

# Solicitors' Indemnity (Enactment) Rules 2007

## Solicitors' Indemnity Rules 2007

### **RULES IN FORCE FROM 1 OCTOBER 2007**

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## **Solicitors' Indemnity (Enactment) Rules 2007**

Rules made under section 37 of the Solicitors Act 1974 and section 9 of the Administration of Justice Act 1985 with the concurrence of the Master of the Rolls on 5 June 2007.

1. The Solicitors' Indemnity Rules 1987 as amended from time to time shall be further amended with effect from 1 October 2007 and shall continue in force thereafter in the form annexed hereto in which form they may be known as the Solicitors' Indemnity Rules 2007.
2. The Solicitors' Indemnity (Incorporated Practice) Rules 1991 as amended from time to time shall continue in force only in respect of the Indemnity Periods commencing on 1 September 1991 and 1 September 1992.
3. The contributions payable in respect of the Indemnity Periods commencing prior to 1 September 1996 shall remain unaltered.
4. In respect of any Indemnity Periods commencing on or after 1 September 1996 the Society shall retain the power under Rule 35 of the Solicitors' Indemnity Rules 1996 to determine Supplementary Contributions in respect of any such period.
5. The indemnity available in respect of the Indemnity Periods commencing prior to 1 October 2007 shall remain unaltered.

# Annex: Solicitors' Indemnity Rules 2007

## Part I General provisions and definitions

### 1 Authority

- 1.1 These Rules are made by the Council with the concurrence of the Master of the Rolls under section 37 of the Solicitors Act 1974 and section 9 of the Administration of Justice Act 1985.
- 1.2 These Rules regulate indemnity provision in respect of the practices of solicitors, recognised bodies, registered European lawyers, registered foreign lawyers and certain other European lawyers carried on wholly or in part in England and Wales.

### 2 Citation

- 2.1 These Rules may be cited as the Solicitors' Indemnity Rules 2007.

### 3 Definitions and interpretation

- 3.1 For the purposes of these Rules:

**Contributions** means contributions previously made to the Fund in accordance with Part IV of the Solicitors' Indemnity Rules 2006 (or any earlier corresponding provisions), and any additional sums paid in accordance with Rule 16

**Fund** means the fund maintained in accordance with these Rules

**Foreign Lawyer** means an individual who is not a solicitor but is a member, and entitled to practise as such, of a legal profession regulated within a jurisdiction outside England and Wales

**Indemnity Period** means the period of one year commencing on 1 September in any calendar year from 1987 to 2002 inclusive, the period of 13 calendar months commencing on 1 September 2003, and the period of one year commencing on 1 October in any subsequent calendar year, unless and until otherwise determined by future Rules; and the **Relevant Indemnity Period** in relation to Contributions or indemnity means that Indemnity Period in respect of which such Contributions are payable or such indemnity is to be provided in accordance with these Rules

**Master Policies** and **Master Policy Certificates** means the policies and certificates referred to in Rule 4.3 and **Master Policy Insurers** means the insurers thereunder

A **Member** of a practice means any principal therein; any officer thereof in the case of a Recognised Body which is a company; any member thereof in the case of a Recognised Body which is a limited liability partnership; any Recognised Body which is a partner or held out to be a partner therein and any officer of such Recognised Body which is a company, or any member of such Recognised Body which is a limited liability partnership; any person employed in connection

therewith (including any trainee solicitor); any solicitor or registered European lawyer who is a consultant to or associate in the practice; any foreign lawyer who is not a registered European lawyer and who is a consultant or associate in the practice; and any solicitor or foreign lawyer who is working in the practice as an agent or locum tenens, whether he or she is so working under a contract of service or contract for services; and the estate and/or personal representative(s) of any such persons

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

- (a) a solicitor, registered European lawyer or registered foreign lawyer,
- (b) a barrister of England and Wales, Northern Ireland or the Irish Republic, or
- (c) a Scottish advocate

**Overseas** means outside England and Wales

An **Overseas Practice** means a Practice carried on wholly from an Overseas office or offices, including a Practice deemed to be a Separate Practice by virtue of paragraph (b) of the definition of Separate Practice

**Partner** and **partnership** (except in the phrase “limited liability partnership”) refer to an unincorporated Practice, and not to a Practice incorporated as a limited liability partnership

**Practice** means a practice to the extent that it carries on Private Practice providing professional services as a sole solicitor or registered European lawyer or as a partnership of a type referred to in Rule 6.1(d) to 6.1(f) and consisting of or including one or more solicitors and/or registered European lawyers, and shall include the business or practice carried on by a Recognised Body in the providing of professional services such as are provided by individuals practising in Private Practice as solicitors and/or registered European lawyers or by such individuals in partnership with registered foreign lawyers, whether such Practice is carried on by the Recognised Body alone or in partnership with one or more solicitors, registered European lawyers and/or other recognised bodies

**Private Practice** shall be deemed to include:

- (a) the acceptance and performance of obligations as trustees;
- (b) notarial practice where a solicitor notary operates such notarial practice in conjunction with a solicitor's practice, whether or not the notarial fees accrue to the benefit of the solicitor's practice;

but does not include:

- (c) practice to the extent that any fees or other income accruing do not accrue to the benefit of the Practice carrying on such practice (except as provided by paragraph (b) in this definition);

- (d) practice by a solicitor or registered European lawyer in the course of his or her employment with an employer other than a solicitor, registered European lawyer, Recognised Body, or partnership such as is referred to in Rule 6.1(d) to 6.1(f); in which connection and for the avoidance of doubt:
  - (i) any such solicitor or registered European lawyer does not carry on Private Practice when he or she acts in the course of his or her employment for persons other than his or her employer;
  - (ii) any such solicitor or registered European lawyer does not carry on Private Practice merely because he or she uses in the course of his or her employment a style of stationery or description which appears to hold him or her out as a principal or solicitor or foreign lawyer in Private Practice;
  - (iii) any practice carried on by such a solicitor outside the course of his or her employment will constitute Private Practice;
- (e) discharging the functions of the following offices:
  - (i) judicial office;
  - (ii) Under Sheriffs;
  - (iii) members and clerks of such tribunals, committees, panels and boards as the Council may from time to time designate but including those subject to the Tribunals and Inquiries Act 1992, the Competition Commission, Legal Services Commission Review Panels and Parole Boards;
  - (iv) Justices' Clerks;
  - (v) Superintendent Registrars and Deputy Superintendent Registrars of Births, Marriages and Deaths and Registrars of Local Crematoria;
  - (vi) such other offices as the Council may from time to time designate

**Previous Practice** means any practice which shall have ceased to exist as such (for whatever reason, including by reason of (a) any death, retirement or addition of principals or (b) any split or cession of the whole or part of its practice to another without any change of principals)

**Principal** means:

- (a) a solicitor or registered European lawyer who is a partner or sole practitioner, or a registered foreign lawyer or non-registered European lawyer who is a partner, and includes any solicitor, registered European lawyer, registered foreign lawyer or non-registered European lawyer held out as a principal; and

- (b) additionally in relation to a Practice carried on by a Recognised Body alone, or a Practice in which a Recognised Body is or is held out to be a partner:
  - (i) a solicitor, registered European lawyer, registered foreign lawyer or non-registered European lawyer who:
    - (A) beneficially owns the whole or any part of a share in such Recognised Body (where it is a company with a share capital); or
    - (B) is a member of such Recognised Body (where it is a company without a share capital or a limited liability partnership); or
  - (ii) a solicitor, registered European lawyer, registered foreign lawyer or non-registered European lawyer who is
    - (A) the ultimate beneficial owner of the whole or any part of a share in such Recognised Body (where the Recognised Body is a company with a share capital) through the medium of some other Recognised Body or bodies or some Overseas body corporate entitled under the Solicitors' Incorporated Practice Rules to own a share in a Recognised Body; or
    - (B) the ultimate owner of a member or any part of a member of such Recognised Body (where the Recognised Body is a company without a share capital or a limited liability partnership, and the member is itself a Recognised Body, or an Overseas body corporate entitled under the Solicitors' Incorporated Practice Rules to be a member of a Recognised Body)

A **Recognised Body** means a body corporate for the time being recognised under section 9 of the Administration of Justice Act 1985

A **registered European lawyer** means an individual registered with the Society under regulation 17 of the European Communities (Lawyer's Practice) Regulations 2000

A **registered foreign lawyer** means an individual registered with the Society under section 89 of the Courts and Legal Services Act 1990

A **Separate Practice** means

- (a) A Practice in which the number and identity of the Principals is not the same as the number and identity of the Principals in any other Practice. When the same Principals in number and identity carry on practice under more than one name or style, there is only one Practice.
- (b) In the case of a Practice of which more than 25% of the Principals are foreign lawyers, any Overseas offices shall be deemed to form a Separate Practice from the offices in England and Wales.
- (c) In the case of an Overseas office of a Practice, the fact that a Principal or a limited number of Principals represent all the

Principals in the Practice on a local basis shall not of itself cause that Overseas office to be a Separate Practice provided that any fee or other income arising out of that office accrues to the benefit of the Practice.

- (d) In the case of a Recognised Body the fact that all of the shares in the Recognised Body are beneficially owned by only some of the Principals in another Practice, shall not, of itself, cause such a Recognised Body to be a Separate Practice provided that any fee or other income arising out of the Recognised Body accrues to the benefit of that other Practice

The terms **Society** and **Council** have the meanings assigned to them by the Solicitors Act 1974.

A **solicitor** means a person who has been admitted as a solicitor of the Supreme Court of England and Wales and whose name is on the roll kept by the Society under section 6 of the Solicitors Act 1974.

3.2 In these Rules, unless the context otherwise requires:

- (a) the singular includes the plural, and vice versa;
- (b) a reference to a person includes a body corporate, partnerships, and other unincorporated associations or bodies of persons;
- (c) a reference to a Rule is to a Rule forming part of these Rules;
- (d) a reference to any statute, statutory provision, or regulation includes:
  - (i) any subordinate legislation (as defined by section 21(1) of the Interpretation Act 1978) made under it; and
  - (ii) any provision which it has superseded or re-enacted (with or without modification) or amended, and any provision superseding it or re-enacting it (with or without modification) or amending it either before, or at the date of the commencement of these Rules, or after the date of the commencement of these Rules;
- (e) references to the Society and to the Council include the Solicitors Regulation Authority and the Legal Complaints Service, and any body or person which succeeds in whole or in part to the functions of the Society, the Council, the Solicitors Regulation Authority or the Legal Complaints Service, and any delegate of the Society, the Council, the Solicitors Regulation Authority, the Legal Complaints Service or any such body or person;
- (f) headings are for ease of reference only and shall not affect the interpretation of these Rules; and
- (g) the Schedule to these Rules forms part of these Rules.

3.3 These Rules will be governed by and interpreted in accordance with English law.

## 4 Establishment and maintenance of Fund

4.1 The Society shall maintain the Fund in accordance with these Rules.

- 4.2 The purpose of the Fund is to provide indemnity against loss as mentioned in section 37 of the Solicitors Act 1974 as extended by section 9 of the Administration of Justice Act 1985, Schedule 4 paragraph 1(3) of the European Communities (Lawyer's Practice) Regulations 2000 and section 89 of the Courts and Legal Services Act 1990 in the circumstances, to the extent and subject to the conditions and exclusions specified by the Solicitors' Indemnity Rules 1987 as the same have been and are in force and amended and applied from time to time and by any future Rules continuing, amending, adding to, applying or re-enacting such or other Rules to provide such indemnity in respect of annual Indemnity Periods (starting in 1987) unless and until otherwise determined by future Rules.
- 4.3 The Fund shall be maintained by Contributions previously made by or on behalf of solicitors, recognised bodies, registered European lawyers and registered foreign lawyers in respect of each Indemnity Period in accordance with Part IV of the Solicitors' Indemnity Rules 2006 (or any earlier corresponding provisions), and by any additional Contributions in accordance with Rule 16.
- 4.4 The Society may maintain the Fund as a single continuous Fund, and any deficiency in respect of one Indemnity Period may be met in whole or part from Contributions in respect of another Period or Periods and any balance in respect of one Period may be applied to the benefit of any other Period or Periods.
- 4.5 The Fund shall be held, managed and administered in accordance with Part IV of these Rules by Solicitors Indemnity Fund Limited, a company set up by the Society for this purpose, or by such other person or persons (including the Society itself) as the Society may designate for such purpose, in place of Solicitors Indemnity Fund Limited. References in these Rules to Solicitors Indemnity Fund Limited shall include any such other person or persons.

## **5 Indemnity Periods before 1 September 1987**

The Master Policies taken out and maintained and the certificates issued by the Society pursuant to the Solicitors' Indemnity Rules 1975 to 1986 shall continue to provide cover subject to and in accordance with their terms in respect of their respective periods up to and including 31 August 1987. They shall not provide cover in respect of any subsequent period.

## **6 Application of the Rules**

- 6.1 These Rules shall apply to a Practice carried on by:
- (a) a sole solicitor;
  - (b) a registered European lawyer practising as a sole practitioner;
  - (c) a Recognised Body;
  - (d) a partnership consisting of one or more solicitors and/or registered European lawyers and/or recognised bodies;

- (e) a partnership consisting of one or more solicitors and/or registered European lawyers, together with one or more registered foreign lawyers; and
- (f) a partnership consisting of one or more registered European lawyers with or without one or more registered foreign lawyers, together with one or more non-registered European lawyers practising from one or more offices in any state to which the Establishment of Lawyers Directive 98/5/EC applies, but outside England and Wales.

## **7 Scope of indemnity**

7.1 The following persons, namely:

- (a) solicitors, former solicitors, registered European lawyers, persons formerly practising as registered European lawyers, registered foreign lawyers practising in partnership with solicitors or registered European lawyers, persons formerly practising as registered foreign lawyers in partnership with solicitors or registered European lawyers, non-registered European lawyers practising in partnership with registered European lawyers, and persons formerly practising as non-registered European lawyers in partnership with registered European lawyers;
- (b) employees and former employees of the above;
- (c) recognised bodies and former recognised bodies; and
- (d) officers and employees and former officers and employees of recognised bodies and former recognised bodies,

shall be provided with indemnity out of the Fund against loss arising from claims in respect of civil liability incurred in Private Practice in their aforesaid capacities or former capacities in the manner set out in Rule 10 and in the circumstances, to the extent and subject to the conditions and exclusions set out in Part II of these Rules and not otherwise.

## Part II Indemnity cover

### 8 Indemnity

#### Indemnity for ceased Practices

- 8.1 Any Member of a Previous Practice which ceased on or before 31 August 2000 who has at any time been either:
- 8.1.1 an Assured as a result of the issue of a certificate under one or more of the Master Policies, or
- 8.1.2 a person entitled to be indemnified by virtue of the issue of a receipt under the Solicitors' Indemnity Rules 1987-1990 or a payment of Contribution and Value Added Tax thereon as stated in the Solicitors' Indemnity Rules 1991-1999,

and who is not, at the time during the Indemnity Period when a claim is first made or intimated against him or her or when circumstances which might give rise to such a claim are first notified by him or her to Solicitors Indemnity Fund Limited a person entitled or required to be indemnified in respect of claims arising from that Previous Practice by a policy of Qualifying Insurance or otherwise under the Solicitors' Indemnity Insurance Rules 2000 or any rules subsequent thereto,

and the Previous Practice

shall be entitled to indemnity out of the Fund in the manner, to the extent and subject to the conditions and exclusions set out in these Rules against:

- (a) all loss (including liability for third party claimants' costs) incurred by the Previous Practice or any Member thereof at any time arising directly from:
- (i) any claim(s) first made or intimated against the Previous Practice or any Member thereof during the Indemnity Period in respect of any description of civil liability whatsoever which may have been incurred in Private Practice by the Previous Practice or by a Member as a Member of such Previous Practice;
- (ii) any claim in respect of any such description of civil liability as aforesaid made or intimated against the Previous Practice or any Member thereof whether during or subsequent to the Indemnity Period arising out of circumstances notified to Solicitors Indemnity Fund Limited during the Indemnity Period as circumstances which might give rise to such a claim; and
- (b) all costs and expenses incurred with the consent of Solicitors Indemnity Fund Limited (such consent not to be unreasonably withheld) in the defence or settlement or compromise of any such claim as aforesaid.

## Eligible Former Principals

- 8.2 Rule 8.1 shall apply in addition in respect of any Principal of a Previous Practice where:
- (a) that Previous Practice ceased on or before 31 August 2000; and
  - (b) a claim is made on or after 1 September 2000 against a "Successor Practice" (as defined in Appendix 1 to the Solicitors' Indemnity Insurance Rules 2000 or any rules subsequent thereto (the "SIIR") to that Previous Practice (a "**Relevant Successor Practice**") in respect of any matter which would have given rise to an entitlement to that Principal to indemnity out of the Fund under the Solicitors' Indemnity Rules 1999 had the claim been notified to Solicitors Indemnity Fund Limited on 31 August 2000 (a "**Relevant Claim**"); and
  - (c) he or she has not at any time been a "Principal" of the Relevant Successor Practice ("Principal" having the meaning set out in Rule 3 of the SIIR); and
  - (d) at the time that the Relevant Claim is made he or she is not a principal in private practice ("Principal" and "Private Practice" having the meanings set out in Rule 3 of the SIIR).
- (an "**Eligible Former Principal**").
- 8.3 In respect of any claim referred to in Rule 8.2 made by an Eligible Former Principal, the extent of the indemnity (if any) to be provided by Solicitors Indemnity Fund Limited shall be limited to an amount equal to the lesser of:
- (a) the Due Proportion of the Deductible (excluding any Penalty Deductible) in respect of the Eligible Former Principal that would have been disregarded by Solicitors Indemnity Fund Limited in relation to the claim had it been made under the Solicitors' Indemnity Rules 1999; and
  - (b) such amount if any which the Relevant Successor Practice is entitled to and seeks to recover from the Eligible Former Principal in relation to the claim.
- 8.4 For the purposes of Rule 8.3, "**Due Proportion**", "**Deductible**" and "**Penalty Deductible**" shall have the meanings respectively given to them by the Solicitors' Indemnity Rules 1999, as set out in Schedule 1 to these Rules.

## Expired Run-off Claims

- 8.5 Any firm or person shall be entitled to indemnity out of the Fund in the manner, to the extent and subject to the conditions and exclusions set out in this Rule 8.5, in relation to an Expired Run-off Claim, provided that:
- (a) such claim is first notified to Solicitors Indemnity Fund Limited at any time between 1 September 2007 and 30 September 2017; and
  - (b) there is no Preceding Qualifying Insurance which provides cover for such claim; and

- (c) such claim does not relate to or arise out of any Claim first made against an Insured or Circumstances first notified to the provider of such Preceding Qualifying Insurance, in either case at a time when such Preceding Qualifying Insurance was required to provide cover in respect thereof; and
- (d) such person was an Insured under the relevant Preceding Qualifying Insurance.

Notwithstanding any other provision of these Rules:

- (i) the obligations of the Fund and/or any Insured in respect of an Expired Run-off Claim shall be in accordance with, and limited to, the Expired Run-off Cover; and
- (ii) any obligation owed by any insured under the Preceding Qualifying Insurance to the qualifying insurer which issued such insurance shall be deemed to be owed to Solicitors Indemnity Fund Limited in place of such qualifying insurer, unless and to the extent that Solicitors Indemnity Fund Limited in its absolute discretion otherwise agrees.

8.6 In Rule 8.5:

**“Expired Run-off Claim”** means any claim made against the Fund for indemnity under these Rules in respect of which no Preceding Qualifying Insurance remains in force to cover such claim, by reason only of:

- (a) the run-off cover provided or required to be provided under the policy having been activated; and
- (b) the sixth anniversary of the date on which cover under such Qualifying Insurance would have ended but for the activation of such run-off cover having passed; or
- (c) (in the case of a Firm In Default or a Run-off Firm) the period of run-off cover provided or required to be provided under arrangements made to cover such claim through the Assigned Risks Pool having expired

**“Expired Run-off Cover”** means either:

- (a) (unless (b) below applies) the terms of the ARP Policy / Assigned Risks Pool Policy in force at the time immediately prior to the date on which run-off cover was triggered under the Preceding Qualifying Insurance, excluding clause 5 (Run-off cover), as if it were a contract between Solicitors Indemnity Fund Limited and the firm or person making an Expired Run-off Claim; or
- (b) where they are provided to Solicitors Indemnity Fund Limited prior to payment of the Claim, the terms of the Preceding Qualifying Insurance, provided that:
  - (i) references in the Preceding Qualifying Insurance to the qualifying insurer that issued such insurance shall be read as references to Solicitors Indemnity Fund Limited;
  - (ii) any obligation owed by any insured under the Preceding Qualifying Insurance to the qualifying insurer which issued such insurance shall be deemed to be owed to Solicitors

Indemnity Fund Limited in place of such qualifying insurer, unless and to the extent that Solicitors Indemnity Fund Limited in its absolute discretion otherwise agrees;

- (iii) the obligations of the Fund and/or any Insured in respect of an Expired Run-off Claim shall neither exceed nor be less than the requirements of the Minimum Terms and Conditions which, in accordance with the applicable SIIR, such Preceding Qualifying Insurance included or was required to include.

Solicitors Indemnity Fund Limited shall be under no obligation to take any steps to obtain the terms of any such Preceding Qualifying Insurance, which for these purposes includes the terms on which it was written in respect of the insured firm or person in question, and not merely a standard policy wording

**“Preceding Qualifying Insurance”** means, in the case of any firm or person who makes an Expired Run-off Claim, the policy of Qualifying Insurance which previously provided run-off cover in respect of that firm or person, or which was required to provide such cover, or (in the case of a Firm In Default or a Run-off Firm) arrangements to provide such run-off cover through the Assigned Risks Pool

**“ARP Policy”, “Assigned Risks Pool”, “Assigned Risks Pool Policy”, “Claim”, “Circumstances”, “Firm In Default”, “Minimum Terms and Conditions” “Qualifying Insurance” and “Run-off Firm”** each have the meaning respectively given to such expressions in the SIIR in force at the time immediately prior to the date on which run-off cover was triggered under the Preceding Qualifying Insurance.

## 9 Exclusions from cover

- 9.1 The Fund shall not afford any indemnity in respect of any loss arising out of any claim:
- (a) for death, bodily injury, physical loss or physical damage to property of any kind whatsoever (other than property in the care, custody and control of the Previous Practice or Member thereof in connection with its, his or her Private Practice for which it, he or she is responsible, not being property occupied or used by it, him or her for the purposes of the Previous Practice);
  - (b) for any alleged breach or other relief in respect of any partnership or partnership agreement between the Principals in the Previous Practice or between any Principal therein and any other person as Principals in any other Previous Practice;
  - (c) for wrongful dismissal or termination of articles of clerkship or training contract or any other alleged breach or any other relief by either party in respect of any contract of employment by the Previous Practice or any Member thereof; and/or for wrongful termination or any other alleged breach or any other relief by either party in respect of any contract for supply to or use by the Previous Practice or any Member thereof of services and/or materials and/or equipment and/or other goods;

- (d) for the payment of a trading debt incurred by the Previous Practice or any Member thereof;
- (e) in respect of any undertaking given by any Principal in the Previous Practice or by a Recognised Body or on his, her or its behalf (whether in his, her or its own name or in the name of the Previous Practice) to any person in connection with the provision of finance, property, assistance or other advantage whatsoever to or for the benefit of such Principal or any other Principal or of his or her or any other Principal's spouse or children or of such Recognised Body or of any business, firm, company, enterprise, association or venture owned or controlled by him, her or it or any other Principal or in a beneficial capacity whether alone or in concert with others, EXCEPT to the extent that the person seeking indemnity shall establish that he, she or it was unaware that the undertaking was or was likely to be connected with the provision of any such finance, property, assistance or other advantage;
- (f) in respect of any dishonest or fraudulent act or omission, but nothing in this exclusion shall prevent any particular Member of the Previous Practice who was not concerned in such dishonesty or fraud being indemnified in accordance with these Rules in respect of any loss arising out of any claim in respect of any dishonest or fraudulent act or omission by any other such Member;
- (g) in respect of any liability incurred in connection with an Overseas Practice. In relation to a Previous Practice having any Overseas offices deemed by paragraph (b) of the definition of Separate Practice in Rule 3.1 to form a Separate Practice, a liability shall be deemed to have been incurred in connection with the office where or from which the major part of the work out of which the loss arose in respect of which indemnity is sought was being done. In the event of doubt as to which (if any) office satisfies this requirement, the liability shall be deemed to have been incurred in connection with the office to which the person who accepted the initial instructions was most closely connected;
- (h) in respect of any liability incurred in connection with a Previous Practice in relation to which the obligation to pay Contribution has been exempted under Rule 27 of the Solicitors' Indemnity Rules 2006 (or any earlier corresponding Rule) or, unless otherwise provided by the terms of the waiver, waived by the Council under Rule 19 (or under any corresponding earlier Rule);
- (i) arising out of any circumstances or occurrences which have been notified under the Master Policy or any certificate issued under the Master Policy or any other insurance existing prior to 1 September 1987;
- (j) in respect of any adjustment by way of claims loading or loss of discount which may at any future date or in respect of any future period be made by reference to any claim or claims first made or intimated during any Indemnity Period;
- (k) in respect of any liability incurred by any person in his, her or its capacity as a shareholder or beneficial owner of a share in a

Recognised Body notwithstanding the definition of Principal in Rule 3.1;

- (l) in respect of any act or omission on the part of any Principal whilst acting on behalf of the Previous Practice or any Member thereof in connection with any matter affecting the business of the Previous Practice provided that at the time of such act or omission such Principal was a Principal in the Previous Practice;
- (m) where the Previous Practice or any Member thereof is entitled to indemnity under any insurance except in respect of any amount greater than the amount which would have been payable under such insurance in the absence of the indemnity provided by the Fund.

9.2 For the avoidance of doubt, any claim or claims by any Member or former Member of any Previous Practice against any Member or former Member of any such Previous Practice for the payment of the whole or any part of the deductible paid or due in respect of a claim already notified or made under these Rules or any previous Rules is not a loss arising within the meaning of Rule 8 and shall in no event be recoverable hereunder.

9.3 The exclusions set out in this Rule 9 shall not apply in relation to an Expired Run-Off Claim, in respect of which the provisions of Rule 8.5 shall apply.

## **10 Manner of indemnity**

- 10.1 Such indemnity shall be provided, according to the decision of Solicitors Indemnity Fund Limited as set out in Rule 10.2, in any one or any combination of the following ways:
- (a) by payment, in or towards satisfaction of the claim and/or claimant's costs and expenses, to or to the order of the claimant making the claim;
  - (b) by payment, in respect of the claim and/or claimant's costs and expenses and/or costs and expenses incurred in respect of the defence or settlement or compromise of the claim, to or to the order of the person against whom the claim is made;
  - (c) by payment, in or towards discharge of costs and expenses incurred in respect of the defence or settlement or compromise of the claim, to or to the order of the legal advisers, adjusters or other persons by whom or in respect of whose services such costs and expenses were incurred;
  - (d) by payment to any firm or person in relation to an Expired Run-off Claim who was an Insured under the relevant Preceding Qualifying Insurance.
- 10.2 Solicitors Indemnity Fund Limited shall in any particular case, and notwithstanding the insolvency or bankruptcy of any person for whom indemnity is provided, have the sole and absolute right to decide in which way or combination of ways indemnity is provided.

## **11 Source of indemnity**

- 11.1 Any such indemnity shall be provided and any claim thereto shall lie and be made exclusively out of and against the Fund.
- 11.2 Solicitors Indemnity Fund Limited shall have no obligation to provide indemnity save to the extent that the same can be provided out of the Fund.
- 11.3 In no circumstances shall any claim to indemnity lie or be made against the Society or the Council.
- 11.4 Save as provided in Rule 21, the Fund shall be available exclusively for the purpose specified in Rule 4.2.
- 11.5 In no circumstances shall the Fund or any part thereof be available or be treated by any person as available (whether by virtue of any claim, attachment, execution or proceeding or otherwise howsoever) for or in connection with any other purpose.

## **12 Maximum liability of the Fund**

- 12.1 The liability of the Fund as stated in Rule 8.1.2(a) shall in no event exceed in respect of each such claim the Indemnity Limit for the Relevant Indemnity Period.
- 12.2 All claims arising from the same act or omission (whether or not made or intimated or arising out of circumstances notified during the same Indemnity Period and whether or not involving the same or any number of different Practices or Previous Practices and/or Members of such Practices or Previous Practices) shall be regarded as one claim.
- 12.3 If a payment exceeding the Indemnity Limit is made to dispose of any such claim (or, in circumstances within Rule 12.2, claims) for loss (including claimants' costs) such as stated in Rule 8.1.2(a), then any liability of the Fund for costs and expenses under Rule 8.1.2(b) shall be limited to such proportion of such costs and expenses as the Indemnity Limit bears to the amount of the payment so made.
- 12.4 The provisions of this Rule 12 shall not apply in relation to an Expired Run-Off Claim, in respect of which the provisions of Rule 8.5 shall apply.

## **13 Indemnity Limit**

- 13.1 Save in relation to an Expired Run-Off Claim, in respect of which the provisions of Rule 8.5 shall apply, the Indemnity Limit shall be £1,000,000 each and every claim (including claimants' costs).

## 14 Conditions

- 14.1 The Previous Practice and each Member thereof shall procure that notice to Solicitors Indemnity Fund Limited shall be given in writing as soon as practicable of:
- (a) any claim(s) the subject of Rule 8 made or intimated during the Relevant Indemnity Period against it, him or her of any claim for or likely to be for more than £500;
  - (b) the receipt by it, him or her of notice of any intention to make any such claim(s).
- 14.2 The Previous Practice and any Member thereof may also give notice in writing to Solicitors Indemnity Fund Limited of any circumstances of which it, he or she shall become aware which may (whether during or after the Relevant Indemnity Period) give rise to any such claim(s).
- 14.3 Any notice given under Rule 14.2, will be effective only if, at the date when such notice was given, the circumstances known to and notified by the Previous Practice and/or Member thereof, represent sufficient ground for a genuine and reasonable supposition on the part of the Previous Practice or Member that those circumstances may give rise to a claim the subject of indemnity under Rule 8.
- 14.4 If notice is given to Solicitors Indemnity Fund Limited under Rule 14.1(b) or 14.2, any claim subsequently made (whether during or after the Relevant Indemnity Period) pursuant to such an intention to claim or arising from circumstances so notified shall be deemed to have been made at the date when such notice was given.
- 14.5 The Previous Practice and each Member thereof shall not admit liability for, or settle, any claim falling within Rule 8 or incur any costs or expenses in connection therewith without the prior consent of Solicitors Indemnity Fund Limited (such consent not to be unreasonably withheld).
- 14.6 Subject to Rule 14.7:
- (a) the Previous Practice and each Member thereof shall procure that Solicitors Indemnity Fund Limited shall be entitled at the Fund's own expense at any time to take over the conduct in the name of the Previous Practice or Member of the defence or settlement of any such claim, including any claim in respect of which the Previous Practice or Member may become entitled to partial indemnity under any insurance with any insurers; and
  - (b) Solicitors Indemnity Fund Limited may after taking over the defence or settlement of any such claim conduct the same as it may in its absolute discretion think fit notwithstanding any dispute or difference, whether or not referred to arbitration under Rule 15, which may exist or arise between it and the Previous Practice or Member.
- 14.7 No Previous Practice or Member thereof shall be required to contest any legal proceedings unless a Queen's Counsel (to be mutually agreed upon or failing agreement to be appointed by the President of

the Society for the time being) shall advise that such proceedings should be contested.

- 14.8 Without prejudice to Rules 14.5, 14.6 and 14.7, the Previous Practice and each Member thereof shall keep Solicitors Indemnity Fund Limited informed in writing at all times, whether or not Solicitors Indemnity Fund Limited shall specifically so request, as to the development and handling of any claim, intimated claim, notice or circumstances the subject of or arising subsequent to any notice given to Solicitors Indemnity Fund Limited under Rule 14.1 or 14.2; and shall consult and co-operate with Solicitors Indemnity Fund Limited in relation thereto as Solicitors Indemnity Fund Limited may request, whether or not Solicitors Indemnity Fund Limited shall take over the conduct thereof.
- 14.9 The Fund waives any rights of subrogation against any Member of the Previous Practice save where those rights arise in connection with
- (a) a dishonest or criminal act by that Member; or
  - (b) the provision of indemnity under the exception to Rule 9.1(e); or
  - (c) a claim to indemnity in circumstances where that Member has received a net benefit to which he or she was not entitled as a consequence of another Member being provided with indemnity out of the Fund;
- and save as otherwise expressly provided in these Rules.
- 14.10 If the Previous Practice or any Member thereof shall prefer any claim to indemnity out of the Fund knowing the same to be false or fraudulent as regards amount or otherwise, it, he or she shall forfeit any claim to any such indemnity in respect of any claim or future claim against the Previous Practice or Member to which the false or fraudulent claim to indemnity out of the Fund may have related or relate.
- 14.11 Where there has been a failure to pay any instalment of any Contribution due or any Value Added Tax payable in accordance with the Solicitors' Indemnity Rules 1987 to 1999 and a claim has been made or intimated against the Previous Practice or any Member thereof in respect of which such Previous Practice or Member would otherwise have been entitled to be provided with indemnity, Solicitors Indemnity Fund Limited shall provide such indemnity by payment (up to the Indemnity Limit) in or towards satisfying, or enabling the Previous Practice or Member concerned to satisfy, the claim and claimants' costs and such Previous Practice shall thereafter upon request reimburse to Solicitors Indemnity Fund Limited on behalf of the Fund the whole or such part as Solicitors Indemnity Fund Limited may request of any payment so made and of any costs and expenses incurred in its defence, settlement or compromise, and each Principal therein shall be jointly and severally responsible to Solicitors Indemnity Fund Limited for such reimbursement accordingly. Provided always that Solicitors Indemnity Fund Limited shall require such reimbursement only to the extent of (a) any increase which in its opinion may have occurred in the total payable out of the Fund (including costs and expenses) as a result of such failure, together

with (b) such amount as may be necessary to satisfy any unpaid Contribution and Value Added Tax and interest thereon at the rate of 4% above Barclays Bank base rate with quarterly rests or at such other rate as the Society may from time to time publish in the Law Society's Gazette.

- 14.12 Where non-compliance with any provision of these Rules by any Previous Practice or any Member thereof claiming to be entitled to indemnity out of the Fund has resulted in prejudice to the handling or settlement of any claim in respect of which such Previous Practice or Member is entitled to indemnity hereunder, such Previous Practice or Member shall reimburse to Solicitors Indemnity Fund Limited on behalf of the Fund the difference between the sum payable out of the Fund in respect of that claim and the sum which would have been payable in the absence of such prejudice. Provided always that it shall be a condition precedent of the right of the Fund to such reimbursement that it shall first have provided full indemnity for such Previous Practice or Member by payment (up to the Indemnity Limit) in or towards satisfying, or enabling such Previous Practice or Member to satisfy, the claim and claimants' costs in accordance with the terms hereof.
- 14.13 In respect of any loss arising from any claim or claims as described by Rule 8.1.2(a) arising out of any dishonest or fraudulent act or omission of any Member of the Previous Practice, the Fund shall nonetheless be available to afford indemnity in accordance with these Rules to the Previous Practice and any Member thereof, other than and excluding in each case the particular Member concerned in such dishonesty or fraud. Provided always that at the request of Solicitors Indemnity Fund Limited, the Previous Practice or Member being indemnified shall:
- (a) take or procure to be taken at the Fund's expense all reasonable steps to obtain reimbursement for the benefit of the Fund from or from the personal representatives of any such Member concerned in such dishonesty or fraud, and
  - (b) procure that any reimbursement so obtained together with any monies which but for such fraud or dishonesty would be due to such Member concerned in such dishonesty or fraud shall be paid to the Fund up to but not exceeding the amounts paid by the Fund in respect of such claim together with any expenditure reasonably incurred by the Fund in obtaining such reimbursement.
- 14.14 In the event of indemnity being afforded under the exception to Rule 9.1(e), the Previous Practice or Member being indemnified shall take or procure to be taken at the Fund's expense all reasonable steps to obtain reimbursement for the benefit of the Fund from any person to whom any benefit arising from the giving of any undertaking accrues in the circumstances set out in Rule 9.1(e). Provided always that such reimbursement shall not exceed:
- (a) the amount paid by the Fund by way of indemnity together with any expenditure reasonably incurred by the Fund in obtaining such reimbursement, or
  - (b) the amount of any benefit accruing to such person,

whichever is the lesser.

- 14.15 In respect of any claim to indemnity, Solicitors Indemnity Fund Limited may appoint solicitors (**Panel Solicitors**) to act on its behalf and on behalf of the Previous Practice or any Member thereof, and Panel Solicitors shall:
- (a) act at the sole direction of the Fund for any purpose falling within the scope of these Rules, including acting on the Court record for the Previous Practice or any Member thereof, and
  - (b) disclose to Solicitors Indemnity Fund Limited as required any statement or information given to or which becomes known to Panel Solicitors in the course of so acting, and such disclosure shall be treated as having been made directly to Solicitors Indemnity Fund Limited by the Previous Practice or Member.
- 14.16 The provisions of this Rule 14 shall not apply in relation to an Expired Run-Off Claim, in respect of which the provisions of Rule 8.5 shall apply.

## **15 Arbitration**

Any dispute or difference concerning any claim or the quantum of any claim to be provided with indemnity in accordance with these Rules, or concerning any payment under Rule 22, shall be referred to the sole arbitrament, which shall be final and binding, of a person to be appointed on the application of either party in default of agreement by the President of the Society for the time being. Any such arbitration shall take place and be conducted between, on the one hand, the person for whom indemnity is provided, the party to the dispute or difference and, on the other hand, Solicitors Indemnity Fund Limited for and in respect of the Fund.

## Part III Contributions

### 16 Power to require Contributions

- 16.1 The Society shall have power to require Principals to make Contributions of such amount and on such basis as the Society may from time to time determine. Value Added Tax, to the extent chargeable on any relevant supply which takes or may be treated as taking place under or by virtue of these Rules, will be charged and payable in addition to and at the same time as any Contributions payable hereunder.
- 16.2 Solicitors Indemnity Fund Limited may at any time give to any Practice written notice correcting any inaccuracy in the calculation of any Contribution under these Rules. Any reimbursement or any payment of Contribution hereby required shall be made forthwith upon, respectively, issue or receipt of such a notice, together with any Value Added Tax applicable and (in the case of any amount payable to Solicitors Indemnity Fund Limited upon correction of an inaccuracy in calculation) interest at a rate of 4% above Barclays Bank base rate with quarterly rests or at such other rate as the Society may from time to time determine and publish in the Law Society's Gazette.
- 16.3 Solicitors Indemnity Fund Limited may at any time, to the extent that it is reasonably practicable for it to do so, recalculate any claims adjustment applicable to any Practice under the Solicitors' Indemnity Rules 2006 (or any earlier corresponding Rules) as a result of the receipt by Solicitors Indemnity Fund Limited of any sum from any third party relating to any indemnity provided to that Practice out of the Fund under these Rules or any earlier corresponding Rules, after deduction of the reasonable costs and expenses incurred by Solicitors Indemnity Fund Limited.
- 16.4 Solicitors Indemnity Fund Limited shall not be entitled, at any time after 30 September 2008, to require any Practice to make any Contribution under the Solicitors' Indemnity Rules 2006 (or any earlier corresponding Rules) which would otherwise be payable by reason of an inaccuracy in calculation, unless that inaccuracy is attributable to a failure to provide information or to a material inaccuracy in information provided by or on behalf of that Practice under Part III of the Solicitors' Indemnity Rules 2006 (or any earlier corresponding Rules).
- 16.5 The Society's decision shall be final and binding on all affected on any question arising as to:
- (a) any obligation to make a Contribution; or
  - (b) any sum due to any person out of the Fund;
- under this Rule 16.

## Part IV Management and administration of the fund

### 17 Powers of the Society

- 17.1 Solicitors Indemnity Fund Limited shall hold, and have full power to manage and administer, the Fund, subject only to:
- (a) such directions, conditions and/or requirements as the Society may from time to time issue to or impose upon it expressly pursuant to this provision, and/or
  - (b) such further detailed arrangements as the Society may from time to time agree with it.
- 17.2 Without limiting the generality of Rule 17.1, the management and administration of the Fund shall include power to:
- (a) collect and recover Contributions due to the Fund in accordance with these Rules;
  - (b) deposit or invest in such manner as Solicitors Indemnity Fund Limited may determine all or any part of the Fund, including any interest, dividends, profits, gains or other assets accruing to or acquired by the Fund;
  - (c) arrange such insurances as Solicitors Indemnity Fund Limited may determine in respect of the Fund and/or its assets and/or the Fund's liability under these Rules to afford indemnity in respect of claims and costs and expenses; and to handle all aspects of any such insurances, including the payment of premiums thereon out of the Fund and the making and recovery of claims thereunder;
  - (d) receive, investigate and handle claims to indemnity and other notices prescribed to be given to Solicitors Indemnity Fund Limited by these Rules, including settlement and compromise and making of ex gratia payments out of the Fund in respect thereof and conduct of any dispute or difference referred to arbitration under Rule 15;
  - (e) receive, investigate and handle any claim made or intimated against any person in respect of which they are or may be entitled to be provided with indemnity out of the Fund (whether or not a claim to indemnity hereunder has been made) and/or in respect of which the conduct is by these Rules assigned to Solicitors Indemnity Fund Limited, including settlement and compromise and making of ex gratia payments and conduct of any proceedings arising in respect of such claim;
  - (f) claim and recover reimbursement in respect of any sums paid by way of indemnity in any circumstances in which such reimbursement may under these Rules be claimed;
  - (g) exercise any right of subrogation save where such rights are waived in accordance with these Rules;
  - (h) maintain full and proper records and statistics (which subject to Rule 18, shall at all reasonable times be available on request to

the Society for inspection and copying) as to the Fund and all aspects of its management and administration;

- (i) make to and review with the Council of the Society annually and at any other time that the Council may require, written and (if the Council so requires) oral reports as to the Fund and, subject to Rule 18, its management and administration, including inter alia recommendations as to the Contributions which are or may be required in respect of past, present and/or future Indemnity Periods and the circumstances in which, extent to which and conditions and exclusions subject to which indemnity should in any future Indemnity Period be afforded out of the Fund;
- (j) engage the assistance of any third party in respect of all or any aspect(s) of the management and administration of the Fund;
- (k) delegate to any third party all or any aspect(s) of the management and administration of the Fund;
- (l) institute and/or conduct such proceedings as it may consider necessary or appropriate for the due management and administration of the Fund in its own name or (subject to prior consent of the Society) in the name of the Society;
- (m) disburse and/or reimburse out of the Fund all administrative and legal and other costs, overheads, fees and other expenses and liabilities incurred in respect of the Fund, including without prejudice to the generality of the foregoing any such costs, overheads, fees and other expenses and liabilities incurred by the Society in respect of the establishment or maintenance, or the management, administration or protection, of the Fund;
- (n) disburse and/or reimburse out of the Fund payments for any educational, charitable or other useful purpose which in its opinion is likely directly or indirectly to lead to the reduction or prevention of claims on the Fund or otherwise to further the purpose or interests of the Fund;
- (o) disburse and/or reimburse out of the Fund the costs, fees and expenses of the handling after 31 August 1987 of claims and potential claims against Assureds notified under the Master Policies and Master Policy Certificates;
- (p) effect out of the Fund or by arrangement with third parties the funding pending reimbursement by Master Policy Insurers of such claims and potential claims and to bear out of the Fund the costs, fees and expenses incurred thereby.

## **18 Use of information**

- 18.1 Without prejudice to the Society's power under Rule 4.5 to designate itself as the person responsible for holding, managing and administering the Fund, information and documents obtained by Solicitors Indemnity Fund Limited about any particular Practice or Member thereof in the course of investigating and handling any claim made or intimated or any circumstances notified as mentioned in Rule 21, may be utilised by Solicitors Indemnity Fund Limited for the purpose of preparation of general records, statistics, reports and

recommendations (not identifying the particular Practice or Member) for or to the Society.

- 18.2 Solicitors Indemnity Fund Limited may bring to the attention of the Society (including, in the case of the matters referred to in Rule 18.2(f), the Legal Complaints Service) at any time and without notice to the Practice or person concerned:
- (a) any failure to provide information in respect of any Practice as required by Part III of the Solicitors' Indemnity Rules 2006 (or any earlier corresponding provisions) or any material omission or inaccuracy in such information;
  - (b) any failure to pay any Contribution or other sum due when required to do so under these Rules (or any earlier corresponding Rules) or to reimburse any amount due by way of a Deductible, Due Proportion or Penalty Deductible, or (in the case of an Expired Run-off Claim) which falls within a policy excess;
  - (c) a material inaccuracy in any proposal form submitted by or on behalf of a Practice;
  - (d) (in the case of an Expired Run-off Claim) any matter or circumstances that would permit the Expired Run-off Cover to be avoided or but for the provisions of clause 4.1 of the Minimum Terms and Conditions (and/or the corresponding of the Expired Run-off Cover);
  - (e) any dishonesty or fraud suspected on the part of any in relation to any Practice or Member thereof, or any other person subject to these Rules or any earlier corresponding Rules, or any Insured (as defined in the Minimum Terms and Conditions); and
  - (f) any claim of inadequate professional services of which it becomes aware made against any such Practice, Member or person or any Insured.
- 18.3 Such information and documents shall not otherwise be disclosed or available to the Society without the prior consent of the Practice (or any subsequent or successor Practice thereto) or Member concerned, except where Solicitors Indemnity Fund Limited or the Society have reason to suspect dishonesty on the part of any Practice, Previous, subsequent or successor Practice or any Member or former Member thereof, or Insured.
- 18.4 Any information and documents held by Solicitors Indemnity Fund Limited about a particular Practice or Member thereof may be disclosed or available to the Society without the prior consent of the Practice (or any subsequent or successor practice thereto) or Member concerned where the Society has been requested by any Practice, subsequent or successor Practice or Member thereof to grant, amend or revoke any waiver under Rule 19 or to make a determination under Rule 20.
- 18.5 Solicitors Indemnity Fund Limited may pass to the Society the name of any Practice (including any subsequent, successor or Previous Practice) or any Member or former Member thereof in circumstances

where Solicitors Indemnity Fund Limited has cause for concern having regard to:

- (a) the nature, incidence or value of paid and/or reserved claims in respect of any such Practice or Member; or
- (b) the existence of circumstances which are considered by the Fund to create an increased risk of claims occurring in respect of that Practice or Member; or
- (c) failure on the part of a Practice or Member thereof, or any Insured (as defined in the Minimum Terms and Conditions), to comply with their obligations under these Rules (or any earlier corresponding Rules);

and for the purposes of paragraphs (b) and (c) above Solicitors Indemnity Fund Limited shall have the power to determine criteria which would indicate the likelihood of an increased risk of claims occurring and to specify those obligations in respect of which a failure to comply could form the basis for Solicitors Indemnity Fund Limited to pass on information.

18.6 In the exercise of the powers set out in Rule 18.5 Solicitors Indemnity Fund Limited may give details to the Society of the reasons for the decision to pass the name of the Practice or Member thereof to the Society including, in appropriate cases, releasing documentary information provided that no such documentary information will be released which could breach the general duty of confidentiality owed by a Practice or Member thereof to a client or former client.

18.7 The Legal Complaints Service of the Society may pass such information as it in its absolute discretion sees fit to any other department or office of the Society, and to Solicitors Indemnity Fund Limited, in relation to any complaint of inadequate professional services against a Practice of which it becomes aware.

18.8 In respect of any information that may be brought to the attention of the Society in accordance with Rules 18.1 to 18.7:

- (a) the Society shall keep all such information confidential;
- (b) the Society shall not (except where and to the extent required by law or in the proper performance by the Society of its regulatory functions) at any time reveal any such information to any person other than a duly authorised employee of the Society or any of its subsidiaries; and
- (c) any privilege attaching to such information shall not be regarded as having been waived whether by virtue of such information having been provided to the Society or otherwise;

but the provisions of this Rule 18.8 shall not prevent the Society from making use of any such information for the purpose of bringing disciplinary proceedings against any person.

## 19 Waivers

19.1 The Society shall have power in any case or class of cases to waive in writing prospectively or retrospectively any obligation on any solicitor,

Recognised Body or foreign lawyer under these Rules and to amend or revoke any such waiver.

19.2 Any application by any person for:

- (a) a waiver of any obligation under these Rules or under the Solicitors' Indemnity Rules 2001 or any Rules subsequent thereto; or
- (b) a correction or recalculation of any sum paid or payable to the Fund under these Rules, or under the Solicitors' Indemnity Rules 2001 or any Rules subsequent thereto;

must be made in writing to the Society no later than 3 calendar months from the date on which the relevant obligation has effect in relation to that person, or the date on which that person is notified thereof by Solicitors Indemnity Fund Limited, whichever is the earlier.

19.3 No application by any person for:

- (a) a waiver of any obligation under the Solicitors' Indemnity Rules 2000 or any Rules made prior thereto; or
- (b) a correction or recalculation of any sum paid or payable to the Fund under the Solicitors' Indemnity Rules 2000 or any Rules made prior thereto;

may be considered unless it was made in writing to the Society as soon as practicable, and in any event no later than 28 February 2002.

19.4 Any appeal against any decision made by the Society in respect of any application for a waiver of any obligation under these Rules or any previous Rules, or in respect of any correction or recalculation of any sum paid or payable to the Fund under these Rules or any previous Rules, must be made in writing to the Society within 21 days from the date of the decision.

19.5 An application for a waiver as contemplated by this Rule 19 or the making of an appeal against any decision made by the Society in respect of such application shall not relieve any person from any obligation under these Rules or any previous Rules pending the determination of any such application or appeal.

## **20 Decisions by the Society**

20.1 The Society shall have power to treat any person as complying with any provision of these Rules for the purposes of the Solicitors Act 1974 notwithstanding that the person has failed to comply with any provision of these Rules where such non-compliance is regarded by the Society in a particular case or cases as being insignificant.

## Part V Maintenance and termination of the fund

### 21 Maintenance and termination of the Fund

- 21.1 The Fund shall continue to be held, managed and administered by Solicitors Indemnity Fund Limited for so long as and to the extent that the Society, in the light of the reports made to it by Solicitors Indemnity Fund Limited, may consider necessary or appropriate for the purpose of providing indemnity in respect of any claim(s) made or intimated during any Indemnity Period and/or during or subsequent to any Indemnity Period arising out of circumstances notified during any Indemnity Period as circumstances which might give rise to such claim(s).
- 21.2 As and when the Society no longer considers it necessary or appropriate that all or any part of the Fund should be so held, managed and administered, the Society may require all or any part of the Fund not so required to be released to the Society which shall apply the same if and to the extent the Society considers it reasonably practicable for the purpose of providing indemnity in any other way permitted by section 37(2) of the Solicitors Act 1974 and otherwise for the overall benefit of the solicitors' profession in such manner as it may decide.

### 22 Return of surplus relating to specific Indemnity Periods

- 22.1 If directed to do so by the Society, Solicitors Indemnity Fund Limited shall return Relevant Contributions by way of payment to Recipient Practices or otherwise in accordance with this Rule 22.
- 22.2 In this Rule 22:
- Applicable Principals** means Principals who have made or caused to be made Relevant Contributions
- Relevant Contributions** means Initial Contributions paid in respect of the Indemnity Periods 2001-2002 and/or 2002-2003 under the Solicitors' Indemnity Rules 2001 and 2002 respectively, but does not include interest or any sum in respect of interest thereon, and does not include any sum charged in accordance with Rule 37 of the Solicitors' Indemnity Rules 2001 or 2002
- Recipient Practice** means a Practice in respect of which Relevant Contributions were made, whether or not, on the date of any payment under this Rule 22, any Principal of the Practice is an Applicable Principal.
- 22.3 Solicitors Indemnity Fund Limited may return Relevant Contributions by making payment to each Recipient Practice.
- 22.4 Solicitors Indemnity Fund Limited may require Recipient Practices and/or Applicable Principals to provide it with such information as it may reasonably require to enable it to determine entitlement to any payment to be made under this Rule 22 or to enable such payment to be made. Solicitors Indemnity Fund Limited may require, as a

condition precedent to payment of any sum under this Rule 22, the provision to Solicitors Indemnity Fund Limited of an indemnity in such form as Solicitors Indemnity Fund Limited may reasonably require from the person or Practice to which payment is to be made.

- 22.5 Where payment cannot be made in accordance with Rule 22.3, Solicitors Indemnity Fund Limited may take such steps as it considers in its absolute discretion to be appropriate to identify and make payment to persons whom Solicitors Indemnity Fund Limited believes to be Applicable Principals, including the estates of deceased Applicable Principals, on such basis as it considers fair in all the circumstances of the case.
- 22.6 Solicitors Indemnity Fund Limited may deduct from any payments due under this Rule 22 to a Recipient Practice or to any Applicable Principal any sums due from that Recipient Practice or Applicable Principal under these Rules or any previous Rules.
- 22.7 Solicitors Indemnity Fund Limited may make payments under this Rule 22 in such manner as it sees fit and on the basis of the information in its records at the relevant time or as provided to it by any person having apparent authority to do so. Solicitors Indemnity Fund Limited shall not be required to verify or seek confirmation of such information.
- 22.8 The repayment by Solicitors Indemnity Fund Limited of a Relevant Contribution to a Recipient Practice in accordance with Rule 22.3 or otherwise in accordance with Rule 22.5 shall constitute a good discharge of any obligations of Solicitors Indemnity Fund Limited in respect of that Relevant Contribution, and Solicitors Indemnity Fund Limited shall have no obligation as to its distribution or allocation to Applicable Principals (within a Recipient Practice or otherwise) or to any other person or Practice.
- 22.9 The obligation of Solicitors Indemnity Fund Limited to make payments in accordance with this Rule 22 shall cease on 1 October 2008. Any Relevant Contributions which Solicitors Indemnity Fund Limited has not paid by that date and in respect of which no valid claim in respect of an Applicable Principal has been made to Solicitors Indemnity Fund Limited shall cease to be payable under this Rule 22 and shall be regarded as part of the Fund available for release to the Society in accordance with Rule 21.

## Schedule 1: Extract from the Solicitors' Indemnity Rules 1999

The definitions set out below are provided for convenience only. For the purposes of these Rules, the full text of the Solicitors' Indemnity Rules 1999 prevails and should be consulted when interpreting the extracts contained in this Schedule.

### 21 Deductibles

21.1 For the purposes of these Rules:

- (a) the "Deductible" means in respect of any claim either:
  - (i) the sum calculated by reference to the total number of Relevant Principals and shall be the amount set out in Table I which corresponds to a Practice with the same number of Principals as there are Relevant Principals; or
  - (ii) the amount of the increased deductible under Rule 22.2 applicable to the Practice in which the majority of Relevant Principals practise at the Date of Notification;
- (b) a "Relevant Principal" means a Principal or former Principal who is liable for the claim by virtue of having been a Principal in the Practice which was concerned with the matters giving rise to the claim at the date when such matters occurred;
- (c) "Due Proportion of the Deductible" means a sum equal to the amount of the Deductible divided by the number of Relevant Principals except where the number of Relevant Principals exceeds fifty when it means a sum equal to the amount of the Deductible divided by the number of Relevant Principals still in practice as Principals at the Date of Notification (provided such number still exceeds fifty);
- (d) the "Date of Notification" means either the date of receipt by Solicitors Indemnity Fund Limited of the first of any notices given under either Rule 19.1 or 19.2, or the date of receipt by Solicitors Indemnity Fund Limited of any claim or intimation of claim in respect of which there is or may be an entitlement to indemnity out of the Fund, whichever is the earlier. Provided however that if in either case such date is subsequent to the Relevant Indemnity Period, the Date of Notification shall be deemed to be the date any claim was first made or intimated against the Practice or any Member thereof;
- (e) the "Aggregate Deductible" is the amount set out in Table II corresponding to the number of Principals in the Practice as at 1st September 1999 or, where applicable, the date of commencement given in any notice required to be delivered under either Rule 26 or 27 during the Relevant Indemnity Period or the amount of the amended aggregate effected under Rule 22.2.

...

## **22 Amending the deductible or aggregate deductible**

22.1 In respect of any claim not yet made or intimated and not arising from circumstances already known to the Practice or any Member thereof or notified to Solicitors Indemnity Fund Limited:

- (a) the Deductible applicable to the Practice in accordance with Table I may be reduced to 50% or to nil (such reduction also having the effect of reducing the Aggregate Deductible applicable to the Practice in accordance with Table II to 50% or to nil);
- (b) the Aggregate Deductible applicable to the Practice in accordance with Table II may be reduced as follows:
  - (i) to one third or two thirds;
  - (ii) to one third or two thirds, of any aggregate calculated in accordance with Rule 22.1(a);

in each case upon payment by the Practice to the Fund of an additional Contribution in an amount calculated on a scale approved by the Society from time to time taking into account the claims record of such Practice and of any other Practice(s) in which any Principal therein was previously a Member.

22.2 In respect of any claim not yet made or intimated and not arising from circumstances already notified to Solicitors Indemnity Fund Limited, the Deductible and Aggregate Deductible applicable to the Practice may be increased specifically to sums of:

- (i) £250,000 subject to an aggregate of two or three times;
- (ii) £500,000 subject to an aggregate of one, two or three times;
- (iii) £750,000 subject to an aggregate of one, two or three times;
- (iv) £1,000,000 subject to an aggregate of one, two or three times

by any Practice in respect of which Gross Fees in excess of £15 million have been disclosed in the Certificate or Notice of Succession, whichever may be appropriate, delivered under Rule 27 save that the amount of the Aggregate Deductible after amendment shall not exceed 3% of the said Gross Fees, in return for a reduced Contribution or repayment by the Fund of any part of any Contribution paid, in an amount determined by the Society either generally or in respect of the particular Practice or any Successor Practice.

22.3 Without prejudice to Rule 22.1, where a claim arises out of circumstances known to the Practice or any Member thereof but not notified prior to the Relevant Indemnity Period and an amendment to the Deductible or Aggregate Deductible was in force during the Indemnity Period when such knowledge was acquired, Solicitors Indemnity Fund Limited may apply the benefit of any Deductible or Aggregate Deductible amendment effected for the Relevant Indemnity Period under Rule 22.1 to any such claim, but shall not be required to do so in any circumstances.

**TABLE I**  
**Deductible (Rule 21.1(a))**

Number of Principals in Practice	Amount per Practice (£)
1	3,000
2	3,000
3	4,500
4	6,000
5	7,500
6	10,500
7	12,250
8	14,000
9	18,000
10	20,000
11	22,000
12	24,000
13	26,000
14	28,000
15	30,000
16	32,000
17	36,000
18	40,000
19	44,000
20	48,000
21	52,000
22	56,000
23	60,000
24	64,000
25	68,000
26	71,500
27	74,250
28	77,000
29	79,750
30	82,500
31	93,000
32	96,000
33	99,000
34	102,000
35	105,000
36	108,000
37	111,000
38	114,000
39	117,000
40	120,000
41	123,000
42	126,000
43	129,000
44	132,000
45	135,000
46	138,000
47	141,000
48	144,000
49	147,000
50	150,000
Over 50	150,000

**TABLE II**  
**Aggregate Deductible (Rule 21.1 (e))**

Number of Principals in Practice	Amount per Practice (£)
1	9,000
2	9,000
3	13,500
4	18,000
5	22,500
6	31,500
7	36,750
8	42,000
9	54,000
10	60,000
11	66,000
12	72,000
13	78,000
14	84,000
15	90,000
16	96,000
17	108,000
18	120,000
19	132,000
20	144,000
21	156,000
22	168,000
23	180,000
24	192,000
25	204,000
26	214,500
27	222,750
28	231,000
29	239,250
30	247,500
31	279,000
32	288,000
33	297,000
34	306,000
35	315,000
36	324,000
37	333,000
38	342,000
39	351,000
40	360,000
41	369,000
42	378,000
43	387,000
44	396,000
45	405,000
46	414,000
47	423,000
48	432,000
49	441,000
50	450,000
Over 50	450,000

## 23 Penalty deductibles

23.1 For the purposes of these Rules:

- (a) the "Penalty Deductible" means in respect of any claim arising out of the circumstances referred to in Rule 23.2 such sum as is equal to 50% of the amount set out in Table I which corresponds to a Practice with the same number of Principals as there are Relevant Principals;
- (b) "Due Proportion of the Penalty Deductible" means a sum equal to the amount of the Penalty Deductible divided by the number of Relevant Principals except where the number of Relevant Principals exceeds fifty when it means a sum equal to the amount of the Penalty Deductible divided by the number of Relevant Principals still in practice as Principals at the Date of Notification (provided such number still exceeds fifty);
- (c) the "Aggregate Penalty Deductible" is the sum equivalent to 50% of the amount set out in Table II corresponding to the number of Principals in the Practice as at 1st September 1999 or, where applicable, the date of commencement given in any notice required to be delivered under either Rule 26 or 27 during the Relevant Indemnity Period.

23.2 Each and every claim that

- (a) arises from a failure to:
  - (i) commence proceedings within the time permitted under sections 2, 5 or 11 of the Limitation Act 1980 or any statutory re-enactment thereof;
  - (ii) commence proceedings within the time permitted under section 111 of the Employment Rights Act 1996 or any statutory re-enactment thereof;
  - (iii) serve civil proceedings within the time permitted under Part 7.5 of the Civil Procedure Rules 1998 or any statutory re-enactment thereof;
  - (iv) serve a notice or issue an application within the periods permitted under Part II of the Landlord and Tenant Act 1954 or any statutory re-enactment thereof;
  - (v) register at Companies House a charge against the assets of a company within the time permitted by section 395 of the Companies Act 1985 or any statutory re-enactment thereof;
  - (vi) apply to register a protected transaction within the priority period afforded under the Land Registration (Official Searches) Rules 1993 or any statutory re-enactment thereof;
  - (vii) execute a Deed of Variation within the two years permitted under section 142(1) of the Inheritance Tax Act 1984 and/or to give written notice to the Inland Revenue within the six months permitted under section 142(2) or any statutory re-enactment thereof; or
- (b) falls within Rule 19.15(c);

shall, in addition to any Deductible applicable, be subject to a Penalty Deductible in respect of which the Fund shall not afford indemnity under Rule 13(a) PROVIDED THAT such failure occurred on or after 1st September 1996.

- 23.3 Each Relevant Principal shall be liable for a Due Proportion of the Penalty Deductible PROVIDED THAT:
- (a) in the case of any Relevant Principal practising in the same Practice as any other Relevant Principal(s) at the Date of Notification such Relevant Principal shall be jointly and severally liable for such sum as is equal to the total sum of the Due Proportions of the Penalty Deductible payable by all Relevant Principals in that Practice.
  - (b) Solicitors Indemnity Fund Limited shall disregard the Due Proportion(s) of the Penalty Deductible payable by:
    - (i) any insolvent or bankrupt Relevant Principal;
    - (ii) any Relevant Principal in a Practice where the total sum of Penalty Deductible payments in respect of claims to which the Relevant Indemnity Period applies is equal to that Practice's Aggregate Penalty Deductible;
    - (iii) any Relevant Principal who as at the Date of Notification has ceased to be a Principal in any Practice and who does not become a Principal in any Practice within 12 months of that date;
- PROVIDED ALWAYS THAT where the number of Relevant Principals exceeds fifty, the definition in Rule 23.1(b) shall apply and (i) and (iii) above shall not apply unless the number of Principals in practice as Principals at the Date of Notification is fifty or less.
- (c) Where an increased Deductible under Rule 22.2 is applicable to the Practice in which the majority of Relevant Principals practise at the Date of Notification, the Principals in such Practice shall be jointly and severally liable for the whole of any Penalty Deductible due PROVIDED ALWAYS THAT if the number of Principals in the Originating Practice is not more than ten then any Penalty Deductible payable shall be due and payable in such Due Proportions as would apply in the absence of any increased Deductible under Rule 22.2.
  - (d) Solicitors Indemnity Fund Limited may pay, or include in any payment made, out of the Fund in respect of any claim, the whole or any part of any Penalty Deductible applicable thereto, and in that event the Penalty Deductible or any Due Proportion of the Penalty Deductible shall be reimbursed forthwith to the Fund by the appropriate Relevant Principal(s) in accordance with Rule 23.3(a).
- 23.4 Every Practice shall have an Aggregate Penalty Deductible.