~(e) a recognised body; or~~<br><br>~~(f) a European corporate practice;~~<br><br>and "ineligible" must be construed accordingly; |
| "employee" | except in rule 6 (Equality and diversity) includes~~, in the case of a solicitor or an REL~~ an individual who is:<br>(a) ~~a solicitor or REL who is~~ employed as a director of a company;<br>(b) ~~a solicitor or REL who is~~ engaged under a contract of service (for example, an assistant solicitor) by a firm or its wholly owned service company; or<br>(c) ~~a solicitor or REL who is~~ engaged under a contract for services (for example, a consultant or a locum), made between the employer and:<br>(i) that individual,<br>(ii) an employment agency, or<br>(iii) a company which is not held out to the public as providing legal services and is wholly owned and directed by that individual;<br>and "employer" and "employment" must be construed accordingly |
| "Establishment Directive" | means the Establishment of Lawyers Directive 98/5/EC; |
| "Establishment Directive Regulations" | means the European Communities (Lawyer's Practice) Regulations 2000 (SI 2000/1119); |
| "Establishment Directive state" | means a state to which the Establishment of Lawyers Directive 98/5/EC applies – currently all the states of the EU plus Iceland, Liechtenstein, Norway and Switzerland; |
| "EU" | means the European Union; |
| ~~"European corporate practice"~~ | ~~means a lawyers' practice incorporated in or formed under the law of an Establishment Directive state, which does not have an office in England and Wales, and is either:~~ |

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| | ~~(a) a body corporate wholly owned (whether directly or indirectly) and directed by RELs and/or non-registered European lawyers, or by such persons together with solicitors with practising certificates, RFLs and/or barristers of England and Wales; or~~<br><br>~~(b) a lawyers' partnership with separate legal identity whose partners are all RELs and/or non-registered European lawyers, or such persons together with solicitors with practising certificates, RFLs and/or barristers of England and Wales.~~ |
| "European cross-border practice" | has the meaning assigned by 16.01(1); |
| "firm" | means any business through which a solicitor or REL carries on ~~the~~ practice ~~of a solicitor or an REL, except~~ other than in-house practice; |
| "foreign lawyer" | means a person who is not a solicitor or barrister of England and Wales, but who is a member, and entitled to practise as such, of a legal profession regulated within a jurisdiction outside England and Wales; |
| "holding company" | has the meaning assigned by the Companies Act 1985; |
| "Immigration tribunal" | means<br>(a) the asylum support adjudicators;<br>(b) the Asylum and Immigration Tribunal, and<br>(c) a tribunal hearing an appeal from (a) or (b); |
| "in-house practice" | means a solicitor's practice within 12.01(1)(g) or 12.01(2)(f), or an REL's practice within 12.02(1)(g) or 12.02(2)(e);:<br><br>~~(a) a solicitor's employment in England and Wales as a solicitor, or an REL's employment in England and Wales as a lawyer of an Establishment Directive state, by any business which is not:~~<br><br>~~(i) the business of a solicitor or an REL practising as a sole principal;~~ |

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| | ~~(ii) a recognised body; or~~<br><br>~~(iii) a partnership with at least one partner who is:~~<br><br>~~(A) a practising solicitor;~~<br><br>~~(B) an REL practising as such; or~~<br><br>~~(C) a recognised body; and~~<br><br>~~(b) a solicitor's employment outside England and Wales as a solicitor, or an REL's employment in Scotland or Northern Ireland as a lawyer of an Establishment Directive state, by any business which is not:~~<br><br>~~(i) the business of a lawyer practising as a sole principal;~~<br><br>~~(ii) a partnership of lawyers, or of lawyers together with other persons, within rule 12; or~~<br><br>~~(iii) a body corporate wholly owned, for the purpose of practising law, by lawyers, or by lawyers together with other persons, within rule 12;~~ |
| "lawyer" | ~~except in rule 12 (Framework of practice),~~ means a member of one of the following professions, entitled to practise as such:<br><br>(a) the profession of solicitor, barrister or advocate of the UK;<br><br>(b) a profession whose members are authorised to practise by an approved regulator other than the Solicitors Regulation Authority;<br><br>(~~b~~c) a legal profession of an Establishment Directive state other than the UK;<br><br>(~~c~~d) a legal profession which has been approved by the Solicitors Regulation Authority for the purpose of multi-national partnerships in England and Wales; or<br><br>(~~d~~e) any other regulated legal profession which is recognised as such by the Solicitors Regulation Authority; |

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| | ~~(for the definition of "lawyer" for the purpose of rule 12 (Framework of practice) see 12.05);~~ |
| "lawyer of an Establishment Directive state" | means a member, and entitled to practise as such, of a legal profession which is covered by the Establishment of Lawyers Directive 98/5/EC, and includes a solicitor or a barrister of England and Wales; |
| "lawyer of England and Wales" | means a solicitor with a current practising certificate or an individual who is authorised to practise in England and Wales by an approved regulator other than the Solicitors Regulation Authority; |
| "legal profession" | means a profession whose members are lawyers as defined in this rule; |
| "LLP" | means a limited liability partnership formed by being incorporated under the Limited Liability Partnerships Act 2000; |
| manager | means:<br>(a) a partner in a partnership;<br>(b) a member of an LLP; or<br>(c) a director of a company; |
| "member" | in relation to a recognised body, means:<br>(a) a person who has agreed to be a member of a company and whose name is entered in the company's register of members; or<br>(b) a member of an LLP; |
| "MNP" | means a multi-national partnership as defined in section 89(9) of the Courts and Legal Services Act 1990; |
| "non-lawyer" | means:<br>(a) an individual who is not a lawyer ~~as defined in this rule~~ practising as such; or<br>(b) a body corporate ~~which includes an individual who is not a lawyer as defined in this rule; or~~<br>~~(c) a partnership which includes as a partner an individual who is not a lawyer as defined in this rule;~~ or partnership which is not: |

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| | (i) a recognised body,<br>(ii) an authorised non-SRA firm, or<br>(iii) a business, carrying on the practice of lawyers from an office or offices outside England and Wales, in which a controlling majority of the owners and managers are lawyers |
| "non-registered European lawyer" | means a lawyer of an Establishment Directive state who is based at an office or offices outside England and Wales and who is not~~: (a)~~ a solicitor, REL or RFL~~; or (b) a barrister of England and Wales, Northern Ireland or the Irish Republic, or a Scottish advocate~~; |
| "notary public" | means a duly certificated notary authorised to practise by the Master of Faculties; |
| "officer" | in relation to a company, means a director or the company secretary; |
| "overseas" | means in or of a jurisdiction other than England and Wales; |
| "overseas practice" | means:<br>(a) the practice ~~of a solicitor or a recognised body~~ from an office ~~or offices~~ outside England and Wales~~;and~~ of:<br>(i) a solicitor<br>(ii) a recognised body,<br>(iii) a manager of a recognised body who is a lawyer of England and Wales;<br>(b) the activities of an individual non-lawyer as a manager of a recognised body practising from an office outside England and Wales,<br>(c) the activities of a body corporate as a manager of a recognised body practising from an office outside England and Wales, and<br>(d) the practice of an REL from an office ~~or offices~~ in Scotland or Northern Ireland; |
| "owner" | in relation to a body ~~corporate~~, means a person with any ownership interest in the body ~~corporate~~; |
| "partner" | ~~includes both an equity partner and a salaried partner in a partnership~~ means a person who is or is held out as a partner in an unincorporated firm |

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| "partnership" | ~~means an unincorporated body falling within the definition of partnership in section 1 of the Partnership Act 1890, and does not include an LLP~~ means an unincorporated partnership, and includes any unincorporated firm in which persons are or are held out as partners, but does not include an LLP; |
| "person" | includes an individual~~,~~ and a body corporate~~, or other legal person~~; |
| "person qualified to direct reserved work" | means an individual who is qualified under statute to do the relevant reserved work and who is:<br>(a) a fellow-manager, or<br>(b) the employer, a manager of the firm or a fellow-employee, if the person doing the work is not a manager |
| "practice" | means:<br>(a) the activities of a solicitor, in that capacity;<br>(b) the activities of an REL in the capacity of lawyer of an Establishment Directive state, from an office or offices within the UK;<br>~~(c) the activities of an RFL from an office or offices in England and Wales as:~~<br>~~(i) a partner in an MNP;~~<br>~~(ii) a director of a recognised body which is a company; or~~<br>~~(iii) a member of a recognised body which is an LLP; and~~<br>(c) the activities of an RFL from an office or offices in England and Wales as:<br>(i) the employee of a recognised sole practitioner,<br>(ii) a manager, employee, member or owner of a recognised body or of an authorised non-SRA firm,<br>(iii) a manager, member or owner of a body corporate which is a manager, member or |

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| | owner of a recognised body or of an authorised non-SRA firm.<br>(d) the activities of a recognised body;<br>(e) the activities of an individual non-lawyer as a manager of a recognised body practising from an office outside England and Wales,<br>(f) the activities of a body corporate as a manager of a recognised body practising from an office outside England and Wales,<br>(g) the activities of a lawyer of England and Wales, in that capacity; and<br>(h) the activities of an authorised non-SRA firm,<br>and "practise" and "practising" should be construed accordingly; |
| "practice from an office" | includes practice carried on:<br>(a) from an office at which you are based; or<br>(b) from an office of a firm in which you are a principal, director, member or an owner, even if you are not based there;<br>and "practising from an office in England and Wales", etc. should be construed accordingly; |
| "practice through a body ~~corporate~~" | includes having an ownership interest in a body ~~corporate or~~ and being a director ~~of~~ if the body is a a company, even if you yourself undertake no work for body's clients ~~of the body corporate;~~<br>and "practising through ~~a body corporate~~ an authorised non-SRA firm" should be construed accordingly; |
| "principal" | means a sole practitioner or a partner in a partnership; |
| ~~"principal in a firm"~~ | ~~means:~~<br>~~(a) a solicitor or recognised body practising either as a sole principal or as a partner;~~<br>~~(b) an REL practising in the UK either as a sole principal or as a partner; or~~<br>~~(c) an RFL practising from an office in England and~~ |

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| | ~~Wales as a partner in an MNP;~~ |
| "providing a service through a separate business" | means having any active involvement in a separate business which provides that service, and includes:<br>(a) any substantial ownership in the business;<br>(b) any direct control over the business, and any indirect control through another person such as a spouse; and<br>(c) any active participation in the business or the provision of its services to customers;<br>(being a non-executive director or providing services under rule 13 (In-house practice) does not, on its own, constitute active involvement); |
| "publicity" | includes all promotional material and activity, including the name or description of your firm, stationery, advertisements, brochures, websites, directory entries, media appearances, promotional press releases, and direct approaches to potential clients and other persons, whether conducted in person, in writing, or in electronic form, but does not include press releases prepared on behalf of a client; |
| "qualifying body" | means a body corporate which meets all the following conditions:<br>(a) it provides only such services as a recognised body may provide,<br>(b) it has at least one manager who is a solicitor or REL,<br>(c) lawyers of England and Wales, lawyers of Establishment Directive states (including the UK), and/or RFLs:<br>(i) constitute at least 75% of the managers,<br>(ii) exercise or control the exercise of at least 75% of the voting rights in the body, and<br>(iii) if the body has shares, hold at least 75% of the shares in the body;<br>(d) (i) every manager who is not within (c) above is an individual approved under regulation XX of |

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| | the Solicitors' Recognised Bodies Regulations 2007; and<br>(ii) every member or owner who is not within (c) above is also a manager. |
| "recognised body" | means a ~~body corporate (which can be a company or an LLP)~~ partnership, company or LLP for the time being recognised by the Solicitors Regulation Authority under section 9 of the Administration of Justice Act 1985 and the Solicitors' Recognised Bodies Regulations 2007; |
| "recognised sole practitioner" | means a solicitor or REL authorised by the Solicitors Regulation Authority under section 1B of the Solicitors Act 1974 to practise as a sole practitioner; |
| "REL (registered European lawyer)" | means an individual registered with the Solicitors Regulation Authority under regulation 17 of the Establishment Directive Regulations; |
| REL-controlled recognised body" | means a recognised body in which RELs, or RELs together with lawyers of England and Wales, constitute the national group of lawyers with the largest (or equal largest) share of control of the recognised body either as individual managers or by their share in the control of bodies which are managers, and for this purpose RELs belong to the national group of England and Wales. |
| "register of European lawyers" | means the register of European lawyers maintained by the Solicitors Regulation Authority under regulation 15 of the Establishment Directive Regulations; |
| "Reserved work" | means the following activities:<br>(a) advocacy before a court or immigration tribunal,<br>(b) the conduct of proceedings in a court or immigration tribunal,<br>(c) the preparation of documents in proceedings before a court or immigration tribunal,<br>(d) the preparation of instruments and the lodging of documents relating to the transfer or charge of land, and the preparation of trust deeds disposing of capital, within paragraph 5 of Schedule 2 to the Legal Services Act 2007, |

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| | (e) the preparation of papers on which to found or oppose a grant of probate or a grant of letters of administration,<br>(f) the administration of oaths and statutory declarations,<br>(g) notarial activities within paragraph 7 of Schedule 2 to the Legal Services Act 2007. |
| "RFL (registered foreign lawyer)" | means an individual registered with the Solicitors Regulation Authority under section 89 of the Courts and Legal Services Act 1990; |
| register of foreign lawyers | means the register of foreign lawyers maintained by the Solicitors Regulation Authority under the Courts and Legal Services Act 1990; |
| ~~"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;~~ |
| "separate business" | means a business which ~~does not carry on the practice of a solicitor, REL or~~ is not a recognised body, a recognised sole practitioner, an authorised non-SRA firm or a firm within 12.01(3)(a)-(c) or 12.02(3)(a)-(c) but which offers a service or services that could properly be offered by a ~~solicitor, REL or~~ recognised body ~~in the course of practice~~; |
| "shareowner" | means:<br>(a) a member of a recognised body which is a company with a share capital, who owns a share in the body; or<br>(b) a person who is not a member of a company with a share capital, but owns a share in the body, which is held by a member as nominee; |
| "societas Europaea" | means a European public limited liability company within the meaning of article 1 of Council Regulation 2157/2001/EC; |
| "sole practitioner" | means a solicitor or REL practising as a sole principal, and does not include a solicitor or REL practising in-house; |
| solicitor-controlled | means a recognised body in which lawyers of England and Wales constitute the national group of lawyers with the |

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| recognised body | largest (or equal largest) share of control of the recognised body either as individual managers or by their share in the control of bodies which are managers; |
| "Solicitors' Recognised Bodies Regulations" | means the Solicitors' Recognised Bodies Regulations 2007 |
| "subsidiary company" | has the meaning assigned by the Companies Act 1985; |
| "UK" | means United Kingdom; and |
| "undertaking" | in 10.05 and 15.10, means a statement made by you or your firm to someone who reasonably relies upon it, that you or your firm will do something or cause something to be done, or refrain from doing something. The undertaking can be given orally or in writing and need not include the words "undertake" or "undertaking". |