

THE LAW SOCIETY OF NORTHERN IRELAND



THE SOLICITORS PRACTICE REGULATIONS 1987 (AS AMENDED)*

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*amended by the Solicitors (Advertising) Practice Regulations 1989
Solicitors (Property Selling) Practice Regulations 1990
Solicitors Practice (Amendment) Regulations 1995
Solicitors Practice (Amendment) Regulations 1998
Solicitors Practice (Amendment) Regulations 2000
Solicitors Practice (Amendment) Regulations 2003
Solicitors Practice (Amendment) (No.2) Regulations 2003
Solicitors Practice (Amendment) Regulations 2005

Consolidated text of the Regulations, accurate as at 1st August 2007

SOLICITORS PRACTICE REGULATIONS 1987

The Council of the Law Society of Northern Ireland, in exercise of the power conferred on them by Articles 74(1) and 75(1) of the Solicitors (Northern Ireland) Order 1976 and all other powers enabling them in that behalf, and with the concurrence of the Lord Chief Justice of Northern Ireland hereby make the following regulations for the purposes mentioned in Article 26(1) of the said Order:

1 These regulations may be cited as the Solicitors Practice Regulations 1987 and shall come into operation on 1st September 1987.

2 (1) The Interpretation Act (Northern Ireland) 1954 shall apply to the interpretation of these regulations as it applies to a statutory instrument.

(2) In these regulations the following expressions have the following meanings respectively:

"Admission and Training Regulations" means the Solicitors Admission and Training Regulations 1986 and any amendment thereof;

"contingency fee" means a fee for services rendered in connection with contentious business which is only payable in the event of the proceedings to which the services relate being successful;

"restricted certificate" means a practising certificate which is issued subject to any of the conditions mentioned in regulation 7(2) (a) and (b) hereof;

"solicitor" shall mean a solicitor of the Supreme Court and shall include a firm of solicitors;

"established client" includes:

- (a) a person or body for whom the solicitor
 - (i) holds deeds or other documents (other than files) for safe custody; or
 - (ii) has, in relation to any piece or parcel of land, previously acted in any capacity in any matter concerning the same parcel of land or part thereof; or
 - (iii) has rendered professional services of any kind within the previous ten years; or
- (b) a person related by blood, adoption or marriage to or employed by such a person or body as is described in sub-paragraph (a) above.
- (c) For the purpose of the immediately preceding sub-paragraph a person shall not be deemed to be related by blood or adoption if that person is of a more distant degree of kinship than that of first cousin and a person shall not be deemed to be related by marriage unless married to a person deemed to be related by blood or adoption as aforesaid.

(3) Other expressions in these regulations have the meanings assigned to them by the Solicitors (Northern Ireland) Order 1976.

3 The Society subscribes to the Code of Conduct for European Lawyers 1988 (updated 19 May 2006) and set out in Appendix 1 hereto and these regulations shall be construed and applied and a solicitor shall conduct himself in accordance with the principles enunciated in that Code and also in accordance with the International Code of Ethics of the International Bar Association as set out in Appendix 2 hereto, except insofar as the provisions of the said Codes are in conflict with the laws of Northern Ireland or inconsistent with the provisions hereinafter contained.

ADVERTISING, PUBLICITY AND ATTRACTION OF BUSINESS

4 (1) *Repealed by the Solicitors (Advertising) Practice Regulations 1989*

(2) *Revoked by the Solicitors Practice (Amendment) Regulations 2005.*

5 In connection with his client's business a solicitor may not seek or inspire an interview with the press or other media but may on the instructions of his client make a statement with a view to its publication.

6 A solicitor must not -

(a) publicly criticise another solicitor or firm of solicitors;

(b) do, directly or indirectly, any act or thing which may tend to bring the solicitor's profession into disrepute.

RESTRICTIONS ON PRACTICE

7 (1) A solicitor holding a restricted certificate shall not engage in practice on his own account whether in partnership or otherwise and shall act as a solicitor only under the supervision of another solicitor who has held a practising certificate for the previous three years.

(2) (a) A solicitor shall be entitled only to a restricted certificate for such period immediately following his admission or the grant of his first practising certificate as the Education Committee shall have determined and during such period of restriction any practising certificate issued to him shall be subject to the further condition that he attend such lectures, tutorials or courses of practical or vocational training as the Education Committee may from time to time by ordinary resolution prescribe, such attendance not to exceed in the aggregate 14 days in any calendar year.

(b) In the event of non-compliance with any requirements so prescribed the period of restriction may at the discretion of the Education Committee be extended to three years, provided however that no period of restriction imposed under this regulation shall exceed the period specified in Article 26(2) of the Solicitors' (Northern Ireland)

Order 1976 or any statutory modification or re-enactment thereof.

PROFESSIONAL CONDUCT

8 (1) A solicitor shall at all times carry out his work and conduct his practice to the highest professional standards and shall observe in relation thereto any decisions or directions which may be adopted, issued or promulgated by the Council either to the solicitor personally or to the profession at large.

(2) Where the solicitor himself is employed by any Government Department, public or local authority, quasi autonomous non-governmental organisation, commercial firm or company or any other such body or organisation, it shall be his duty to ensure that any other employee of that department, authority, organisation, firm, company or body or any allied department, authority, body or organisation shall act, in relation to any transaction or matter in which the solicitor is involved, to the same standards and subject to the same decisions and directions as the solicitor himself would have been obliged to observe had he been engaged personally in carrying out the work done by such other employee.

[8A(1)]¹ In any case to which this regulation applies, for the purposes of Regulation 8(1) and without prejudice to the generality thereof, a solicitor shall comply with the Code of Practice and associated Forms set out in Schedule 1 and Schedule 2 to these regulations.

(2) This regulation applies where a solicitor is acting in the purchase or sale of domestic property.

(3) For purposes of this regulation:

[a] "domestic property" means premises or part of premises primarily used or intended to be used for residential purposes, and not acquired or disposed of by the client in the course of a commercial business activity (including agriculture);

[b] the Code of Practice and associated Forms set out in Schedule 1 and Schedule 2 to these regulations may be cited as "The Home Charter Scheme".

[c] "the Committee" means the Home Charter Committee of the Council of the Law Society of Northern Ireland.

(4) Regulation 18 of these Regulations shall not apply in any case to which this regulation applies.

8B For the purpose of monitoring compliance with the solicitor's obligations

¹ Regulations 8A-C inserted by the Solicitors Practice (Amendment) Regulations 2000

under Regulation 8A, the solicitor concerned shall, at the request of the Society;

- [a] make available for inspection by any duly authorised representative of the Society the conveyancing file relating to a transaction to which Regulation 8A applies;
- [b] without prejudice to the generality of Regulation 23(a) answer with reasonable expedition all enquiries by the Society in relation to his compliance with Regulation 8A.

8C Where a solicitor has failed to comply with his obligations under Regulation 8A it shall be an adequate defence for him to establish, in respect of that non-compliance that his failure arose as a consequence of instructions from his client, provided that the solicitor can establish that the client was informed in writing of the terms of the Code of Practice and the obligations thereunder and gave instructions in writing authorising the non-compliance in question.]

- 9 A solicitor shall not refuse to act for a prospective client solely on account of that person's race, colour, ethnic or national origins, sex or creed.
- 10 A solicitor shall answer with reasonable promptness any enquiry by a client or the client's authorised agent as to the progress of that client's business.
- 11 A solicitor shall not, without the knowledge of or disclosure to his client, make or receive any secret profit or commission in connection with or arising out of the business of that client.
- 12 A solicitor shall not, except where he is expressly permitted so to do by these regulations or any waiver thereof, directly or indirectly obtain or attempt to obtain, or permit to be obtained, instructions for professional work in any manner which compromises or impairs, or is likely to compromise or impair the client's freedom to instruct a solicitor of his choice or the solicitor's independence and shall not in any circumstances take any action which compromises or impairs, or is likely to compromise or impair,
 - (a) his integrity;
 - (b) his duty to act in the best interests of the client;
 - (c) the good repute of the solicitor or of solicitors in general;
 - (d) his proper standard of work.

[12A ^{II}A solicitor shall not for the purpose of obtaining or retaining instructions from

^{II} Regulations 12A – 12C inserted by the Solicitors Practice (Amendment) Regulations 1998 and amended by the Solicitors Practice (Amendment) Regulations 2003

any person or of securing the transfer of that person's instructions from another solicitor:

- (a) make or offer to make, whether directly or indirectly, any payment to or on behalf of that (or any other) person; or
- (b) give (or offer to give) any undertaking to any third party to facilitate the provision of money or credit by such third party to that (or any other) person

12B (1) Without prejudice to the provisions of Regulations 12A, a solicitor shall not directly or indirectly lend money to a client without requiring that client to obtain independent legal advice on the terms of that loan, other than as provided by paragraphs (2) and (3) of this Regulation.

(2) A solicitor may make an advance to his client in respect of the proceeds of a claim which has been settled or for which judgment has been obtained or in respect of other funds due to the client but which have not yet been received provided:-

(a) there is no prior claim on the proceeds or funds, whether by operation of the statutory charge under the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981, or pursuant to an undertaking, or otherwise; and

(b) the solicitor has obtained a signed statement from the client acknowledging:-

- (i) the reasons for the advance;
- (ii) the amount of the advance;
- (iii) that no interest will be paid to the solicitor;
- (iv) that the advance is to be re-paid by deduction from the proceeds or funds due in the particular case as soon as these are received.

(3) A solicitor may make an advance to his client in anticipation of receipt of the proceeds of a claim or of other funds which will become due to that client provided:

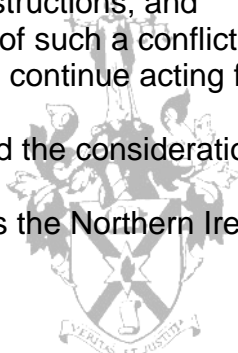
- (a) the advance is not made for any of the purposes specified in Regulation 12A; and
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- (b) the solicitor has informed the client in writing of the estimated net amount of proceeds or funds likely to be received and that the advance may give rise to a conflict of interest at a later date which may result in the client being required to obtain independent legal advice; and
- (c) the solicitor has obtained a signed statement from the client acknowledging:
- (i) the reasons for the advance;
 - (ii) the amount of the advance;
 - (iii) that no interest will be paid to the solicitor;
 - (iv) that the advance is to be re-paid by deduction from the proceeds or funds due to the client in the particular case as soon as these are received;
 - (v) that the advance will be due and repayable to the solicitor whether or not the anticipated proceeds or funds are received.
- (4) Nothing in this Regulation shall prevent a solicitor from making payments on behalf of his client in respect of outlays which may form part of the solicitor's bill of costs.
- (5) In conveyancing transactions nothing in this regulation shall prevent a solicitor making a short term advance on behalf of his client where there is a binding contract in order to facilitate completion of the transaction
- 12C A solicitor shall not provide an undertaking in respect of money which is or may become due to his client except where and to the extent that no other party is entitled to the money in priority to that client and the client has given written irrevocable authority to the solicitor in respect of the undertaking.]
- 13 A solicitor shall account promptly to his client on the conclusion of any transaction or matter and at any time immediately in response to a request from his client, for all monies held or received by him for or on account of his client.
- 14 Where a solicitor permits his name to be published in the "Legal Aid List" or other publication as a solicitor providing services under a statutory Legal Aid Advice and Assistance Scheme he shall not refuse to accept instructions from a prospective client eligible to participate in such scheme, except for reasonable cause.
- 15 Where a solicitor knows that he cannot accept instructions or that he must cease to act in any cause or matter then he shall give adequate and clear

notice of that fact to his client, prospective or actual.

- 16 (1) A solicitor shall not join or act in association with any organisation or person not being a practising solicitor whose business or any part of whose business is to make, support or prosecute whether by action or otherwise and whether by a solicitor or agent or otherwise claims arising as a result of death or personal injury in such circumstances that such person or organisation solicits or receives any payment, gift or benefit in respect of such claims nor shall a solicitor act in respect of any such claim for any client introduced to him by such person or organisation.
- (2) A solicitor shall not with regard to any such claim knowingly act for any client introduced or referred to him by any person or organisation whose connection with such client arises from solicitation in respect of the cause of any such claim
- (3) It shall be the duty of a solicitor to make reasonable inquiry before accepting instructions in respect of any such claim for the purpose of ascertaining whether the acceptance of such instructions will involve a contravention of the provisions of paragraph (1) or (2) of this regulation.
- 17 A solicitor shall not accept instructions in respect of any claim or in relation to any matter in circumstances or under any arrangement whereby he will receive, in respect of such claim or matter a contingency fee; and a solicitor shall not make any agreement with his client for payment of his fees in respect of contentious business done or to be done by way of a gross sum commission or percentage otherwise than in accordance with the Attorneys and Solicitors Act 1870 or any statutory modification or re-enactment thereof.
- 18 In any contentious or non-contentious business undertaken by him a solicitor shall, in so far as is practicable, having regard to his client's interests and instructions and to the circumstance of the case, observe the procedures and practices recommended or directed from time to time by the Council as being good practice in the category or type of contentious or non-contentious business so undertaken, provided however and it is hereby declared that any procedures and practices so recommended or directed shall not be regarded as being comprehensive unless they shall expressly be stated so to be.
- 19 (1) Subject as hereinafter provided, a solicitor shall not act for both vendor and purchaser on a transfer of land for value at arm's length or for both lessor and lessee on the grant of lease for value at arm's length.
- (2) Provided no conflict of interest appears and the vendor and/or lessor is not a builder or developer selling or leasing as such this regulation shall not apply if:
- (a) the parties are associated companies; or
- (b) the parties are related by blood, adoption or marriage; or

- (c) both parties are established clients and both parties have been informed in writing that:-
- (i) the solicitor is acting for both parties; and
 - (ii) no conflict of interest appears to the solicitor at the time of receipt of instructions; and
 - (iii) in the event of such a conflict of interest arising the solicitor will be unable to continue acting for either party in the transaction; or
- (d) on a transfer of land the consideration is less than £3,000; or
- (e) one of the parties is the Northern Ireland Co-Ownership Housing Association;



(3) ^{III}Where the vendor and/or lessor is a builder or developer this regulation shall not apply if

- (a) no conflict of interest appears; and
- (b) the purchaser is :-
- (i) an associated company of the vendor/lessor; or
 - (ii) a director or partner of the vendor/lessor; or
 - (iii) a person related by blood, adoption or marriage to such director or partner; or
 - (iv) the solicitor himself; or
 - (v) an employee or partner of the solicitor or his firm and
- (c) both parties have been informed in writing that:-
- (i) the solicitor is acting for both parties; and
 - (ii) no conflict of interest appears to the solicitor at the time of receipt of instructions; and
 - (iii) in the event of such a conflict of interest arising the solicitor will be unable to continue acting for either party in the transaction.
- (4) Notwithstanding the provisions of paragraph (2) and (3) hereof a solicitor shall not in any circumstances act for the purchaser on the transfer of land for value at arm's length or for the lessee on a grant of lease for value at arm's length where he or a solicitor practising in a joint property selling practice with him is instructed to negotiate the sale of the property concerned.

20 A solicitor shall not act for both a lender and borrower in the preparation and execution of a mortgage, charge or other security except that it shall be permissible for a solicitor to act for a purchaser/borrower and a lending

^{III} Inserted by the Solicitors Practice (Amendment) (No.2) Regulations 2003

institution (or the Northern Ireland Housing Executive acting as a lending institution) in a transaction where the solicitor is retained by the purchaser/borrower before he receives instructions from the lending institution and where the terms of the security documents are standard and not subject to alteration by negotiation; it shall also be permissible for a solicitor to act for both a lender and borrower in relation to a further charge.

- 21 (1) A solicitor who acts in the sale or intended sale of land for a vendor who offers a free assurance or mortgage or an assisted assurance or mortgage of that land or both shall be under a duty to inform the purchaser in writing, or, if he is aware that the purchaser has instructed another solicitor to act in the matter, to inform that solicitor in writing that the purchaser is entitled to instruct any solicitor of his choice and that
- (a) in the case of an offer of a free assurance or free mortgage or both, the vendor will pay the purchaser's legal costs in respect of the purchase and/or mortgage or
 - (b) in the case of an assisted assurance or mortgage or both the vendor will make such contribution towards the purchaser's said costs as may have been offered by the vendor.
- (2) For the purpose of the foregoing paragraph
- (a) an offer of a free assurance means an offer (whether express or implied) by or on behalf of a vendor of land to arrange or procure that the land is vested in a purchaser free of legal costs in respect of the purchase;
 - (b) an offer of a free mortgage means an offer (whether express or implied) by or on behalf of a vendor of land to grant or arrange for or procure the grant to the purchaser of a loan secured by a mortgage of that land on terms that the purchaser shall not be liable for any legal costs in respect of the mortgage;
 - (c) an offer of an assisted assurance means an offer (whether express or implied) by or on behalf of the vendor of lands to contribute towards the purchaser's legal costs in respect of the purchase;
 - (d) an offer of an assisted mortgage means an offer (whether express or implied) by or on behalf of the vendor of land to make a contribution towards the purchaser's legal costs of mortgaging that land;
 - (e) for the purposes of this regulation "sale", "assurance", "vendor" and 'purchases' shall have the same meanings as are assigned to them by the Solicitors (Northern Ireland) Order 1976 for the purposes of
 - (f) "legal costs" shall mean all costs and disbursements which, but

for the offer of a free or assisted assurance or mortgage, would have been properly payable by the purchaser with regard to the relevant sale or mortgage

- (3) In any such case as is mentioned in paragraph (1) of this regulation a solicitor who acts for both the vendor and the purchaser in the matter shall be deemed to have committed an act of professional misconduct unless he shall, before so acting, have communicated with the purchaser in accordance with paragraph (1) of this regulation and the purchaser shall have thereafter stated in writing that he has chosen to be represented by the vendor's solicitor.
- (4) The foregoing paragraph shall apply whether or not any such solicitor shall have, by virtue of his conduct and in the circumstances of the case, committed a breach of either regulation 19(1) or regulation 20.

22 ^{IV} A solicitor shall ensure that every office where he carried on property selling is, and can reasonably be seen to be, properly supervised and that every such office is managed by either a solicitor holding a practising certificate or by an employee who has demonstrable and relevant experience either in property selling, estate agency or financial services or who has been continuously employed as a law clerk in a solicitor's office for not less than 15 years; and that such solicitor or employee is normally in attendance at that office during the hours when it is open to the public.

GENERAL

23 - A solicitor shall

- (a) reply with reasonable expedition to all letters addressed to him by the Society in relation to his professional conduct or any matter or thing arising out of or in connection with the Society's functions under the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981;
- (b) attend upon the Council or a committee thereof when notified in writing so to do;
- (c) inform the Society in writing of the address or addresses at which he practises, carries on business or is employed as a solicitor and of any changes thereof
- (d) in the event of his ceasing to practise for any reason, inform the Society of such cessation and of an address at which the Society may communicate with him;
- (e) keep the Society informed of his home address, his status in the profession (whether as assistant, consultant or principal in private practice or other employment of a legal nature) and of any judicial or quasi-judicial office held by him, and of any changes therein.

^{IV} Section 22 amended by the Solicitors (Property Selling) Practice Regulations 1990

24^V (a) So long as a Scheme shall be in operation a solicitor insured thereunder shall:

- (i) give notice in writing as soon as practicable to the Managers of such Scheme, of any claim under the Scheme made against the solicitor or his firm, or the receipt by either of them of notice from any person of any intention to make a claim against them. The solicitor shall also cooperate with the Managers or any solicitor instructed by them, in every way which they may reasonably require and shall reply promptly to all letters addressed to him by the Managers or such solicitor instructed as aforesaid and shall give them all such information as they reasonably require;
 - (ii) when required by the Society, disclose in confidence and in such manner as the Society may direct from time to time, to the Managers or any solicitor instructed by them, such information with regard to his practice and the composition thereof as may reasonably be required under the Scheme, for the purposes of either negotiating the premium payable thereunder or determining the means of the distribution of the premium amongst the solicitors insured thereunder.
- (b) If a solicitor has:-
- (i) in the case of a sole practitioner more than two claims paid in any insurance year or in the case of a partnership more than three claims paid in any insurance year; or
 - (ii) not co-operated with the Managers or any solicitor instructed by them; or
 - (iii) unduly delayed in the notification of a claim; or
 - (iv) a claim against him which appears to the Managers or any solicitor instructed by them to be a prima facie evidence of professional misconduct

then such solicitor shall be deemed to have surrendered any right to confidentiality between himself and the Managers of such Scheme or any solicitor instructed by them and the Managers or any solicitor instructed by them shall inform the Society accordingly, to enable the Society to investigate and consider the matter.

- (c) (i) if it appears to the Managers that a solicitor has failed to exercise reasonable diligence in the conduct of his practice, the Managers shall report the matter to the Committee^{VI} but without disclosing to the Committee the identity of such

^V Regulation 24 replaced by the Solicitors' Practice (Amendment) Regulations 1995

^{VI} "the Committee" means the Professional Indemnity Insurance Committee of the Society or any other committee which shall from time to time discharge the functions of that committee

solicitor;

- (ii) upon receiving a report regarding a solicitor pursuant to regulation 24 (c) (i) the Committee may recommend to the Council that any right to confidentiality enjoyed by such solicitor under any Scheme be suspended;
- (iii) upon receiving a recommendation pursuant to regulation 24 (c) (ii) the Council may direct that any right to confidentiality enjoyed by the solicitor in question is suspended;
- (iv) if the Council makes a direction pursuant to regulation 24 (c) (iii) the Managers shall inform the Council of the identity of the solicitor in question.

- 25 A solicitor shall bring to the notice of the Society (having where necessary first obtained his client's consent) any conduct on the part of another solicitor which appears to him to be a breach of these regulations.
- 26 The Council shall have power to waive in writing any of the provisions of these regulations and to revoke any such waiver in any particular case or cases.
- 27 These regulations supersede the Solicitors' Practice Regulations 1978 and the Solicitors' Practice Regulations 1980 which are hereby revoked.

SCHEDULE **Regulation 4**

**SCHEDULES TO BE INSERTED IN THE SOLICITORS PRACTICE REGULATIONS
1987**

"SCHEDULE 1 **Regulation 8A**



CODE OF PRACTICE

PART I

When acting for a vendor in a transaction to which Regulation 8A applies a solicitor shall:

1. so far as is practicable and consistent with the client's instructions make use of the General Conditions of Sale and other standard conveyancing documents published by the Society;
2. when taking instructions;
 - [a] record the information provided for in Form 1A in Schedule 2 or some other similar form;
 - [b] seek suitable evidence of the client's identity;
 - [c] seek information as to the identity of any persons who are or will be in occupation of the property and thereby affecting the rights of any mortgagee or purchaser;
 - [d] identify any special terms which may be appropriate for the contract including, inter alia, making enquiry to what provision is to be made with regard to fixtures, fitting and chattels;
 - [e] enquire about completing the Society's recommended form of Enquiries before Contract in so far as the same relate to the premises;
 - [f] enquire as to the position regarding the insurance of the premises against fire and other normal insurable risks and to advise the client, if appropriate, of any problem likely to arise from under-insurance or non-insurance.
3. Following receipt of instructions write to the client setting out terms of business including an estimate of costs and outlay in such manner as may be prescribed by the Society together with a leaflet in Form 2 in Schedule 2 or some other similar form or letter containing the same information.
4. Before giving any undertaking to a bank or other financial institution, obtain the client's consent in writing and, in relation to any undertaking as to the payment of money, ensure that such undertaking is so qualified as to extend only to

monies as and when they shall be received and in all cases where an undertaking is given, furnish a copy thereof to the client and ensure that the fact that the undertaking has been given is recorded on the file in a manner designed to attract attention and to be highly visible.

5. In bespeaking any Property Certificates or searches referred to in the General Conditions of Sale or any regulation, direction or recommendation promulgated by the Society or the Council take care, in the case of any Local Council or competent Authority not using the forms negotiated between the Society and the Local Authorities Association, that the forms used by such Council contain similar questions and will provide the same information.
6. Take due account of any peculiarities or problems revealed in the title documents in preparing the draft contract.
7. In submitting a form of draft contract to the purchaser's solicitors, furnish with it:
 - [a] the title or copy title to the premises;
 - [b] any searches which are being provided by the vendor in pursuance of any regulation direction or recommendation of the Society or of the Council;
 - [c] a form of Enquiries before Contract, as recommended by the Society, duly completed with replies to the various questions contained therein after consultation with the client.
8. In the event of the matter falling within the provisions of Regulation 19(2), write to both clients in the terms set out in Form 4A in Schedule 2 and, if a conflict of interest arises thereafter, observe the Society's requirements and write to both clients in the terms set out in Form 4B in Schedule 2.
9. Take due care in obtaining information to deal with any additional enquiries or requisitions which may be raised by the purchaser or the purchasers solicitors.
10. Consider any advice on any amendments which may have been proposed by the purchaser to the draft contract previously submitted.
11. Submit complete contract as accepted by the vendor or submit a counter offer to the purchaser and, at the same time, seek to obtain such deposit as is provided for in the said complete contract or counter offer.
12. Take due care in considering and approving any deed which may be drafted by the purchaser or the purchaser's solicitors in relation to the transaction.
13. In so far as practicable, obtain redemption figures from any mortgagee at least two working weeks prior to the date of completion and advise the purchaser or the purchasers' solicitors accordingly.

14. Arrange for the execution of the assurance to the purchaser in good time for completion and make suitable and satisfactory arrangements for the handing over of possession.
15. Following completion submit the redemption cheque to the appropriate mortgagee together with the appropriate document for completion of the satisfaction of the mortgage forthwith.
16. Seek duly executed satisfaction of mortgage by way of reminder if the same has not been returned by the mortgagee within 10 working days from the date the cheque was sent.
17. (1) In Registry of Deeds transactions:
 - [a] register the satisfaction of the mortgage or in the alternative forward to the purchaser's solicitors the vacated mortgage with the appropriate registration fee immediately the same is received;
 - [b] furnish to the purchaser's solicitors the duly registered satisfaction of mortgage immediately the same has been noted by the Registry;
- (2) In Land Registry transactions:-
 - [a] furnish the satisfaction of the charge together with the appropriate fee to the purchaser's solicitors immediately the satisfaction is received from the chargee.
18. Within 5 working days after completion advise, either directly or indirectly, the Rates Collection Agency and, where appropriate, the Ground Landlord or his Agent, of the change of ownership and the date thereof.
19. Account to the client for all monies received and expended including any interest on money in lieu thereof as early as practicable after completion.
20. Present regular reports to the client and in particular report at the following stages:
 - (1) on sending draft contracts and other papers to the purchaser's solicitors;
 - (2) following final acceptance of contract and obtaining a deposit;
 - (3) following the obtaining of redemption figures from any mortgagee when arrangements should be made for the execution of the deed, obtaining the keys and generally completing the legal formalities;
 - (4) after completion with a statement of account and report on proceeds of sale.

PART II

When acting for a purchaser in a transaction to which Regulation 8A applies a solicitor shall:

- [a] when taking instructions record the information provided for in **Form 1B** set out in Schedule 2 or some other similar form and seek suitable evidence of the client's identity and information as to the identity of any persons who are or will be in occupation of the property and thereby affecting the rights of any mortgagee or purchaser;
- [b] following receipt of instructions to act in a transaction to write to the client setting out terms of business including estimate of costs as specified in any Practice Direction of the Committee together with **Form 2** provided for in the Schedule, or in such other similar form;
- [c] in the event of any investment business being necessary involving an outside independent financial adviser to be recommended or arranged, make the necessary arrangements with the relevant independent financial adviser as early as practicable after the date of instructions;
- [d] in the event of any undertaking being required to a bank or other financial institution, seek the clients instructions before giving same and, if so instructed, give same in the form approved by the Council of the Society from time to time or, in the event of there being no such form, or no suitable form, ensure that any undertaking given extends only to acts which can be performed by the firm itself: and, where any undertaking is given in relation to the payment of money, ensure that such undertaking is so qualified as to extend only to monies as and when they shall be received by the firm. (Suggested forms of undertaking are provided at **Form 3(A)(B)(C)** and **(D)** of Schedule 2);
- [e] in the event of an undertaking being given to a bank or other financial institution, furnish a copy thereof to the client and ensure that the fact that such an undertaking has been given is noted on the file in a manner designed to attract attention and to be highly visible;
- [f] in the event of any client seeking to instruct a firm in the sale of the same property, then give consideration to the matter of conflict of interest. If any such conflict of interest crystallises then the firm shall inform both clients accordingly and shall require them to seek alternative advice. If no such conflict appears, and if the circumstances provided for in Regulation (19) of the Solicitors' Practice Regulations 1987 apply, then the firm shall write to both clients in terms similar to the letter set out in **Form 4(A)** of Schedule 2. If a conflict of interest arises thereafter the firm shall observe the Society's requirements and shall write to both clients in terms similar to the letter set out in **Form 4(B)** of Schedule 2;
- [g] where a map of the premises is available, provide a copy for the client

at the earliest possible opportunity for information purposes and to enable the client to comment on the boundaries of the property;

- [h] advise the purchaser of the amount of and need for the deposit prior to returning the offer to purchase to the vendor's solicitors;
- [i] investigate the title with due professional skill and, in particular, advise the purchaser of any potential challenge to ownership which might be mounted under the current insolvency law and advise the purchaser to take appropriate measures to safeguard his interest in the property;
- [j] subject to Clause 3(h) and to receipt of cleared funds from the client, furnish payment of any deposit offered within 5 working days following receipt of notice of acceptance of contract;
- [k] forward report on title to the mortgagee within the time specified in instructions or, if the time limit is for any reason missed, use all proper endeavours to ensure that funds will be available for completion from either the mortgagee or another source;
- [l] advise the client, in writing of the consequences of the mortgage involved. (A suggested form of letter is included in **Form 5** of Schedule 2);
- [m] seek to obtain from the client, by way of the form of letter set out in **Form 6** of Schedule 2 or some similar form, in adequate time for completion, all funds necessary to complete including any monies required to cover outlay including stamp duty, Land Registry fees and costs;
- [n] obtain such searches as the Committee may from time to time prescribe by Practice Direction;
- [o] forward draft Deed in good time for approval, engrossment and execution to take place prior to completion;
- [p] lodge the assurance in accordance with Inland Revenue requirements in the Stamp Office with the appropriate duty as soon as practicable after completion and in any event within 30 days;
- [q] lodge the assurance, and all other documents required for registration, in the appropriate Registry as soon as practicable after any required satisfaction of mortgage is received or, in the alternative, as early as practicable after the assurance has been received back from the Stamp Office whichever may be appropriate;
- [r] as soon as the assurance has been registered in the Registry of Deeds update the Registry of Deeds search provided;
- [s] provide a Cash Statement to the client;

- [t] report to the client from time to time as may be required and, in particular, report to the client;
- (i) when title is received to provide client with details of premises, easements, onerous covenants, etc., and to enclose copy map of premises;
 - (ii) when the offer to purchase is furnished to the Vendor's solicitors;
 - (iii) when the accepted offer or a counter offer is received;
 - (iv) when the mortgage instructions are received;
 - (v) prior to completion, when the report on title and request for cheque has been forwarded, arrange for finance and remind client of completion details including dealing with services etc;
 - (vi) following completion when the assurance is lodged in the Registry of Deeds or Land Registry when a cash statement can be furnished.

PART III

When acting for both borrower and lender in the creation of a mortgage or charge in a transaction to which Regulation 8A applies, a solicitor shall:

- [a] after receipt of instructions from the lending institution and no later than the execution of the mortgage documents seek an interview with the client for the purpose of discussing those instructions;
- [b] in the course of such interview discuss with the client;
 - (i) any valuation of the property carried out on behalf of the lending institution of which the client may be aware with particular regard to the rights, duties and liabilities (or lack thereof) attaching thereto;
 - (ii) the requirements and proposals of the lending institution in relation to any collateral security which may be sought or made;
 - (iii) the requirements and proposals of the lending institution in relation to any insurance of the premises or contents which may have been sought or made;
 - (iv) the effect of any "all monies" requirement imposed by the lending institution;
 - (v) the position under any building standards indemnity guarantee scheme or, in the event of the premises not being covered by such a Scheme, any substitute therefore;

- (vi) the fact that a Mortgage Guarantee Premium or other fee may be deducted from the Advance or otherwise payable;
- [c] check the instructions and requirements of the lending institution against the title to ensure that the particular requirements of the lending institution are met or are capable of being met;
- [d] immediately after completion, or immediately after the assurance to the purchaser has been stamped, lodge, with the assurance, any mortgage deed in the Registry of Deeds or the Land Registry;
- [e] in any Land Registry transaction forward to the lending institution on request a copy of the Land Registry receipt card and advise such lending institution in the event of the document being returned to the solicitor and not relodged promptly;
- [f] on completion of the matter and on receipt of the duly registered documents either from the Registry of Deeds or the Land Registry, furnish the documents of title to the lending institutions.

PART IV

When acting in any transaction to which Regulation 8A applies, a solicitor shall:

- [a] in all cases respond to any request for information by the client within 3 working days from receiving same;
- [b] in all cases respond to telephone calls from the client or any professional colleague no later than the next working day;
- [c] in all cases seek to arrange appointments taking due account of any particular difficulties which the client may have and honour all such appointments as and when made unless prevented by force majeure;
- [d] comply with any Practice Directions of the Committee approved by the Council of the Society as interpretative or ancillary to these Rules.

SCHEDULE 2

HOME CHARTER SCHEME

FORM 1A

INSTRUCTIONS SHEET



SALE

Client

Name: _____

Address: _____

Telephone
(Business) _____ (Home) _____

Joint Client (if appropriate)

Name: _____

—

Address _____

Telephone (Business) _____

Is the Client known to you or the firm? _____

If not has any evidence of identity been obtained _____

Selling

Premises (Address) _____

Sale Price _____

Additional Items to be sold/purchased and price _____

Purchaser (if known)

Name _____

Solicitors _____

Details

Any persons resident on premises?

Proposed Completion date (if known)

Reasons/requirements for Completion date

Estate Agents

Address:

Telephone No.

Situation of Deeds

Building Society Roll Number if known or Branch

Other Existing Mortgages or
Charges

Any collateral security to be receipted discharged

Client's Bank

Any undertaking required? (if so NOTE ON FILE)

Name of ground landlord/agent collecting ground rent/any land purchase
annuity? _____

Further information

(Standing Orders to be cancelled? Capital Gains Tax implications?).

Property Enquiries/Questionnaire completed?



HOME CHARTER SCHEME

FORM 1B

INSTRUCTIONS SHEET

PURCHASE



CLIENT

Name: _____

Address: _____

Telephone (Business) _____ (Home) _____

JOINT CLIENT (if appropriate)

Name: _____

Address: _____

Telephone (Business) _____

Is the Client known to you or the firm? _____

If not has any evidence of identity been obtained? _____

BUYING

Premises (Address) _____

Sale Price _____

Additional Items to be sold/purchased and prices _____

VENDOR

Name _____

Solicitors _____

Details _____

Any persons resident on premises? _____

(Consider Boland -v- William & Glynn's Bank) _____

Proposed Completion date (if known) _____

Reasons/requirements for Completion date

Estate Agents

Address

Telephone No.

LOAN

Amount of Loan required

Lender involved

Collateral security (take details)

Bridging finance required?

Client's Bank

Any undertaking needed? (if so NOTE ON FILE)

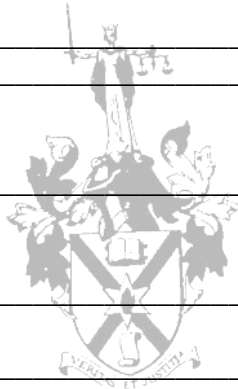
Is a survey required? Name of Surveyor

Any Mortgage quotation needed?

Law Society (NI) Financial Advice Ltd - any help required?

Additional information

(Use to be made of property? Any permissions required? Any special insurance needs?)



FORM 2A^{VII}

Dear

Premises:

We acknowledge with thanks receipt of your instructions to act in the sale of the above premises.

In order to enable us to prepare a Contract for us when a purchase is obtained, please arrange to let us have the Title Deeds as soon as possible. Alternatively, please let us know where we may obtain them on your behalf. If they are with a Building Society it would be helpful if you could let us have details of the Branch with which you normally deal, together with the account number.

This firm is a member of the Law Society Home Charter Scheme, and we would refer you to the enclosed leaflet which explains the basis on which your work will be carried out and what you should do if, at any time, you have any questions or difficulties. Unless we hear from you to the contrary, we shall assume that you have no objection to having the file inspected by the Law Society's Monitoring Officer, for the purposes of ensuring that the Rules of the Home Charter Scheme have been duly observed and complied with by this firm.

We are obliged on your behalf to furnish the purchaser's solicitors with all relevant and available information about the premises. We enclose the standard form of questionnaire which we would require you to consider, with a view to letting us have information to enable us to complete the replies on your behalf.

The work for which your Solicitor is responsible, in the house buying process, includes the management of the following stages. The terms of the sale and purchase having been negotiated, the parties' respective Solicitors will be responsible for taking the parties into formal contract. House buying or selling usually involves two separate transactions for each party (a purchase and a sale) which must be synchronised, and a lending institution, usually a Building Society, will be involved also. The timing and entry into contract is also important in a typical chain situation. The purchasers' Solicitor will prepare the Deed of Transfer, having first satisfied himself that the vendors title is in order, and that all matters involving planning or building control, or arising from survey, have been dealt with. All necessary arrangements regarding the handing over of possession, involving the transfer of funds in exchange for the signed Deed of Transfer, and the stamping and registration of those deeds, will also be looked after by the Solicitor.

We enclose an estimate of charges which we are required to furnish under the Home Charter Regulations, which is based upon the anticipated sale price. Charges may of course vary if the eventual sale price varies. The estimate is set out in the Law Society prescribed form and if anything requires clarification please do not hesitate to get in touch with us.

^{VII} Suggested letter to clients for guidance only, issued by the Home Charter Committee, April 2003

If you have any queries at any time, please contact us immediately.

This case will be dealt with by our.....When you next attend/attend for your first appointment, please bring evidence of your identities, e.g. a Drivers Licence or a Passport.

Yours sincerely



HOME CHARTER SCHEME

FORM 2B

The Law Society's Home Charter Scheme is designed to give assured standards of quality. This leaflet explains the basis on which your work will be carried out and what you should do, if at any time, you have any questions or difficulties.

THE SALE/PURCHASE

The work involved in selling or buying property has many aspects but the main areas which your solicitor will be dealing with on your behalf are as follows:-

- 1 Supplying information for your buyer/ obtaining information from your seller.
- 2 Checking that the sellers are in position to sell the property to you/making arrangements to satisfy your lender that the property is suitable as security.
- 3 Agreeing the terms of the contract dates.
- 4 Final signing and agreeing completion dates.
- 5 Making pre-completion arrangements and checks.
- 6 Obtaining mortgage monies/redemption figures.
- 7 Supervising completion.
- 8 Arranging for the registration of the sale on the public record.

In the case of a sale your solicitor will receive the purchase monies and pay off any existing mortgages. They will also arrange to pay for your new property, if applicable, and forward any balance monies to you with a statement of account.

In the case of a purchase your solicitor will arrange to obtain the loan monies from your lender. There will be additional money required to make payment in full. That will include expenses and taxes paid on your behalf, such as stamp duty, and registration fees. These are dealt with in the section on fees later in this leaflet.

MORTGAGES

There are many Mortgage Lenders, each one offering various mortgage packages, often at different rates. There are mortgages with rates which go up and down according to bank rates and there are other mortgages which have fixed rates of interest. If you choose a fixed rate than you will find that there is a penalty if you withdraw early from the mortgage.

FORM 2B

IN EVERY CASE WHEN YOU RECEIVE AN OFFER OF LOAN FROM A LENDER YOU SHOULD STUDY IT CAREFULLY AND SPEAK TO YOUR SOLICITOR TO ENSURE THAT YOU UNDERSTAND IT. IF THE LOAN IS NOT REPAYED THE LENDER HAS A RIGHT TO TAKE THE PROPERTY FROM YOU AND SELL IT. THIS RIGHT MAY ONLY BE EXERCISED IN CERTAIN CIRCUMSTANCES AND IF YOU, AT ANY TIME IN THE FUTURE, HAVE DIFFICULTY REPAYING THE LENDER YOU SHOULD IMMEDIATELY CONSULT YOUR SOLICITOR.

Your Lender will require a surveyor to value the property. Please note that unless you ask for a full condition report the survey report which you normally receive will only indicate an approximate value of the property and you will not get a full examination Report.

If you borrow more than 75% of the value then the Lender usually requires a Mortgage Indemnity Policy. This is a one-off charge for an Insurance Policy to protect the lender in the event that they have to re-possess the property and sell it for less than the amount of Mortgage then outstanding. The policy is intended to protect the lender, it will not protect you from losing your house.

It is easy to get confused about the total cost of your mortgage payment per month and you should always insist on a written quotation.

A Repayment Mortgage involves a single monthly payment to the lender. At the end of the term of years fixed by the mortgage the loan will be totally repaid. In the early years the amount outstanding will not reduce much, but this will change as the years progress.

An Endowment Mortgage involves a payment of interest only each month. In addition an endowment policy is taken out. This will repay the mortgage in the event of death and will provide a savings plan so that at the end of the mortgage there should be sufficient to pay off the mortgage and provide some additional funds to you. However, this is not always guaranteed.

There are other types of savings plans available and you should in every case talk to your solicitor so that you know precisely all the consequences of each choice of mortgage.

FINANCIAL SERVICES

Your solicitor can obtain quotations and advice for you from Law Society (NI) Financial Advice Ltd/(Independent Financial Adviser). (This is a company which was set up and financed by the Law Society acting on behalf of the solicitor's profession generally. The purpose of this company is to help to provide a wider service for the community and to make sure that independent financial advice is available). Independent financial advice is getting harder to find as many advisers sell only the financial products of particular investment companies.

There is an arrangement between the company and your solicitor whereby any

commission which the company receives as a result of business written is shared with the solicitor who introduces the business. This, of course, only applies where business is actually written for the client after discussion and advice. If any business is written for you your solicitor will advise you of the precise amount he or she receives.

If you do use Law Society (NI) Financial Advice it is hoped that you will find them helpful. If they are in any way unsatisfactory please tell us so that we can report the matter to the Law Society so that improvements can be made for the future.

SERVICES

You should ensure that companies which supply services such as electricity and telephones are notified of the change of ownership of the property and the date on which the change of ownership will take place so that there will be no disruption of supply. You should ensure that the Rates Collection Agency knows the date of your moving into or out of the house.

FEES

A Form of estimate of the firm's account will be sent to you at the beginning of the case. This account is divided into two parts. First there are the fees due to the solicitor. Secondly there are sums of money spent on your behalf. These are normally called "outlay". If you are obtaining a loan from a building society or other financial institution they will insist on these matters being dealt with and paid prior to completion. The main items of "outlay" are as follow:-

1. Stamp Duty Land Tax (SDLT)

SDLT is a tax payable on property transactions. Purchasers are personally obliged to complete self assessment forms in respect of this. It is payable by a purchaser on a scale which increases according to the value of the property purchased. Duty is charged as a percentage of the total sum paid and not only on the amount which exceeds the threshold. It is rounded up where necessary to the nearest multiple of £5. Your solicitor can advise you on your liability for the payment of SDLT.

2. Search Fees

These are fees paid to check in the various registries that the person selling the house to you has no charges registered against the property and that he or she is registered as owner of the property. If you are selling a property then your solicitor will be required to bring the searches up to date.

3. Property Certificates

These are required from various statutory authorities to ensure that the property complies with various regulations such as Planning and Building Control.

4. Registration Fees

These are paid to the appropriate Registry each time a transaction is registered. For example a fee charged by the Land Registry for the purchase of an average house could amount to approximately £400. It should be remembered that these fees are increased by Government from time to time.

DIFFICULTIES

The Charter exists to ensure that you obtain a quality service. One of the ways in which the quality of our work is checked is by regular and random inspection by the Law Society of the files which members of the scheme are holding. It is possible that your file may be subject to inspection like this. If you have any objection to that being done you should tell your solicitor at once.

If you have cause for complaint you should initially contact the solicitor who has charge of your case. If he is unable to resolve the problem you should contact the senior partner of the firm. In some cases this may be the same person and in that case, or should the senior partner not be able to resolve the matter, then you can refer it to the Law Society of Northern Ireland at 98 Victoria Street, Belfast.

If you feel that the account for professional fees is unreasonable then you may have a right to have this matter resolved through an Officer of the Court (the Master Taxing Office). Alternatively you may have a right within three months of the bill being delivered to seek a certificate from the Law Society of Northern Ireland to state whether the fee is reasonable or what the proper fee should be. Your solicitor is obliged to provide you with full information on these processes should this arise.

This leaflet is designed to provide you with as much information as is possible on the purpose and value of the Home Charter Scheme. If you have any additional queries please do not hesitate to contact the Home Charter Committee of the Law Society. They will be only too pleased to help.

HOME CHARTER SCHEME

FORM 3A

Undertaking by Solicitor - Title Deeds/Land Certificate(s) lent to the Solicitor for purpose of inspection only and return.



.....
....20..

TO

BANK LIMITED

I/We hereby acknowledge to have received from you the Title Deeds/Land Certificate(s) and documents relating toin accordance with the schedule hereto.

I/We undertake to hold them on your behalf and to return them to you on demand in the same condition in which they now are and without the property to which they relate or any interest therein being, to my/our knowledge, in any way charged, conveyed, assigned, leased, encumbered, disposed of or dealt with.

Signature.....

Note:- This undertaking should be signed by the Solicitor in person or (in the case of a firm) by a partner.

HOME CHARTER SCHEME

FORM 3B

Undertaking by Solicitor - title Deeds/Land Certificate(s) handed to the Solicitor re Sale or Mortgage of Property, or part if it, and to account to Bank for net proceeds.

.....20..

TO: BANK LIMITED.



I/We hereby acknowledge to have received from you the Title Deeds/Land Certificate(s) and documents relating to _____ in accordance with the schedule hereto for the purpose of the sale/mortgage of this property or part thereof.

Pending completion of such transaction I(/We undertake to hold them on your behalf and to return them to you on demand in the same condition in which they now are and without the property to which they relate or any interest therein being, to my/our knowledge, in any way charged, conveyed, assigned, leased, encumbered, disposed of or dealt with.

If the transaction is completed I(/We undertake -

- (a) to pay to you the amount of the proceeds of sale/mortgage as and when received, subject only to the deduction therefrom of the necessary legal costs and outlays relating to the particular transaction.
- (b) If the Title Deeds/Land Certificate(s) and documents relate to property in addition to that which is the subject of the proposed sale or mortgage, to return them to you together with the appropriate instrument or instruments evidencing the transaction (if applicable).

Signature.....

NOTE:- This undertaking should be signed by the the Solicitor in person or (in the case of a firm) by a partner.

HOME CHARTER SCHEME

FORM 3C

Undertaking by Solicitor - to deliver Title Deeds/Land Certificate(s) to bank on completion of a purchase, the purchase money in whole or in part being provided by the Bank.



.....20

.....

TO:

BANK LIMITED

If you provide facilities to my/our client for or towards the purchase of the Freehold/ leasehold property

.....

.....

(description of property)

I/We undertake

- (a) that any sums received from you or your client for the purpose of this transaction will be applied solely for acquiring a good marketable title to such property and in paying any necessary legal costs and outlays in connection with such purchase.

(The purchase price contemplated is £..... and with apportionments and any necessary outlays, is not expected to exceed £.....).

- (b) after the property has been acquired by and all necessary stamping and registration has been completed, to deliver the Title Deeds/Land Certificate(s) and documents to you and in the meantime to hold them to your order.

I/We deserve the right to discharge this undertaking by repaying to you all monies advanced by you to my/our client through me/us together with appropriate interest thereon.

Signature

.....

Note: This undertaking should be signed by the Solicitor in person or (in the case of a firm) by a partner.

HOME CHARTER SCHEME

FORM 3D

Undertaking by Solicitor - for use in connection with bridging finance

Authority from Client(s)



DATE20.....

TO.....

(name and address of Solicitors)

I/We hereby irrevocably authorise and direct you to give an undertaking in the form set out below and to pay the net proceeds of the sale of my/our property at (the existing property) and the net proceeds of the loan being sought by me/us in respect of the purchase of property at(the new property) respectively therein mentioned toBank Limited.

.....
Signature(s) of Client(s)

UNDERTAKING
Date
20

TO BANK LIMITED

If you provide facilities to my/our clientfor or towards the purchase of the new property

I/we undertake

1 That any sums received from you or your client will be applied only for the following purposes in acquiring a good marketable title to the new property and in paying any necessary legal cost and outlays in connection with such purchase.

(The purchase price contemplated is £..... and with apportionments and any necessary legal costs and outlays is not expected to exceed £.....).

(b) (if the existing property is subject to a mortgage/charge) in discharging the mortgage/charge now affecting the existing property in favour of and in paying any necessary legal costs and outlays in connection with such

discharge.

(The amount required to discharge the said mortgage charge is approximately £.....)

2

- (a) To pay you the net proceeds of a loan of £..... from (name of building society or other lending institution) to our client in respect of the new property if and when received (as evidenced by the copy letter of approval or instructions to solicitor annexed hereto).

(The net proceeds of such loan after deduction of the necessary legal costs and outlays in connection with the transaction should be not less than £.....)

- (b) After completion of the purchase of the new property and pending completion of such loan transaction to hold the Title Deeds/and Certificate(s) of the new property in trust for you and to your order.

3 (if clause 2 is not applicable)

After completion of the purchase of the new property to hold the Title Deeds/and Certificate(s) thereof in trust for your and to your order.

4 (if the existing property is to be sold)

- (a) to pay to you the net proceeds of the sale of the existing property as and when received.

(The sale price contemplated is £.....The net proceeds of such sale after deduction of the necessary legal costs and outlays in connection with the transaction should be not less than £.....)

- (b) pending completion of such sale to hold the Title Deeds/Land Certificate(s) relating to the existing property in trust for you and to your order, upon the discharge of such mortgage/charge (if any) as is specified hereunder, that is to say

Signature

Note:- This undertaking should be Signed by the Solicitor in person or (in the case of a firm) by a partner.

HOME CHARTER SCHEME

FORM 4A

Dear

RE

In this case we have also been instructed to act on behalf of the proposed Vendor/Purchasers. If there were any question of a conflict of interest between yourselves and them the Law Society's Regulations would prohibit us from acting for you and the proposed Vendor/Purchaser as well. Having considered the matter we can confirm that there does not appear to be any such conflict at the present time.

If, for any reason, such a conflict does develop we would be unable, under Law Society Regulations, to continue to act for either you or the proposed vendor/purchasers but would have to arrange for alternative representation.

If you have any queries about the matter please write to us forthwith.


Yours

HOME CHARTER SCHEME

FORM 4B

Dear

RE



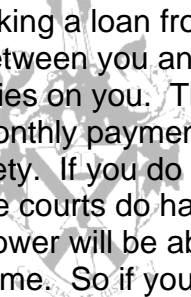
You will remember that at the beginning of this transaction, we advised you that we had been instructed to act for the proposed Vendor/Purchasers as well as yourself /yourselves. We said then that if any conflict of interest were to develop between you we would be unable to continue to act for either you or the Vendor/Purchaser.

As you know such a conflict has now developed. In these circumstances it is necessary that all parties should be separately represented. Can you please advise us which firm you would like to represent you for the remainder of the matter and we will arrange for your papers to be passed on to them as soon as possible.

Yours

HOME CHARTER SCHEME

FORM 5



To help buy this property you are taking a loan from a Lender. It is important to understand that the arrangement between you and the Lender is a business transaction which imposes legal duties on you. The most important of these is that you are required to make regular monthly payments of the amount and at the time specified by the Bank/Building Society. If you do not make these payments then you risk losing your home. However, the courts do have the power to give relief in some cases if it seems likely that the borrower will be able to make satisfactory arrangements within a reasonable time. So if you do fall into arrears you should inform the Lender immediately and also consult us. We will try to protect your interests. Remember the Lender is in business to make a profit from lending money.

You will have received a letter of offer from the Lender and you should study this carefully. If you have any doubts or questions about anything in the letter we will be happy to explain it. In particular you should study what it says about the insurance of the structure of the property. You should also remember to take out separate insurance to cover the contents of the house. It may also be wise to take out some kind of life assurance so that in the event of your death the mortgage will be paid off. That is something we would be happy to discuss with you if you want. If this is to be done then all arrangements should be made well before completion. Remember the Lender will hold the deeds of your property until the sum is paid off. You should receive a statement of account from the Lender from time to time. Check it carefully.

Finally you should note that in some cases the Lender has the right to use your house as security for other money which it has lent to you for reasons other than the purchase. You would need to be particularly careful if this is the case and to consider your position before taking on the responsibility.

HOME CHARTER SCHEME

FORM 6

Dear Client,

//Sale of existing property
Purchase of new property

As you know we hope to complete the above transaction on [date] and to enable us to do so we shall require the following amount by [date at least three days prior to completion]. This amount is made up as follows:

NEW PROPERTY

Deposit already paid (and received)	(-)	-
Balance purchase price		-
Stamp Duty		-
Land Registry Fees (estimated)/ Registry of Deeds fees		-
Money spent on your behalf		-
Mortgage advance		-

OLD PROPERTY

Deposit already received and paid	-	(-)
Balance sale price	-	
Amount to redeem mortgage		-
Money spent on your behalf		-
Our Costs (if this has been agreed)	.	-

BALANCE DUE BY YOU

=====

Estate Agents fees and outlay amounting to £..... will also be payable."

INTERNATIONAL CODE OF ETHICS.

ABOUT THE INTERNATIONAL BAR ASSOCIATION

The International Bar Association (IBA) is the world's foremost international association of lawyers. With a membership of some 10,000 individual lawyers in 115 countries as well as 101 Bar Associations and Law Societies, it is able to place worldwide experience and a network of personal contacts at the disposal of its members. The principal aims and objectives of the IBA are to encourage the discussion of problems relating to professional organisation and status, to promote an exchange of information between legal associations worldwide, to support the independence of the judiciary and the right of lawyers to practice their profession without interference, to keep abreast of developments in the law and to help in improving and making new laws.

Above all it seeks to provide a forum in which individual lawyers can contact and exchange ideas with other lawyers.

The IBA fulfils these objectives through its public interest activities and through the activities of its three specialised Sections: the Section on Business Law (SBL), Section on General Practice (SGP) and the Section on Energy and Natural Resources Law (SERL).

The IBA and its Sections publish journals, books and the proceedings of their meetings. They also publish directories giving full details of each member. They provide a reference for those seeking contacts with colleagues in other countries.

The IBA's conferences and seminars fulfil one of the Association's most important objectives: the promotion of useful contacts and interchange between lawyers throughout the world.

Every two years a major conference is held in which all three Sections of the IBA participate. The individual Sections hold their own conferences in the intervening years. Several specialised seminars are arranged each year.

Membership of the IBA is open to all lawyers in industry, private practice, academia and members of the judiciary. For further details please write to the International Bar Association at the address below:

2 Harewood Place, Hanover Square, London W1R 9HB.

INTERNATIONAL CODE OF ETHICS

First adopted 1956

This edition 1986.

PREAMBLE

The International Bar Association is a federation of National Bar Associations and

Law Societies with full or sustaining organisational members and individual members. Most of the full or sustaining organisational members have established Codes of Legal Ethics as models for or governing the practice of law by their members. In some jurisdictions these Codes are imposed on all practitioners by their respective Bar Associations or Law Societies or by the courts or administrative agencies having jurisdiction over the admission of individuals to the practice of law.

Except where the context otherwise requires this Code applies to any lawyer of one jurisdiction in relation to his contacts with a lawyer of another jurisdiction or to his activities in another jurisdiction.

Nothing in this Code absolves a lawyer from the obligation to comply with such requirements of the law or of rules of professional conduct as may apply to him in any relevant jurisdiction. It is a re-statement of much that is in these requirements and a guide as to what the International Bar Association considers to be a desirable course of conduct by all lawyers engaged in the international practice of law.

The International Bar Association may bring incidents of alleged violations to the attention of relevant organisations.

RULES

1. A lawyer who undertakes professional work in a jurisdiction where he is not a full member of the local profession shall adhere to the standards of professional ethics in the jurisdiction in which he has been admitted. He shall also observe all ethical standards which apply to lawyers of the country where he is working.
2. Lawyers shall at all times maintain the honour and dignity of their profession. They shall, in practice as well as in private life, abstain from any behaviour which may tend to discredit the profession of which they are members.
3. Lawyers shall preserve independence in the discharge of their professional duty.

Lawyers practising on their own account or in partnership where permissible, shall not engage in any other business or occupation if by doing so they may cease to be independent.

4. Lawyers shall treat their professional colleagues with the utmost courtesy and fairness.

Lawyers who undertake to render assistance to a foreign colleague shall always keep in mind that the foreign colleague has to depend on them to a much larger extent than in the case of another lawyer of the same country. Therefore their responsibility is much greater, both when giving advice and when handling a case.

for this reason it is improper for lawyers to accept a case unless they can handle it promptly and with due competence, without undue interference by

the pressure of other work. To the fees in this case Rule 19 applies.

5. Except where the law or custom of the country concerned otherwise requires, any oral or written communication between lawyers shall in principle be accorded a confidential character as far as the Court is concerned, unless certain promises or acknowledgements are made therein on behalf of a client.
6. Lawyers shall always maintain due respect towards the court. Lawyers shall without fear defend the interests of their clients and without regard to any unpleasant consequences to themselves or to any other person. Lawyers shall never knowingly give to the Court incorrect information or advice which is to their knowledge contrary to the law.
7. It shall be considered improper for lawyers to communicate about a particular case directly with any person whom they know to be represented in that case by another lawyer without the latter's consent.
8. A lawyer should not advertise or solicit business except to the extent and in the manner permitted by the rules of the jurisdiction to which that lawyer is subject. A lawyer should not advertise or solicit business in any country in which such advertising or soliciting is prohibited.
9. A lawyer should never consent to handle a case unless (a) the client gives direct instructions, or (b) the case is assigned by a competent body or forwarded by another lawyer, or (c) instructions are given in any other manner permissible under the relevant local rules or regulations.
10. Lawyers shall at all times give clients a candid opinion on any case.

They shall render assistance with scrupulous care and diligence. This applies also if they are assigned as counsel for an indigent person.

Lawyers shall at any time be free to refuse to handle a case unless it is assigned by a competent body.

Lawyers should only withdraw from a case during its course for a good cause and if possible in such a manner that the client's interests are not adversely affected.

The loyal defence of a client's case may never cause advocates to be other than perfectly candid, subject to any right or privilege to the contrary which clients choose them to exercise, or knowingly to go against the law.

11. Lawyers shall, when in the client's interest, endeavour to reach a solution by settlement out of court rather than start legal proceedings.

Lawyers should never stir up litigation.

12. Lawyers should not acquire a financial interest in the subject matter of a case which they are conducting. Neither should they directly or indirectly acquire

property about which litigation is pending before the Court in which they practice.

13. Lawyers should never represent conflicting interests in litigation. In non-litigation matters, lawyers should do so only after having disclosed all conflicts or possible conflicts of interest to all parties concerned and only with their consent. This Rule also applies to all lawyers in a firm.
14. Lawyers should never disclose, unless lawfully ordered to do so by the Court or as required by Statute, what has been communicated to them in their capacity as lawyers even after they have ceased to be the client's counsel. This duty extends to their partners, to junior lawyers assisting them and to their employees.
15. In pecuniary matters lawyers shall be most punctual and diligent. They should never mingle funds of others with their own and they should at all times be able to refund money they hold for others.

They shall not retain money they receive for their clients for longer than is absolutely necessary.

16. Lawyers may require that a deposit is made to cover their expenses, but the deposit should be in accordance with the estimated amount of their charges and the probable expenses and labour required.
17. Lawyers shall never forget that they should put first not their right to compensation for their services, but the interests of their clients and the exigencies of the administration of justice.

The lawyer's right to ask for a deposit or to demand payment of out-of-pocket expenses and commitments, failing payment of which they may withdraw from the case or refuse to handle it, should never be exercised at a moment at which the client may be unable to find other assistance in time to prevent irreparable damage being done.

Lawyers' fees should, in the absence or non-applicability of official scales, be fixed on a consideration of the amount involved in the controversy and the interest of it to the client, the time and labour involved and all other personal and factual circumstances of the case.

18. A contract for a contingent fee where sanctioned by the law or by professional rules and practice should be reasonable under all circumstances of the case, including the risk and uncertainty of the compensation and subject to supervision of a court as to its reasonableness.
19. Lawyers who engage a foreign colleague to advise on a case or to co-operate in handling it, are responsible for the payment of the latter's charges except express agreement to the contrary. When lawyers direct a client to a foreign colleague they are not responsible for the payment of the latter's charges, but neither are they entitled to a share of the fee of his foreign colleague.

20. Lawyers should not permit their professional services or their names to be used in any way which would make it possible for persons to practice law who are not legally authorised to do so.

Lawyers shall not delegate to a legally unqualified person not in their employ and control any functions which are by the law or custom of the country in which they practice only to be performed by a qualified lawyer.



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Représentant les avocats d'Europe
Representing Europe's lawyers

CODE OF CONDUCT FOR EUROPEAN LAWYERS

Conseil des barreaux européens - Council of Bars and Law Societies of Europe
association internationale sans but lucratif

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This Code of Conduct for European Lawyers was originally adopted at the CCBE Plenary Session held on 28 October 1988, and subsequently amended during the CCBE Plenary Sessions on 28 November 1998, 6 December 2002 and 19 May 2006. The Code includes an Explanatory Memorandum which was updated during the CCBE Plenary Session on 19 May 2006.

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1. PREAMBLE

1.1. The Function of the Lawyer in Society

In a society founded on respect for the rule of law the lawyer fulfils a special role. The lawyer's duties do not begin and end with the faithful performance of what he or she is instructed to do so far as the law permits. A lawyer must serve the interests of justice as well as those whose rights and liberties he or she is trusted to assert and defend and it is the lawyer's duty not only to plead the client's cause but to be the client's adviser. Respect for the lawyer's professional function is an essential condition for the rule of law and democracy in society.

A lawyer's function therefore lays on him or her a variety of legal and moral obligations (sometimes appearing to be in conflict with each other) towards:

- the client;
- the courts and other authorities before whom the lawyer pleads the client's cause or acts on the client's behalf;
- the legal profession in general and each fellow member of it in particular;
- the public for whom the existence of a free and independent profession, bound together by respect for rules made by the profession itself, is an essential means of safeguarding human rights in face of the power of the state and other interests in society.

1.2. The Nature of Rules of Professional Conduct

1.2.1. Rules of professional conduct are designed through their willing acceptance by those to whom they apply to ensure the proper performance by the lawyer of a function which is recognised as essential in all civilised societies. The failure of the lawyer to observe these rules may result in disciplinary sanctions.

1.2.2. The particular rules of each Bar or Law Society arise from its own traditions. They are adapted to the organisation and sphere of activity of the profession in the Member State concerned and to its judicial and administrative procedures and to its national legislation. It is neither possible nor desirable that they should be taken out of their context nor that an attempt should be made to give general application to rules which are inherently incapable of such application.

The particular rules of each Bar and Law Society nevertheless are based on the same values and in most cases demonstrate a common foundation.

1.3. The Purpose of the Code

1.3.1. The continued integration of the European Union and European Economic Area and the increasing frequency of the cross-border activities of lawyers within the European Economic Area have made necessary in the public interest the statement of common rules which apply to all lawyers from the European Economic Area whatever Bar or Law Society they belong to in relation to their cross-border practice. A particular purpose of the statement of those rules is to mitigate the difficulties which result from the application of "double deontology", notably as set out in Articles 4 and 7.2 of Directive 77/249/EEC and Articles 6 and 7 of Directive 98/5/EC.

1.3.2. The organisations representing the legal profession through the CCBE propose that the rules codified in the following articles:

- be recognised at the present time as the expression of a consensus of all the Bars and Law Societies of the European Union and European Economic Area;
- be adopted as enforceable rules as soon as possible in accordance with national or EEA procedures in relation to the cross-border activities of the lawyer in the European Union and European Economic Area;
- be taken into account in all revisions of national rules of deontology or professional practice with a view to their progressive harmonisation.

They further express the wish that the national rules of deontology or professional practice be interpreted and applied whenever possible in a way consistent with the rules in this Code.

After the rules in this Code have been adopted as enforceable rules in relation to a lawyer's cross-border activities the lawyer will remain bound to observe the rules of the Bar or Law Society to which he or she belongs to the extent that they are consistent with the rules in this Code.

1.4. Field of Application *Ratione Personae*

This Code shall apply to lawyers as they are defined by Directive 77/249/EEC and by Directive 98/5/EC and to lawyers of the Observer Members of the CCBE.

1.5. Field of Application *Ratione Materiae*

Without prejudice to the pursuit of a progressive harmonisation of rules of deontology or professional practice which apply only internally within a Member State, the following rules shall apply to the cross-border activities of the lawyer within the European Union and the European Economic Area. Cross-border activities shall mean:

- (a) all professional contacts with lawyers of Member States other than the lawyer's own;
- (b) the professional activities of the lawyer in a Member State other than his or her own, whether or not the lawyer is physically present in that Member State.

1.6. Definitions

In this Code:

"Member State" means a member state of the European Union or any other state whose legal profession is included in Article 1.4.

"Home Member State" means the Member State where the lawyer acquired the right to bear his or her professional title.

"Host Member State" means any other Member State where the lawyer carries on cross-border activities.

"Competent Authority" means the professional organisation(s) or authority(ies) of the Member State concerned responsible for the laying down of rules of professional conduct and the administration of discipline of lawyers.

"Directive 77/249/EEC" means Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services.

"Directive 98/5/EC" means Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained.

2. GENERAL PRINCIPLES

2.1. Independence

- 2.1.1. The many duties to which a lawyer is subject require the lawyer's absolute independence, free from all other influence, especially such as may arise from his or her personal interests or external pressure. Such independence is as necessary to trust in the process of justice as the impartiality of the judge. A lawyer must therefore avoid any impairment of his or her independence and be careful not to compromise his or her professional standards in order to please the client, the court or third parties.
- 2.1.2. This independence is necessary in non-contentious matters as well as in litigation. Advice given by a lawyer to the client has no value if the lawyer gives it only to ingratiate him- or herself, to serve his or her personal interests or in response to outside pressure.

2.2. Trust and Personal Integrity

Relationships of trust can only exist if a lawyer's personal honour, honesty and integrity are beyond doubt. For the lawyer these traditional virtues are professional obligations.

2.3. Confidentiality

- 2.3.1. It is of the essence of a lawyer's function that the lawyer should be told by his or her client things which the client would not tell to others, and that the lawyer should be the recipient of other information on a basis of confidence. Without the certainty of confidentiality there cannot be trust. Confidentiality is therefore a primary and fundamental right and duty of the lawyer.
- The lawyer's obligation of confidentiality serves the interest of the administration of justice as well as the interest of the client. It is therefore entitled to special protection by the State.
- 2.3.2. A lawyer shall respect the confidentiality of all information that becomes known to the lawyer in the course of his or her professional activity.
- 2.3.3. The obligation of confidentiality is not limited in time.
- 2.3.4. A lawyer shall require his or her associates and staff and anyone engaged by him or her in the course of providing professional services to observe the same obligation of confidentiality.

2.4. Respect for the Rules of Other Bars and Law Societies

When practising cross-border, a lawyer from another Member State may be bound to comply with the professional rules of the Host Member State. Lawyers have a duty to inform themselves as to the rules which will affect them in the performance of any particular activity.

Member organisations of the CCBE are obliged to deposit their codes of conduct at the Secretariat of the CCBE so that any lawyer can get hold of the copy of the current code from the Secretariat.

2.5. Incompatible Occupations

- 2.5.1. In order to perform his or her functions with due independence and in a manner which is consistent with his or her duty to participate in the administration of justice a lawyer may be prohibited from undertaking certain occupations.
- 2.5.2. A lawyer who acts in the representation or the defence of a client in legal proceedings or before any public authorities in a Host Member State shall there observe the rules regarding incompatible occupations as they are applied to lawyers of the Host Member State.
- 2.5.3. A lawyer established in a Host Member State in which he or she wishes to participate directly in commercial or other activities not connected with the practice of the law shall respect the rules regarding forbidden or incompatible occupations as they are applied to lawyers of that Member State.

2.6. Personal Publicity

- 2.6.1. A lawyer is entitled to inform the public about his or her services provided that the information is accurate and not misleading, and respectful of the obligation of confidentiality and other core values of the profession.
- 2.6.2. Personal publicity by a lawyer in any form of media such as by press, radio, television, by electronic commercial communications or otherwise is permitted to the extent it complies with the requirements of 2.6.1.

2.7. The Client's Interest

Subject to due observance of all rules of law and professional conduct, a lawyer must always act in the best interests of the client and must put those interests before the lawyer's own interests or those of fellow members of the legal profession.

2.8. Limitation of Lawyer's Liability towards the Client

To the extent permitted by the law of the Home Member State and the Host Member State, the lawyer may limit his or her liabilities towards the client in accordance with the professional rules to which the lawyer is subject.

3. RELATIONS WITH CLIENTS

3.1. Acceptance and Termination of Instructions

- 3.1.1. A lawyer shall not handle a case for a party except on that party's instructions. The lawyer may, however, act in a case in which he or she has been instructed by another lawyer acting for the party or where the case has been assigned to him or her by a competent body.

The lawyer should make reasonable efforts to ascertain the identity, competence and authority of the person or body who instructs him or her when the specific circumstances show that the identity, competence and authority are uncertain.

- 3.1.2. A lawyer shall advise and represent the client promptly, conscientiously and diligently. The lawyer shall undertake personal responsibility for the discharge of the client's instructions and shall keep the client informed as to the progress of the matter with which the lawyer has been entrusted.
- 3.1.3. A lawyer shall not handle a matter which the lawyer knows or ought to know he or she is not competent to handle, without cooperating with a lawyer who is competent to handle it.
- A lawyer shall not accept instructions unless he or she can discharge those instructions promptly having regard to the pressure of other work.
- 3.1.4. A lawyer shall not be entitled to exercise his or her right to withdraw from a case in such a way or in such circumstances that the client may be unable to find other legal assistance in time to prevent prejudice being suffered by the client.

3.2. Conflict of Interest

- 3.2.1. A lawyer may not advise, represent or act on behalf of two or more clients in the same matter if there is a conflict, or a significant risk of a conflict, between the interests of those clients.
- 3.2.2. A lawyer must cease to act for both or all of the clients concerned when a conflict of interests arises between those clients and also whenever there is a risk of a breach of confidence or where the lawyer's independence may be impaired.
- 3.2.3. A lawyer must also refrain from acting for a new client if there is a risk of breach of a confidence entrusted to the lawyer by a former client or if the knowledge which the lawyer possesses of the affairs of the former client would give an undue advantage to the new client.
- 3.2.4. Where lawyers are practising in association, paragraphs 3.2.1 to 3.2.3 above shall apply to the association and all its members.

3.3. Pactum de Quota Litis

- 3.3.1. A lawyer shall not be entitled to make a *pactum de quota litis*.
- 3.3.2. By "*pactum de quota litis*" is meant an agreement between a lawyer and the client entered into prior to final conclusion of a matter to which the client is a party, by virtue of which the client undertakes to pay the lawyer a share of the result regardless of whether this is represented by a sum of money or by any other benefit achieved by the client upon the conclusion of the matter.
- 3.3.3. "*Pactum de quota litis*" does not include an agreement that fees be charged in proportion to the value of a matter handled by the lawyer if this is in accordance with an officially approved fee scale or under the control of the Competent Authority having jurisdiction over the lawyer.

3.4. Regulation of Fees

A fee charged by a lawyer shall be fully disclosed to the client, shall be fair and reasonable, and shall comply with the law and professional rules to which the lawyer is subject.

3.5. Payment on Account

If a lawyer requires a payment on account of his or her fees and/or disbursements such payment should not exceed a reasonable estimate of the fees and probable disbursements involved.

Failing such payment, a lawyer may withdraw from the case or refuse to handle it, but subject always to paragraph 3.1.4 above.

3.6. Fee Sharing with Non-Lawyers

- 3.6.1. A lawyer may not share his or her fees with a person who is not a lawyer except where an association between the lawyer and the other person is permitted by the laws and the professional rules to which the lawyer is subject.
- 3.6.2. The provisions of 3.6.1 above shall not preclude a lawyer from paying a fee, commission or other compensation to a deceased lawyer's heirs or to a retired lawyer in respect of taking over the deceased or retired lawyer's practice.

3.7. Cost of Litigation and Availability of Legal Aid

- 3.7.1. The lawyer should at all times strive to achieve the most cost effective resolution of the client's dispute and should advise the client at appropriate stages as to the desirability of attempting a settlement and/or a reference to alternative dispute resolution.
- 3.7.2. A lawyer shall inform the client of the availability of legal aid where applicable.

3.8. Client Funds

- 3.8.1. Lawyers who come into possession of funds on behalf of their clients or third parties (hereinafter called "client funds") have to deposit such money into an account of a bank or similar institution subject to supervision by a public authority (hereinafter called a "client account"). A client account shall be separate from any other account of the lawyer. All client funds received by a lawyer should be deposited into such an account unless the owner of such funds agrees that the funds should be dealt with otherwise.
- 3.8.2. The lawyer shall maintain full and accurate records showing all the lawyer's dealings with client funds and distinguishing client funds from other funds held by the lawyer. Records may have to be kept for a certain period of time according to national rules.
- 3.8.3. A client account cannot be in debit except in exceptional circumstances as expressly permitted in national rules or due to bank charges, which cannot be influenced by the lawyer. Such an account cannot be given as a guarantee or be used as a security for any reason. There shall not be any set-off or merger between a client account and any other bank account, nor shall

the client funds in a client account be available to defray money owed by the lawyer to the bank.

- 3.8.4. Client funds shall be transferred to the owners of such funds in the shortest period of time or under such conditions as are authorised by them.
- 3.8.5. The lawyer cannot transfer funds from a client account into the lawyer's own account for payment of fees without informing the client in writing.
- 3.8.6. The Competent Authorities in Member States shall have the power to verify and examine any document regarding client funds, whilst respecting the confidentiality or legal professional privilege to which it may be subject.

3.9. Professional Indemnity Insurance

- 3.9.1. Lawyers shall be insured against civil legal liability arising out of their legal practice to an extent which is reasonable having regard to the nature and extent of the risks incurred by their professional activities.
- 3.9.2. Should this prove impossible, the lawyer must inform the client of this situation and its consequences.

4. RELATIONS WITH THE COURTS

4.1. Rules of Conduct in Court

A lawyer who appears, or takes part in a case, before a court or tribunal must comply with the rules of conduct applied before that court or tribunal.

4.2. Fair Conduct of Proceedings

A lawyer must always have due regard for the fair conduct of proceedings.

4.3. Demeanour in Court

A lawyer shall while maintaining due respect and courtesy towards the court defend the interests of the client honourably and fearlessly without regard to the lawyer's own interests or to any consequences to him- or herself or to any other person.

4.4. False or Misleading Information

A lawyer shall never knowingly give false or misleading information to the court.

4.5. Extension to Arbitrators etc.

The rules governing a lawyer's relations with the courts apply also to the lawyer's relations with arbitrators and any other persons exercising judicial or quasi-judicial functions, even on an occasional basis.

5. RELATIONS BETWEEN LAWYERS

5.1. Corporate Spirit of the Profession

5.1.1. The corporate spirit of the profession requires a relationship of trust and co-operation between lawyers for the benefit of their clients and in order to avoid unnecessary litigation and other behaviour harmful to the reputation of the profession. It can, however, never justify setting the interests of the profession against those of the client.

5.1.2. A lawyer should recognise all other lawyers of Member States as professional colleagues and act fairly and courteously towards them.

5.2. Co-operation among Lawyers of Different Member States

5.2.1. It is the duty of a lawyer who is approached by a colleague from another Member State not to accept instructions in a matter which the lawyer is not competent to undertake. The lawyer should in such case be prepared to help that colleague to obtain the information necessary to enable him or her to instruct a lawyer who is capable of providing the service asked for.

5.2.2. Where a lawyer of a Member State co-operates with a lawyer from another Member State, both have a general duty to take into account the differences which may exist between their respective legal systems and the professional organisations, competences and obligations of lawyers in the Member States concerned.

5.3. Correspondence between Lawyers

5.3.1. If a lawyer intends to send communications to a lawyer in another Member State, which the sender wishes to remain confidential or without prejudice he or she should clearly express this intention prior to communicating the documents.

5.3.2. If the prospective recipient of the communications is unable to ensure their status as confidential or without prejudice he or she should inform the sender accordingly without delay.

5.4. Referral Fees

5.4.1. A lawyer may not demand or accept from another lawyer or any other person a fee, commission or any other compensation for referring or recommending the lawyer to a client.

5.4.2. A lawyer may not pay anyone a fee, commission or any other compensation as a consideration for referring a client to him- or herself.

5.5. Communication with Opposing Parties

A lawyer shall not communicate about a particular case or matter directly with any person whom he or she knows to be represented or advised in the case or matter by another lawyer, without the consent of that other lawyer (and shall keep the other lawyer informed of any such communications).

5.6. (Deleted by decision of the Plenary Session in Dublin on 6 December 2002)

5.7. Responsibility for Fees

In professional relations between members of Bars of different Member States, where a lawyer does not confine him- or herself to recommending another lawyer or introducing that other lawyer to the client but instead him- or herself entrusts a correspondent with a particular matter or seeks the correspondent's advice, the instructing lawyer is personally bound, even if the client is insolvent, to pay the fees, costs and outlays which are due to the foreign correspondent. The lawyers concerned may, however, at the outset of the relationship between them make special arrangements on this matter. Further, the instructing lawyer may at any time limit his or her personal responsibility to the amount of

the fees, costs and outlays incurred before intimation to the foreign lawyer of the instructing lawyer's disclaimer of responsibility for the future.

5.8. Continuing Professional Development

Lawyers should maintain and develop their professional knowledge and skills taking proper account of the European dimension of their profession.

5.9. Disputes amongst Lawyers in Different Member States

- 5.9.1. If a lawyer considers that a colleague in another Member State has acted in breach of a rule of professional conduct the lawyer shall draw the matter to the attention of that colleague.
- 5.9.2. If any personal dispute of a professional nature arises amongst lawyers in different Member States they should if possible first try to settle it in a friendly way.
- 5.9.3. A lawyer shall not commence any form of proceedings against a colleague in another Member State on matters referred to in 5.9.1 or 5.9.2 above without first informing the Bars or Law Societies to which they both belong for the purpose of allowing both Bars or Law Societies concerned an opportunity to assist in reaching a settlement.

EXPLANATORY MEMORANDUM

This Explanatory Memorandum was prepared at the request of the CCBE Standing Committee by the CCBE's deontology working party, who were responsible for drafting the first version of the Code of Conduct itself. It seeks to explain the origin of the provisions of the Code, to illustrate the problems which they are designed to resolve, particularly in relation to cross-border activities, and to provide assistance to the Competent Authorities in the Member States in the application of the Code. It is not intended to have any binding force in the interpretation of the Code. The Explanatory Memorandum was updated on the occasion of the CCBE Plenary Session on 19 May 2006.

The original versions of the Code are in the French and English languages. Translations into other Community languages are prepared under the authority of the national delegations.

Commentary on Article 1.1 – The Function of the Lawyer in Society

The Declaration of Perugia, adopted by the CCBE in 1977, laid down the fundamental principles of professional conduct applicable to lawyers throughout the EC. The provisions of Article 1.1 reaffirm the statement in the Declaration of Perugia of the function of the lawyer in society which forms the basis for the rules governing the performance of that function.

Commentary on Article 1.2 – The Nature of Rules of Professional Conduct

These provisions substantially restate the explanation in the Declaration of Perugia of the nature of rules of professional conduct and how particular rules depend on particular local circumstances but are nevertheless based on common values.

Commentary on Article 1.3 – The Purpose of the Code

These provisions introduce the development of the principles in the Declaration of Perugia into a specific Code of Conduct for lawyers throughout the EU and the EEA, and lawyers of the Observer Members of the CCBE, with particular reference to their cross-border activities (defined in Article 1.5). The provisions of Article 1.3.2 lay down the specific intentions of the CCBE with regard to the substantive provisions in the Code.

Commentary on Article 1.4 – Field of Application Ratione Personae

The rules are stated to apply to all lawyers as defined in the Lawyers Services Directive of 1977 and the Lawyers Establishment Directive of 1998, and lawyers of the Observer Members of the CCBE. This includes lawyers of the states which subsequently acceded to the Directives, whose names have been added by amendment to the Directives. The Code accordingly applies to all the lawyers represented on the CCBE, whether as full Members or as Observer Members, namely:

Austria	Rechtsanwalt;
Belgium	avocat / advocaat / Rechtsanwalt;
Bulgaria	advokat;
Croatia	odvjetnik;
Cyprus	dikegóros;
Czech Republic	advokát;
Denmark	advokat;
Estonia	vandeadvokaat;
Finland	asianajaja / advokat;
FYROMacedonia	advokat;
France	avocat;
Germany	Rechtsanwalt;
Greece	dikegóros;
Hungary	ügyvéd;
Iceland	lögmaður;
Ireland	barrister, solicitor;
Italy	avvocato;
Latvia	zvērīnāts advokāts;
Liechtenstein	Rechtsanwalt;
Lithuania	advokatas;
Luxembourg	avocat / Rechtsanwalt;
Malta	avukat, prokuratur legali;
Netherlands	advocaat;
Norway	advokat;
Poland	adwokat, radca prawny;
Portugal	advogado;
Romania	avocat;
Slovakia	advokát / advokátka;
Slovenia	odvetnik / odvetnica;
Spain	abogado / advocat / abokatu / abogado;
Sweden	advokat;
Switzerland	Rechtsanwalt / Anwalt / Fürsprech / Fürsprecher / avocat / avvocato /advokat;
Turkey	avukat;
Ukraine	advocate;
United Kingdom	advocate, barrister, solicitor.

It is also hoped that the Code will be acceptable to the legal professions of other non-member states in Europe and elsewhere so that it could also be applied by appropriate conventions between them and the Member States.

Commentary on Article 1.5 – Field of Application Ratione Materiae

The rules are here given direct application only to “cross-border activities”, as defined, of lawyers within the EU and the EEA and lawyers of the Observer Members of the CCBE - see above on Article 1.4, and the definition of “Member State” in Article 1.6. (See also above as to possible extensions in the future to lawyers of other states.) The definition of cross-border activities would, for example, include contacts in state A even on a matter of law internal to state A between a lawyer of state A and a lawyer of state B; it would exclude contacts between lawyers of state A in state A of a matter arising in state B, provided that none of their professional activities takes place in state B; it would include any activities of lawyers of state A in state B, even if only in the form of communications sent from state A to state B.

Commentary on Article 1.6 – Definitions

This provision defines a number of terms used in the Code, “Member State”, “Home Member State”, “Host Member State”, “Competent Authority”, “Directive 77/249/EEC” and “Directive 98/5/EC”.

The reference to “where the lawyer carries on cross-border activities” should be interpreted in the light of the definition of “cross-border activities” in Article 1.5.

Commentary on Article 2.1 – Independence

This provision substantially reaffirms the general statement of principle in the Declaration of Perugia.

Commentary on Article 2.2 – Trust and Personal Integrity

This provision also restates a general principle contained in the Declaration of Perugia.

Commentary on Article 2.3 – Confidentiality

This provision first restates, in Article 2.3.1, general principles laid down in the Declaration of Perugia and recognised by the ECJ in the *AM&S* case (157/79). It then, in Articles 2.3.2 to 4, develops them into a specific rule relating to the protection of confidentiality. Article 2.3.2 contains the basic rule requiring respect for confidentiality. Article 2.3.3 confirms that the obligation remains binding on the lawyer even if he or she ceases to act for the client in question. Article 2.3.4 confirms that the lawyer must not only respect the obligation of confidentiality him- or herself but must require all members and employees of his or her firm to do likewise.

Commentary on Article 2.4 – Respect for the Rules of Other Bars and Law Societies

Article 4 of the Lawyers Services Directive contains the provisions with regard to the rules to be observed by a lawyer from one Member State providing services on an occasional or temporary basis in another Member State by virtue of Article 49 of the consolidated EC treaty, as follows:

- (a) activities relating to the representation of a client in legal proceedings or before public authorities shall be pursued in each Host Member State under the conditions laid down for lawyers established in that state, with the exception of any conditions requiring residence, or registration with a professional organisation, in that state;
- (b) a lawyer pursuing these activities shall observe the rules of professional conduct of the Host Member State, without prejudice to the lawyer's obligations in the Member State from which he or she comes;
- (c) when these activities are pursued in the UK, "rules of professional conduct of the Host Member State" means the rules of professional conduct applicable to solicitors, where such activities are not reserved for barristers and advocates. Otherwise the rules of professional conduct applicable to the latter shall apply. However, barristers from Ireland shall always be subject to the rules of professional conduct applicable in the UK to barristers and advocates. When these activities are pursued in Ireland "rules of professional conduct of the Host Member State" means, in so far as they govern the oral presentation of a case in court, the rules of professional conduct applicable to barristers. In all other cases the rules of professional conduct applicable to solicitors shall apply. However, barristers and advocates from the UK shall

always be subject to the rules of professional conduct applicable in Ireland to barristers; and

- (d) a lawyer pursuing activities other than those referred to in (a) above shall remain subject to the conditions and rules of professional conduct of the Member State from which he or she comes without prejudice to respect for the rules, whatever their source, which govern the profession in the Host Member State, especially those concerning the incompatibility of the exercise of the activities of a lawyer with the exercise of other activities in that state, professional secrecy, relations with other lawyers, the prohibition on the same lawyer acting for parties with mutually conflicting interests, and publicity. The latter rules are applicable only if they are capable of being observed by a lawyer who is not established in the Host Member State and to the extent to which their observance is objectively justified to ensure, in that state, the proper exercise of a lawyer's activities, the standing of the profession and respect for the rules concerning incompatibility.

The Lawyers Establishment Directive contains the provisions with regard to the rules to be observed by a lawyer from one Member State practising on a permanent basis in another Member State by virtue of Article 43 of the consolidated EC treaty, as follows:

- (a) irrespective of the rules of professional conduct to which he or she is subject in his or her Home Member State, a lawyer practising under his home-country professional title shall be subject to the same rules of professional conduct as lawyers practising under the relevant professional title of the Host Member State in respect of all the activities the lawyer pursues in its territory (Article 6.1);
- (b) the Host Member State may require a lawyer practising under his or her home-country professional title either to take out professional indemnity insurance or to become a member of a professional guarantee fund in accordance with the rules which that state lays down for professional activities pursued in its territory. Nevertheless, a lawyer practising under his or her home-country professional title shall be exempted from that requirement if the lawyer can prove that he or she is covered by insurance taken out or a guarantee provided in accordance with the rules of the Home Member State, insofar as such insurance or guarantee is equivalent in terms of the conditions and extent of cover. Where the equivalence is only partial, the Competent Authority in the Host Member State may require that additional insurance or an additional guarantee be contracted to cover the elements which are not already covered by the insurance or guarantee contracted in accordance with the rules of the Home Member State (Article 6.3); and

- (c) a lawyer registered in a Host Member State under his or her home-country professional title may practise as a salaried lawyer in the employ of another lawyer, an association or firm of lawyers, or a public or private enterprise to the extent that the Host Member State so permits for lawyers registered under the professional title used in that state (Article 8).

In cases not covered by either of these Directives, or over and above the requirements of these Directives, the obligations of a lawyer under Community law to observe the rules of other Bars and Law Societies are a matter of interpretation of any relevant provision, such as the Directive on Electronic Commerce (2000/31/EC). A major purpose of the Code is to minimise, and if possible eliminate altogether, the problems which may arise from "double deontology", that is the application of more than one set of potentially conflicting national rules to a particular situation (see Article 1.3.1).

Commentary on Article 2.5 – Incompatible Occupations

There are differences both between and within Member States on the extent to which lawyers are permitted to engage in other occupations, for example in commercial activities. The general purpose of rules excluding a lawyer from other occupations is to protect the lawyer from influences which might impair the lawyer's independence or his or her role in the administration of justice. The variations in these rules reflect different local conditions, different perceptions of the proper function of lawyers and different techniques of rule-making. For instance in some cases there is a complete prohibition of engagement in certain named occupations, whereas in other cases engagement in other occupations is generally permitted, subject to observance of specific safeguards for the lawyer's independence.

Articles 2.5.2 and 3 make provision for different circumstances in which a lawyer of one Member State is engaging in cross-border activities (as defined in Article 1.5) in a Host Member State when he or she is not a member of the Host State legal profession.

Article 2.5.2 imposes full observation of Host State rules regarding incompatible occupations on the lawyer acting in national legal proceedings or before national public authorities in the Host State. This applies whether the lawyer is established in the Host State or not.

Article 2.5.3, on the other hand, imposes "respect" for the rules of the Host State regarding forbidden or incompatible occupations in other cases, but only where the lawyer who is established in the Host Member State wishes to participate directly in commercial or other activities not connected with the practice of the law.

Commentary on Article 2.6 – Personal Publicity

The term "personal publicity" covers publicity by firms of lawyers, as well as individual lawyers, as opposed to corporate publicity organised by Bars and Law Societies for their members as a whole. The rules governing personal publicity by lawyers vary considerably in the Member States. Article 2.6 makes it clear that there is no overriding objection to personal publicity in cross-border practice. However, lawyers are nevertheless subject to prohibitions or restrictions laid down by their home professional rules, and a lawyer will still be subject to prohibitions or restrictions laid down by Host State rules when these are binding on the lawyer by virtue of the Lawyers Services Directive or the Lawyers Establishment Directive.

Commentary on Article 2.7 – The Client's Interest

This provision emphasises the general principle that the lawyer must always place the client's interests before the lawyer's own interests or those of fellow members of the legal profession.

Commentary on Article 2.8 – Limitation of Lawyer's Liability towards the Client

This provision makes clear that there is no overriding objection to limiting a lawyer's liability towards his or her client in cross-border practice, whether by contract or by use of a limited company, limited partnership or limited liability partnership. However it points out that this can only be contemplated where the relevant law and the relevant rules of conduct permit - and in a number of jurisdictions the law or the professional rules prohibit or restrict such limitation of liability.

Commentary on Article 3.1 – Acceptance and Termination of Instructions

The provisions of Article 3.1.1 are designed to ensure that a relationship is maintained between lawyer and client and that the lawyer in fact receives instructions from the client, even though these may be transmitted through a duly authorised intermediary. It is the responsibility of the lawyer to satisfy him- or herself as to the authority of the intermediary and the wishes of the client.

Article 3.1.2 deals with the manner in which the lawyer should carry out his or her duties. The provision that the lawyer shall undertake personal responsibility for the discharge of the instructions given to him or her

means that the lawyer cannot avoid responsibility by delegation to others. It does not prevent the lawyer from seeking to limit his or her legal liability to the extent that this is permitted by the relevant law or professional rules - see Article 2.8.

Article 3.1.3 states a principle which is of particular relevance in cross-border activities, for example when a lawyer is asked to handle a matter on behalf of a lawyer or client from another state who may be unfamiliar with the relevant law and practice, or when a lawyer is asked to handle a matter relating to the law of another state with which he or she is unfamiliar.

A lawyer generally has the right to refuse to accept instructions in the first place, but Article 3.1.4 states that, having once accepted them, the lawyer has an obligation not to withdraw without ensuring that the client's interests are safeguarded.

Commentary on Article 3.2 – Conflict of Interest

The provisions of Article 3.2.1 do not prevent a lawyer acting for two or more clients in the same matter provided that their interests are not in fact in conflict and that there is no significant risk of such a conflict arising. Where a lawyer is already acting for two or more clients in this way and subsequently there arises a conflict of interests between those clients or a risk of a breach of confidence or other circumstances where the lawyer's independence may be impaired, then the lawyer must cease to act for both or all of them.

There may, however, be circumstances in which differences arise between two or more clients for whom the same lawyer is acting where it may be appropriate for the lawyer to attempt to act as a mediator. It is for the lawyer in such cases to use his or her own judgement on whether or not there is such a conflict of interest between them as to require the lawyer to cease to act. If not, the lawyer may consider whether it would be appropriate to explain the position to the clients, obtain their agreement and attempt to act as mediator to resolve the difference between them, and only if this attempt to mediate should fail, to cease to act for them.

Article 3.2.4 applies the foregoing provisions of Article 3 to lawyers practising in association. For example a firm of lawyers should cease to act when there is a conflict of interest between two clients of the firm, even if different lawyers in the firm are acting for each client. On the other hand, exceptionally, in the "chambers" form of association used by English barristers, where each lawyer acts for clients individually, it is possible for different lawyers in the association to act for clients with opposing interests.

Commentary on Article 3.3 – Pactum de Quota Litis

These provisions reflect the common position in all Member States that an unregulated agreement for contingency fees (*pactum de quota litis*) is contrary to the proper administration of justice because it encourages speculative litigation and is liable to be abused. The provisions are not, however, intended to prevent the maintenance or introduction of arrangements under which lawyers are paid according to results or only if the action or matter is successful, provided that these arrangements are under sufficient regulation and control for the protection of the client and the proper administration of justice.

Commentary on Article 3.4 – Regulation of Fees

Article 3.4 lays down three requirements: a general standard of disclosure of a lawyer's fees to the client, a requirement that they should be fair and reasonable in amount, and a requirement to comply with the applicable law and professional rules.

In many Member States machinery exists for regulating lawyers' fees under national law or rules of conduct, whether by reference to a power of adjudication by the Bar authorities or otherwise. In situations governed by the Lawyers Establishment Directive, where the lawyer is subject to Host State rules as well as the rules of the Home State, the basis of charging may have to comply with both sets of rules.

Commentary on Article 3.5 – Payment on Account

Article 3.5 assumes that a lawyer may require a payment on account of the lawyer's fees and/or disbursements, but sets a limit by reference to a reasonable estimate of them. See also on Article 3.1.4 regarding the right to withdraw.

Commentary on Article 3.6 – Fee Sharing with Non-Lawyers

In some Member States lawyers are permitted to practise in association with members of certain other approved professions, whether legal professions or not. The provisions of Article 3.6.1 are not designed to prevent fee sharing within such an approved form of association. Nor are the provisions designed to prevent fee sharing by the lawyers to whom the Code applies (see on Article 1.4 above) with other "lawyers", for example

lawyers from non-Member States or members of other legal professions in the Member States such as notaries.

Commentary on Article 3.7 – Cost of Litigation and Availability of Legal Aid

Article 3.7.1 stresses the importance of attempting to resolve disputes in a way which is cost-effective for the client, including advising on whether to attempt to negotiate a settlement, and whether to propose referring the dispute to some form of alternative dispute resolution.

Article 3.7.2 requires a lawyer to inform the client of the availability of legal aid where applicable. There are widely differing provisions in the Member States on the availability of legal aid. In cross-border activities a lawyer should have in mind the possibility that the legal aid provisions of a national law with which the lawyer is unfamiliar may be applicable.

Commentary on Article 3.8 – Client Funds

The provisions of Article 3.8 reflect the recommendation adopted by the CCBE in Brussels in November 1985 on the need for minimum regulations to be made and enforced governing the proper control and disposal of clients' funds held by lawyers within the Community. Article 3.8 lays down minimum standards to be observed, while not interfering with the details of national systems which provide fuller or more stringent protection for clients' funds.

The lawyer who holds clients' funds, even in the course of a cross-border activity, has to observe the rules of his or her home Bar. The lawyer needs to be aware of questions which arise where the rules of more than one Member State may be applicable, especially where the lawyer is established in a Host State under the Lawyers Establishment Directive.

Commentary on Article 3.9 – Professional Indemnity Insurance

Article 3.9.1 reflects a recommendation, also adopted by the CCBE in Brussels in November 1985, on the need for all lawyers in the Community to be insured against the risks arising from professional negligence claims against them.

Article 3.9.2 deals with the situation where insurance cannot be obtained on the basis set out in Article 3.9.1.

Commentary on Article 4.1 – Rules of Conduct in Court

This provision applies the principle that a lawyer is bound to comply with the rules of the court or tribunal before which the lawyer practises or appears.

Commentary on Article 4.2 – Fair Conduct of Proceedings

This provision applies the general principle that in adversarial proceedings a lawyer must not attempt to take unfair advantage of his or her opponent. The lawyer must not, for example, make contact with the judge without first informing the lawyer acting for the opposing party or submit exhibits, notes or documents to the judge without communicating them in good time to the lawyer on the other side unless such steps are permitted under the relevant rules of procedure. To the extent not prohibited by law a lawyer must not divulge or submit to the court any proposals for settlement of the case made by the other party or its lawyer without the express consent of the other party's lawyer. See also on Article 4.5 below.

Commentary on Article 4.3 – Demeanour in Court

This provision reflects the necessary balance between respect for the court and for the law on the one hand and the pursuit of the client's best interest on the other.

Commentary on Article 4.4 – False or Misleading Information

This provision applies the principle that the lawyer must never knowingly mislead the court. This is necessary if there is to be trust between the courts and the legal profession.

Commentary on Article 4.5 – Extension to Arbitrators etc.

This provision extends the preceding provisions relating to courts and other bodies exercising judicial or quasi-judicial functions.

Commentary on Article 5.1 – Corporate Spirit of the Profession

These provisions, which are based on statements in the Declaration of Perugia, emphasise that it is in the public interest for the legal profession to maintain a relationship of trust and cooperation between its members. However, this cannot be used to justify setting the interests of the profession against those of justice or of clients (see also on Article 2.7).

Commentary on Article 5.2 – Co-operation among Lawyers of Different Member States

This provision also develops a principle stated in the Declaration of Perugia with a view to avoiding misunderstandings in dealings between lawyers of different Member States.

Commentary on Article 5.3 – Correspondence between Lawyers

In certain Member States communications between lawyers (written or by word of mouth) are normally regarded as to be kept confidential as between the lawyers. This means that the content of these communications cannot be disclosed to others, cannot normally be passed to the lawyers' clients, and at any event cannot be produced in court. In other Member States, such consequences will not follow unless the correspondence is marked as "confidential".

In yet other Member States, the lawyer has to keep the client fully informed of all relevant communications from a professional colleague acting for another party, and marking a letter as "confidential" only means that it is a legal matter intended for the recipient lawyer and his or her client, and not to be misused by third parties.

In some states, if a lawyer wishes to indicate that a letter is sent in an attempt to settle a dispute, and is not to be produced in a court, the lawyer should mark the letter as "without prejudice".

These important national differences give rise to many misunderstandings. That is why lawyers must be very careful in conducting cross-border correspondence.

Whenever a lawyer wants to send a letter to a professional colleague in another Member State on the basis that it is to be kept confidential as between the lawyers, or that it is "without prejudice", the lawyer should ask in advance whether the letter can be accepted on that basis. A lawyer wishing that a communication should be accepted on such a

basis must express that clearly at the head of the communication or in a covering letter.

A lawyer who is the intended recipient of such a communication, but who is not in a position to respect, or to ensure respect for, the basis on which it is to be sent, must inform the sender immediately so that the communication is not sent. If the communication has already been received, the recipient must return it to the sender without revealing its contents or referring to it in any way; if the recipient's national law or rules prevent the recipient from complying with this requirement, he or she must inform the sender immediately.

Commentary on Article 5.4 – Referral Fees

This provision reflects the principle that a lawyer should not pay or receive payment purely for the reference of a client, which would risk impairing the client's free choice of lawyer or the client's interest in being referred to the best available service. It does not prevent fee-sharing arrangements between lawyers on a proper basis (see also on Article 3.6 above).

In some Member States lawyers are permitted to accept and retain commissions in certain cases provided the client's best interests are served, there is full disclosure to the client and the client has consented to the retention of the commission. In such cases the retention of the commission by the lawyer represents part of the lawyer's remuneration for the service provided to the client and is not within the scope of the prohibition on referral fees which is designed to prevent lawyers making a secret profit.

Commentary on Article 5.5 – Communication with Opposing Parties

This provision reflects a generally accepted principle, and is designed both to promote the smooth conduct of business between lawyers and to prevent any attempt to take advantage of the client of another lawyer.

Commentary on Article 5.6 – Change of Lawyer

Article 5.6 dealt with change of lawyer. It was deleted from the Code on 6 December 2002.

Commentary on Article 5.7 – Responsibility for Fees

These provisions substantially reaffirm provisions contained in the Declaration of Perugia. Since misunderstandings about responsibility for unpaid fees are a common cause of difference between lawyers of different Member States, it is important that a lawyer who wishes to exclude or limit his or her personal obligation to be responsible for the fees of a foreign colleague should reach a clear agreement on this at the outset of the transaction.

Commentary on Article 5.8 – Continuing Professional Development

Keeping abreast of developments in the law is a professional obligation. In particular it is essential that lawyers are aware of the growing impact of European law on their field of practice.

Commentary on Article 5.9 – Disputes amongst Lawyers in Different Member States

A lawyer has the right to pursue any legal or other remedy to which he or she is entitled against a colleague in another Member State. Nevertheless it is desirable that, where a breach of a rule of professional conduct or a dispute of a professional nature is involved, the possibilities of friendly settlement should be exhausted, if necessary with the assistance of the Bars or Law Societies concerned, before such remedies are exercised.