

THE LAW SOCIETY OF JERSEY CODE OF CONDUCT

INTRODUCTION

The Code of Conduct was adopted by The Law Society of Jersey by Resolution duly passed at an Extraordinary General Meeting held on 7 November 2016.

The Code is effective from 1 January 2017 and replaces all previous versions. The terms and provisions of previous versions shall apply only in relation to any act or omission which occurred during the period of time during which that version of the Code of Conduct was in force.

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GLOSSARY OF TERMS

Except where the context otherwise requires:

Accounts Rules – The Law Society of Jersey Accounts Rules [date] [as from time to time in force].

Advocate – a person admitted to the Jersey Bar in accordance with Article 8 of the Advocates and Solicitors (Jersey) Law 1997.

Bye-Laws – The Law Society of Jersey Bye-Laws.

Client – an individual or company or other corporate body or other entity for whom or on whose behalf a member or firm is engaged to provide legal services.

Client care information – as defined in G.1.13.

Code – this Code of Conduct.

costs – includes fees.

Court – the Royal Court of Jersey [or any other court with jurisdiction in Jersey recognised or established by the law of Jersey].

CPD – as defined in R.7.7.

employee – employee of a member, or of his/her [law] firm, or of the firm's service company and in relation to a member or members the expressions "his employee(s)", "her employee(s)" and "their employee(s)" shall be construed accordingly, so that for example the expression "his employee(s)" includes the employees of that member, and/or the employee(s) of his firm, and/or the employee(s) of his firm's service company.

firm – includes sole practitioners, general partnerships, limited liability partnerships or other legal services bodies as defined in The Law Society of Jersey Law 2005, and any formal or informal association of members, including chambers, such an association being constituted where there is use of a common name and shared premises or address, or shared systems and/or other services.

informed written consent – a confirmation in writing, by a client or clients, permitting a member or firm to act or continue to act in a matter where there exists a conflict or potential conflict of interest and where the relevant issues and risks have been explained to the clients and there is a reasonable belief that the clients understand those issues and risks.

Legal Aid Guidelines – guidelines approved by the Law Society of Jersey which govern the operation of the Legal Aid scheme in Jersey.

legal services – the services of acting for or on behalf of a client where the work done or to be done requires legal education and training, but including any other service provided by a firm that carries out or holds itself out as carrying out work of the kind referred to in the first part of this definition.

limited liability partnership or LLP – a limited liability partnership registered under the Limited Liability Partnerships (Jersey) Law 1997.

member – ordinary member of The Law Society.

practitioner – a Jersey advocate or Jersey solicitor.

Principle or P. – a principle set out at the beginning of this Code.

professional client – a client who is a professional person or firm who instructs a member or his/her firm on behalf of, or with respect to the interests of, a client of that professional client.

Rule or R. – any rule set out in this Code.

sole practitioner – a practice which comprises only one member of the Law Society.

Solicitor – a person admitted as a solicitor in accordance with Article 8 of the Advocates and Solicitors (Jersey) Law 1997.

staff – employees of a member, or of his/her firm, or of the firm's service company [whether or not engaged in providing legal services].

terms of engagement – encompasses a letter of engagement or terms of business or any other document setting out the contractual relation between a member or his firm and a client.

INTERPRETATION

Ref.	
1.1	<p>In this Code [unless the context otherwise requires]:</p> <p>a) References to legislation:</p> <ul style="list-style-type: none">i) include any subordinate legislation (including regulations and orders) made under that legislation, whether before or after the date of adoption of this Code; andii) include a reference to such legislation as from time to time amended or re-enacted (whether before or after the date of adoption of this Code) and, where such legislation has re-enacted or replaced any other legislation, such other legislation, <p>and references to re-enactment include by way of consolidation or re-writing (whether with or without modification);</p> <p>b) References to law include reference to all applicable legislation and law in any part of the world, [and include all applicable rules and regulations, codes of practice, codes of conduct, handbooks, policy statements or other guidance (whether or not having the force of law) issued from time to time by any relevant authority];</p> <p>c) References to a "person" include a natural person, partnership, company, association, joint venture, consortium, organisation, foundation, trust, government or state (in each case whether or not having separate legal personality);</p> <p>d) References to a "company" include any company, corporation or other body corporate, wherever and however incorporated or established;</p> <p>e) The singular shall include the plural and <i>vice versa</i> and references to any gender or the neuter include a reference to the other gender and the neuter;</p> <p>Any reference to this Code or to any other document is a reference to this Code or that other document as amended, varied, supplemented, replaced, or restated at any time; and</p>

	Any reference to something being "in writing" or "written" shall include a reference to that thing being produced by any legible and non-transitory substitute for writing (including in electronic form) or partly in one manner and partly in another.
1.2	The <i>ejusdem generis</i> principle of construction shall not apply to this Code. Accordingly, general words shall not be given a restrictive meaning by reason of the fact that they are preceded or followed by words indicating a particular class of acts, matters or things or by examples falling within the general words; and any phrase introduced by the terms "other", "including", "include" and "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
1.3	The table of contents and headings in this Code are inserted for convenience only and shall not affect the construction of this Code.
1.4	The Annex(es) comprise annex(es) to this Code and form part of this Code.

PRINCIPLES

Ref.	Principles
P.1	Members must, in compliance with their overriding duty to the court, uphold the rule of law and the proper administration of justice in the course of their professional duties and/or the provision of legal services.
P.2	Members must not, in their professional and personal lives, act in any way which brings or which may fairly bring the legal profession or the provision of legal services in Jersey into disrepute.
P.3	Members must, at all times, act with honesty and integrity.
P.4	Members must act in the best interests of their clients.
P.5	Members must not allow their professional independence to be compromised.
P.6	Members must provide a proper standard of work and service to their clients.
P.7	Members must protect client money and assets.
P.8	Members must manage their firm effectively and in accordance with good business practice, proper governance and sound financial and risk management principles.
P.9	Members must deal with their regulators in an open, timely and cooperative manner.

RULES

Ref.	Rule 1
R.1	Client relations
R.1.1	<p>Taking on clients</p> <p>A member:</p> <ul style="list-style-type: none">a) is free to decide whether to accept instructions from a client other than where a member is appointed to act under the Legal Aid Scheme;b) must not do anything to compromise or impair a person's freedom of choice in placing instructions for legal services;c) must not act in the following circumstances:<ul style="list-style-type: none">i) if by acting, he or she will knowingly assist in or commit a breach of the law, regulations or the rules of professional conduct (including these Rules);ii) if the member, his or her employee or his or her firm do not have sufficient resources or competence to deal properly with the matter;iii) if instructions are given by someone other than the client, or by one person on behalf of others in a joint matter, he or she is unable to obtain confirmation that the client or all of the clients agree with the instructions given;iv) if he or she knows or has reasonable grounds to believe that the instructions are given by a client who is under duress or undue influence;v) if he or she knows or has reasonable grounds to believe that the instructions are given by a client who is vulnerable unless (subject to R.1.1 c) iv)) he or she is satisfied that the instructions represent the client's wishes and that the client understands the consequences of those instructions; orvi) where professional embarrassment arises during the course of an instruction, even if there is no actual legal conflict.
R.1.2	<p>Accepting instructions</p> <p>A member must, when accepting instructions from a client, ensure that the client is advised in writing (in clear and unambiguous language) of the following;</p> <ul style="list-style-type: none">a) the work to be undertaken, including any limitations as to scope;b) the name and contact details of the member with overall responsibility for the client's matter and of any other member or employee dealing with the matter;c) the responsibilities of the member and of the client;

	<p>d) details of how to make a complaint and whom to contact; and</p> <p>e) the circumstances in which a retainer may be terminated (by either the client or member) together with reasonable details about the recovery of unpaid costs (at the point of termination), the ownership of documents and timescales for the destruction of files/data.</p>
R.1.3	<p>Information about fees and disbursements</p> <p>Members must provide to clients a reasonable indication of likely fees and expenses (“disbursements”), both at the outset and as a matter progresses, unless otherwise agreed with their clients. The information must be clear and in writing. Members must advise clients of the following:</p> <p>a) the basis of the fees and disbursements and whether those fees may be increased and in what circumstances;</p> <p>b) details of the likely payments to be made to others, either by the client or the member (or his or her firm);</p> <p>c) details of the client's potential liability for costs in contentious matters;</p> <p>d) the terms of any limitation of the member's or the firm's (including employees') liability;</p> <p>e) the terms of payment and relevant details;</p> <p>f) the terms on which funds are held on behalf of the client and how they will be used;</p> <p>g) any financial benefit that may be received in the course of acting for the client and whether the member or firm will account to the client for that benefit, and if so, how; and</p> <p>h) details of the circumstances in which the member, employee or firm may be entitled to exercise a lien for unpaid fees and disbursements.</p>
R.1.4	<p>Legal Aid</p> <p>Members in practice for less than 15 years must represent “<i>veuves, pauvres et personnes indéfendues</i>” in accordance with their obligations under their respective oaths through the scheme adopted by unanimous resolution of the Bar passed on 20 August 1904, being the oaths administered pursuant to Article 8(6) of the Advocates and Solicitors (Jersey) Law 1997. Members shall represent such persons through a “<i>tour de rôle</i>” as directed by the Bâtonnier or those acting for him in accordance with the Legal Aid Guidelines.</p>

R.1.5	<p>Ongoing client care</p> <p>Members must ensure that their clients are aware of relevant issues during the course of the retainer. Members shall attend to all client affairs with diligence and answer all correspondence within the timescales agreed with the client or, if no such timescales have been agreed, within a reasonable time. Members must treat their clients fairly and correctly at all times.</p>
R.1.6	<p>Complaint handling</p> <p>Members must have a written complaints procedure and ensure that complaints are handled promptly, fairly and in accordance with that procedure. Clients must be told at the outset of the matter or the client relationship how to complain and existing clients must be advised of their right to complain if they indicate that they are dissatisfied with an aspect of the service or conduct of a member or employee.</p>
R.1.7	<p>Limitation of liability</p> <p>Members may limit their and their firm's and employees' liability to their clients in writing, provided that such limitation is in accordance with any conditions set, at the relevant time, by The Law Society of Jersey.</p>
R.1.8	<p>Termination of retainer</p> <p>Members may only terminate a retainer for just cause and, other than in exceptional circumstances, upon reasonable notice, unless the retainer is terminated automatically by law. A client is free to terminate a retainer at any time.</p>
R.1.9	<p>Changing lawyers</p> <p>Except where not to do so would be materially adverse to such person's interests, a member shall not accept instructions from a new client in relation to a matter when the member is or becomes aware that another member has previously acted for the client in question on that matter, until that member has received confirmation from the other member, in response to a written enquiry to that member, that there is no objection to accepting such instructions or a reasonable time has elapsed since such enquiry. If an objection is received which cannot be resolved amicably, the matter shall be referred to the President or Chief Executive Officer of the Law Society, either of whom will appoint an adjudicator who shall act as an expert and not an arbitrator, and whose decision shall be final.</p>

R.1.10	<p>Retention of documents</p> <p>All files or records of any material matter shall be retained by a member's firm in either physical form or, if not reasonably affecting the status or value of the document concerned, electronically, for at least 11 years from the last material entry on the file/record and shall not then be destroyed unless it is reasonable to do so in the circumstances. In any event, members may destroy files and records, other than original documents or items of intrinsic value or currency (e.g. wills, promissory notes) after 20 years from their date or the last material entry, whichever is the later, whether they have the consent of the client or not.</p> <p>A member or a member's firm is not obliged to maintain the hardware of the computer system upon which such files or records or other may be stored for this 20 year period.</p> <p>See also Annex 1 to R.1 – Ownership of documents.</p>
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Ref.	Rule 2
R.2	Confidentiality
R.2.1	<p>Duty of confidentiality</p> <p>Members must keep the affairs of clients, former clients and potential clients (where any information of a confidential nature has been provided) confidential except where a firm is compelled or permitted by law to disclose the information, the firm has a public duty to disclose, it is necessary in the firm's own interests to disclose or where the client, former client or potential client has agreed or given informed written consent to the information being disclosed.</p>
R.2.2	<p>Duty of disclosure</p> <p>Members must disclose to a client, whether the client is one or more persons, for whom they or their firm are acting on a matter, all information of which the member or their employee is aware which is material to that client's matter regardless of the source of the information, subject to:</p> <p>a) the duty of confidentiality in R.2.1, which always overrides the duty to disclose (and R.6.6 applies); and</p> <p>b) the following, where the duty does not apply:</p> <p>i) where such disclosure is prohibited by law or regulation;</p> <p>ii) where the information in question is received under a duty of confidence, including mistaken disclosure, or receipt where it is agreed with the client that no duty to disclose arises or a different standard of disclosure applies; where the member or employee reasonably believes that serious physical, mental or financial injury will be caused to any person if the information is disclosed to a client; or</p> <p>iii) where the information in question relates to state security or intelligence.</p> <p>This Rule does not apply to information received, or that a member or employee becomes aware of, after the instruction has been carried out or the matter completed, whichever occurs first.</p>

Ref.	Rule 3
R.3	Duty to the Court
R.3.1	<p>Duty to act with independence in the interests of justice</p> <p>Members owe a duty to the court to act with independence in the interests of justice. This duty overrides any inconsistent obligations which they may have (other than obligations under the criminal law and confidentiality). It includes the following specific obligations which apply whether they are acting as an advocate or are otherwise involved in the conduct of litigation in whatever rôle (with the exception of R.3.1 a), which applies when acting as an advocate before any court or tribunal).</p> <p>For the purpose of this Rule, references to advocate shall mean any member fulfilling the role of an advocate irrespective of whether they are an Advocate or Solicitor.</p> <p>Members must:</p> <ul style="list-style-type: none"> a) not knowingly or recklessly mislead or attempt to mislead the court or permit the court to be misled (R.3.4 applies); b) not abuse their role as an advocate (R.3.5 applies); c) take reasonable steps to avoid wasting the court's time; d) take reasonable steps to ensure that the court has before it all relevant decisions and statutory provisions; and e) ensure that their ability to act independently is not compromised.
R.3.2	<p>Competing duties</p> <p>Subject to R.3.3, a member's duty to act in the best interests of each client is subject to their duty to the court.</p>
R.3.3	<p>Protection of confidentiality</p> <p>A member's duty to the court does not require them to act in breach of their duty to keep the affairs of each client confidential.</p>

R.3.4	<p>Not misleading the court</p> <p>A member's duty not to knowingly or recklessly mislead or attempt to mislead the court or to permit the court to be misled will include the following obligations:</p> <p>Members must not:</p> <ul style="list-style-type: none"> a) make submissions, representations or any other statement, or b) register, file or otherwise lodge any documents with the court, Judicial Greffe or Viscount, that they know, or are instructed, are untrue or misleading, or, in respect of which, they do not hold the requisite authority or consent; c) ask questions which suggest facts to witnesses that they know, or are instructed, are untrue or misleading; d) call witnesses to give evidence or put affidavits or witness statements to the court which they know, or are instructed, are untrue or misleading, unless they make clear to the court the true position as known by or instructed to them; or e) invent a defence for a client or suggest to the client or to a witness the use of words in evidence which would distort the facts.
R.3.5	<p>Not abusing their role as an advocate</p> <p>Where a member is acting as an advocate, their duty not to abuse their role includes the following obligations:</p> <p>Members must not:</p> <ul style="list-style-type: none"> a) make statements or ask questions merely to insult, humiliate or annoy a witness or any other person or which exploit, or attempt to exploit, the vulnerability of a witness or any other person; b) make a serious allegation against a witness whom they have had an opportunity to cross-examine unless they have given that witness a chance to answer the allegation in cross-examination; c) make a serious allegation against any person, or suggest that a person is guilty of a crime with which their client is charged unless: <ul style="list-style-type: none"> i) they have reasonable grounds for the allegation; and ii) the allegation is relevant to their client's case or the credibility of a witness; and iii) where the allegation relates to a third party, they avoid naming them in open court unless this is reasonably necessary. or d) put forward to the court a personal opinion of the facts or the law unless they are invited or required to do so by the court or by law.

Ref.	Rule 4
R.4	Honesty, integrity and independence
R.4.1	Members must not do anything which could reasonably be seen by the public to undermine their honesty, integrity and independence.
R.4.2	<p>A member's duty to act with honesty and integrity under P.3 includes the following requirements:</p> <p>Members must:</p> <ul style="list-style-type: none"> a) not knowingly or recklessly mislead or attempt to mislead anyone; b) not draft any statement of case, witness statement, affidavit or other document containing: <ul style="list-style-type: none"> i) Any statement of fact or contention which is not supported by their client or by their instructions; ii) Any contention which the member does not consider to be properly arguable; iii) Any allegation of fraud, unless the member has clear instructions to allege fraud and has reasonably credible material which establishes an arguable case of fraud; iv) (In the case of a witness statement or affidavit) any statement of fact other than the evidence which they reasonably believe the witness would give if the witness were giving evidence orally; c) not encourage a witness to give evidence which is misleading or untruthful; d) not rehearse, practise with or coach a witness in respect of their evidence unless the member has the permission of the representative for the opposing side or of the court; e) not communicate with any witness (including their client) about the case while the witness is giving evidence; f) not make, or offer to make, payments to any witness which are contingent on the evidence or on the outcome of the case; g) only propose, or accept, fee arrangements which are legal.

Ref.	Rule 5
R.5	Acting in the best interests of each client
R.5.1	<p>A member's duty to act in the best interests of each client (P.4), to provide a proper standard of service to each client (P.6) and to keep the affairs of each client confidential (R.2.1) includes the following obligations:</p> <p>Members must:</p> <ul style="list-style-type: none"> a) promote fearlessly, and by all proper and lawful means, the client's best interests; b) do so without regard to their own interests or to any consequences to them; c) do so without regard to the consequences to any other person (whether to their professional client, employer or any other person); d) not permit their professional client, firm or any other person to limit their discretion as to how the interests of the client can best be served; and e) protect the confidentiality of each client's affairs, in accordance with R.2.1, subject to the exceptions there set out.
R.5.2	<p>A member's duty to act in the best interests of each client is subject to their duty to the court (in accordance with R.3.1 and subject to R.3.3) and to their obligations to act with honesty, and integrity and to maintain their independence, in accordance with R.4, and may be qualified by R.10.2.</p>

Ref.	Rule 6
R.6	Conflicts of interest
R.6.1	<p>Duty not to act</p> <p>Except in the limited circumstances dealt with in R.6.3, a member or their firm must not act if there is a conflict of interests or a significant risk of a conflict.</p>
R.6.2	<p>Acting in the same or related matter(s)</p> <p>There is, for example, a conflict of interests if a member or their firm owes separate duties to act in the best interests of two or more clients in relation to the same or related matters, and those duties conflict, or there is a significant risk that those duties may conflict. A related matter will always include any other matter which involves the same asset or liability or transaction.</p>
R.6.3	<p>Exceptions to duty not to act</p> <p>A member or their firm may act, in non-contentious matters, for more than one client whose interests conflict in the matter only with the informed written consent of all clients. Similarly, a member or their firm may act, in such a matter, for a client whose interests materially conflict with those of another client (but the other client is not a party to the matter) with the informed written consent of both clients.</p> <p>Where there is a client conflict and the clients are competing for the same asset or objective, a member of their firm may only act if:</p> <ol style="list-style-type: none"> a) the clients have provided their informed written consent, confirming that they want the member or their firm to act, in the knowledge that they act, or may act, for more than one or more other clients who are competing for the same asset or objective; b) there is no other client conflict in relation to that matter; c) unless the clients specifically agree, no individual acts for, or is responsible for the supervision of work done for, more than one of the clients in that matter; and d) the member is satisfied that it is reasonable for them to act for all of the clients and that the benefits to the clients of so acting outweigh the risks.

R.6.4	<p>Requirement to obtain additional informed written consent</p> <p>Where one or more parties to a transaction is a private individual, prior to acting in the circumstances outlined in R.6.3, a member or firm must write to the clients, in terms that make it clear, and the clients must confirm in writing that they have understood that, in the event of an issue of a conflict of interest arising that cannot be managed by the member or firm, or where one of the clients is concerned that the member or firm is not acting in their best interests, then the member or firm will be obliged to cease acting for one or all of the clients in relation to the transaction and to set out the member or firm's policy in those circumstances in relation to fees already billed and work as yet unbilled.</p>
R.6.5	<p>Conflict when already acting</p> <p>Except in the limited circumstances dealt with in R.6.3, if a member or their firm act for more than one client in a matter and, during the course of the conduct of that matter, a conflict arises between the interests of two or more of those clients, a member or their firm may only continue to act for one of the clients (or a group of clients between whom there is no such conflict), and provided that the duty of confidentiality to the other client(s) is not put at risk.</p>
R.6.6	<p>Own interest conflicts</p> <p>A member or their firm must not act where the member's or firm's own interests conflict with those of the client or there is a significant risk of a conflict.</p>
R.6.7	<p>Apparent conflict between duty of confidentiality to former clients and duty to new clients</p> <p>A member or their firm may act for the adversary or counterparty (client A) of a client (including a former client, client B) provided that such member or firm is not privy to confidential information in respect of client B that is materially relevant to such dispute or matter, or can protect such confidential information effectively by the use of safeguards and, in the latter case, informed written consent has been obtained from client A and where possible client B, and, in any event, effective safeguards including information barriers, are put in place and it is reasonable in all the circumstances for the member or the firm to act for client A with such safeguards in place.</p>
R.6.8	<p>Public office or appointment leading to conflict</p> <p>A member must decline to act where the member or his or her employee or a relative of the member or employee holds some public office or appointment as a result of which a conflict of interests, or a significant risk of a conflict, arises or the public might reasonably conclude that the member or their firm had been able to make use of the office or appointment for the advantage of the client; or the ability of the member or their firm to advise the client properly and impartially is inhibited.</p>

R.6.9	<p>Accepting gifts</p> <p>A member must not enter into a contract with a client, or prepare a document, or give instructions to a partner or employee (including a fellow employee) of that member's firm to enter into a contract with a client, or prepare a document, by which the client confers a gratuitous benefit, whether monetary or non-monetary, on that member, a close relative or a partner or employee of that member's firm or the member's employer unless:</p> <ul style="list-style-type: none"> a) the benefit or the value of the benefit so conferred is no more than the lesser of £500 or (where applicable) one half of one per cent of the client's current estimated net estate; or b) the document is a will prepared on behalf of a close relative, where the following circumstances apply: <ul style="list-style-type: none"> i) the bequest or legacy is to the spouse, civil partner or cohabitant of the testator provided that, if the testator has issue at the date of execution of the will, either those issue are all the issue of both the testator and the recipient of the bequest or legacy, or, if the testator has other issue, appropriate provision is also made for those other issue; or ii) the bequest or legacy is to a person related to the testator and is not to any significant degree disproportionately large as compared to that of (1) any other person in the same degree of relationship to the testator or (2) any person, who under the law relating to intestacy is, or could be, a representative of, or represented by, any other person in the same degree of relationship to the testator. <p>Where a potential gift is to be undocumented, a member may not accept it unless it or its value does not exceed the lesser of £250 or (where applicable) one half of one per cent of the client's current estimated net estate. An undocumented gift from a natural person can only be received inter vivos.</p> <p>This Rule applies alongside, and is without prejudice to, applicable legislation on bribery and corruption, and the requirement on a firm to keep a register of gifts.</p> <p>The payment of fees pursuant to a contract of engagement to provide legal services is excluded from this provision.</p>
R.6.10	<p>Bail</p> <p>A member must not stand bail or provide a surety for a client without obtaining the prior consent of the Committee of the Law Society.</p>

Ref.	Rule 7
R.7	Business Management
R.7.1	<p>Business structure</p> <p>A member who is a principal must ensure that there is a clear and effective governance and management structure and proper reporting lines within the firm.</p>
R.7.2	<p>Risk management</p> <p>Members must:</p> <ul style="list-style-type: none"> a) identify, monitor and manage risks within the firm on an ongoing basis; b) implement and maintain effective systems and controls to comply with this Code of Conduct, the Accounts Rules, the Bye-Laws and all other legal and regulatory requirements of the jurisdictions in which their firms have offices or by which they are regulated; c) maintain appropriate records including good file management to demonstrate compliance with this R.7.2; and d) ensure all employees comply with the requirements of this Rule as applicable to them.
R.7.3	<p>Professional Indemnity Insurance</p> <p>An ordinary member in practice on their own account or any two or more ordinary members in practice in partnership, limited liability partnership or other legal services body must maintain professional indemnity insurance against professional liabilities arising from practice with a level of cover no less than that determined by the Law Society in general meeting from time to time.</p> <p>Members must meet the requirements as detailed in the Bye-Laws in relation to the maintenance of professional indemnity insurance and the provision of details of such cover to the Law Society.</p>

R.7.4	<p>Financial stability</p> <p>Members must:</p> <ul style="list-style-type: none"> a) identify, monitor and manage risks to money and assets entrusted to them by clients and others; b) implement and maintain effective systems and controls for monitoring the financial stability of the firm; c) ensure compliance with the Accounts Rules; d) maintain appropriate financial records including good file management/ accounting practices to demonstrate compliance with this R.7.4; and e) ensure all employees comply with the requirements of this R.7.4 as applicable to them.
R.7.5	<p>Supervision and management</p> <p>Members and their firms must ensure that appropriate arrangements are in place for the effective supervision of qualified and unqualified staff. Such arrangements must include the regular checking of the quality of work by suitably competent and experienced people so that clients' matters are properly supervised, the degree of regularity and extent of checking to be proportionate to the experience and known quality of work and advice done by, and specialisations of, the member of staff whose work is being checked.</p>
R.7.6	<p>Training and development</p> <p>Members and their firms must ensure that all employees have the experience to have, and/or are properly trained to achieve and maintain, a level of competence, taking account of the supervision and management as referred to under R.7.5, appropriate to their work and level of responsibility.</p>
R.7.7	<p>Continuing Professional Development (CPD)</p> <p>All members (including those who work part-time) must:</p> <ul style="list-style-type: none"> a) complete a minimum of 15 hours of Continuing Professional Development ("CPD"), as defined in the Guidelines issued by the Law Society from time to time, in each calendar year; b) ensure that they (or their firm on their behalf) file the CPD return (to confirm their compliance) with the Law Society on or before 31 January in the year following that to which the confirmation relates; and c) produce their CPD record to the Law Society on request.

Ref.	Rule 8
R.8	Publicity and communications
R.8.1	<p>Application</p> <p>This Rule applies to all forms of publicity including the name or description of a member's practice, stationery, advertisements, brochures, websites, directory entries, media appearances, promotional press releases, and direct approaches to potential clients and other persons, and whether conducted in person, in writing, or in electronic form or in any medium.</p>
R.8.2	<p>Advertising</p> <p>A member must ensure that any advertising, marketing or promotion in connection with the member or his or her firm complies with this Code of Conduct and all legal and regulatory obligations. Such publicity must not be:</p> <ul style="list-style-type: none"> a) false; b) misleading or deceptive or calculated or likely to mislead or deceive; c) offensive to a reasonable standard of fairness and decency; or d) prohibited by law.
R.8.3	<p>Clarity as to charges</p> <p>Any publicity relating to charges must be clearly expressed and state whether disbursements and GST are included. There shall not be a breach of this Rule where it is intended that disbursements and GST will be included, but without this being expressly stated, and this intention is honoured.</p>
R.8.4	<p>Unsolicited visits or telephone calls</p> <p>A member's practice must not be publicised in Jersey by means of unsolicited visits or telephone calls to a member of the public. A member of the public does not include current or former clients, existing or former business or professional connections or other members or other commercial organisations.</p>
R.8.5	<p>Letterhead, emails and website requirements</p> <p>Members must ensure that the letterhead, website and e-mails of their firm comply with all legal and regulatory requirements, including this Code of Conduct.</p>

Ref.	Rule 9
R.9	Referrals/fee sharing
R.9.1	<p>Sharing fees</p> <p>Without the prior approval of the Committee, members may only share fees/profits of their legal practice a) with other members (including partners) or former partners or dependants of former partners; or b) pursuant to a staff bonus scheme.</p>
R.9.2	<p>Referral fees</p> <p>Members and their employees must not (without the prior approval of the Committee) make or agree to make any payments to a third party for the referral of clients except in relation to agency arrangements with a legal firm practising the law of another jurisdiction where the payment does not exceed more than one third of the fee for the matter involved.</p>

Ref.	Rule 10
R.10	Relations with other members and third parties
R.10.1	<p>Dealing in good faith and courtesy</p> <p>Members must:</p> <ul style="list-style-type: none"> a) act towards other members and their employees in good faith subject to their duty to the client and the overriding duty to the court; b) behave with good manners and courtesy towards other members, their employees and third parties even though there may be matters of bitter contention between clients; c) not write offensive letters to other members, their employees or third parties; d) not use social media or other forms of communication improperly.
R.10.2	<p>Not taking unfair advantage</p> <p>Members must not take unfair advantage of anyone, either for the client's benefit or for their own benefit.</p>
R.10.3	<p>Restrictions on contacting clients of other members</p> <p>Members or their firm must not communicate directly or indirectly on a particular matter with a person represented by the firm of another member on the matter except through that firm or with that other firm's consent, save that where the person represented by the other member's firm is a commercial organisation or man or woman of business, consent to such communication may be given by that person, and will be deemed given where that person communicates directly with the member, employee or firm to whom this Rule is being applied, provided always that any communication in response or subsequently to that person must be copied to the other member's firm.</p>

R.10.4	<p>Undertakings</p> <p>A member who has given, or whose employee has given, an undertaking to another member or the firm of another member in the course of practice is personally bound by that undertaking and must honour that undertaking and ensure that it is performed in a timely and effective manner, unless:</p> <ul style="list-style-type: none"> a) when giving the undertaking the member or employee makes it clear that the undertaking is not a personal undertaking and states on whose behalf it is given and has authority to give such undertaking; or b) he or she is clearly and unequivocally released by the recipient or the court. <p>A member's firm shall be responsible for honouring an undertaking given by any member or employee with express or ostensible authority.</p> <p>Reference must also be made by members to Annex 2 – Undertakings in Property Transactions.</p>
R.10.5	<p>Instructing other practitioners</p> <p>A member's firm that instructs the firm of another member or a practitioner in the law of another jurisdiction will be responsible for the payment of that other firm's or practitioner's proper fees and disbursements unless otherwise agreed. A member will be personally responsible for paying the proper costs of any agent or other person who is instructed on behalf of the client, unless the member and the person instructed make an express agreement to the contrary or it is otherwise clear that the person instructed is instructed on terms that the member is not so personally responsible.</p>

Ref.	Rule 11
R.11	Practice framework
R.11.1	<p>Entitlement to practise</p> <p>In accordance with, and except as provided by The Law Society of Jersey Law 2005, no person shall practise Jersey law as an advocate or solicitor unless he or she is an ordinary member of the Law Society.</p>
R.11.2	<p>Restrictions on practice</p> <p>A member must not practise Jersey law in a partnership practising Jersey law, including a limited liability partnership, with any person other than another member.</p>
R.11.3	<p>Legal Services Bodies</p> <p>A limited liability partnership registered in Jersey, or other legal services body constituted in Jersey, which has been recognised by the Committee of The Law Society of Jersey in accordance with the Bye-Laws, may practise from an office in Jersey and must have such an office.</p>
R.11.4	<p>Involvement in other professions, occupations or business</p> <p>A member or partnership, including a limited liability partnership, shall not carry on any other profession, occupation or business, which might reflect adversely on the reputation of the legal profession in Jersey, or which might be prejudicial to the administration of justice in Jersey.</p>

Ref.	Rule 12
R.12	Conduct, rights and obligations of practice
R.12.1	<p>Duty to co-operate with the Law Society</p> <p>All members must:</p> <ul style="list-style-type: none"> a) co-operate with the Law Society by responding to proper and reasonable requests for information in an open, honest and timely manner; b) promptly notify the Law Society of any changes to relevant information about the member, the firm or employees; c) not deceive or mislead the Law Society; d) report to the Law Society if convicted of any offence, other than a minor traffic offence; e) report to the Law Society any disciplinary sanction (including private rebuke or censure) imposed by another regulator (in Jersey or elsewhere); f) engage with the Law Society in relation to any matters of a disciplinary nature and co-operate with any reasonable requests or directions and in the conduct of disciplinary proceedings; g) promptly notify the Law Society where their firm is in financial difficulties or at a not negligible risk of being unable to meet its financial obligations; and h) subject to the completion of any internal process or reporting, within his/her firm, in respect of such matters, advise the Law Society where they have good reason to doubt the professional integrity, or fitness to practise, of a member or legally qualified employee of their firm, without prejudice to any restrictions on disclosure provided by statute.
R.12.2	<p>Provision of information and production of documents</p> <p>A member must promptly (within 14 days or as otherwise determined) comply with any proper request or notice (which must be in writing) served on the member or firm by the Law Society or the Committee of the Law Society to produce documents, information and explanations relating to the firm, for the purpose of ascertaining whether a member or firm is complying with or has complied with any rules, codes (including these Rules and this Code) or mandatory guidance made or issued by the Law Society or the Committee of the Law Society or which is necessary to deal with any issues of potential misconduct.</p>

R.12.3	<p>Complying with conditions or limitations</p> <p>Members and their firms must comply with any proper conditions or limitations reasonably imposed by the Law Society or the Committee of the Law Society, including on the conduct of their practice.</p>
R.12.4	<p>Obstruction of complaints</p> <p>Members must not:</p> <ul style="list-style-type: none"> a) attempt to hinder or prevent a person who wishes to report their conduct to the Law Society from doing so; b) take any action or enter into an agreement which would attempt to preclude the Law Society from investigating any complaint made to the Law Society which alleges misconduct; c) offer any incentive to a complainant to withdraw a complaint; d) victimise a person for reporting their conduct to the Law Society; or e) issue, or threaten to issue, defamation proceedings pending the resolution of a complaint to the Law Society, unless malice can be properly alleged.
R.12.5	<p>Sole practitioners</p> <p>Members who are sole practitioners must make proper arrangements in the event of their illness, death, absence or other incapacity to protect their clients, and their clients' money and assets held by, or to, the order of the sole practitioner.</p>

Ref.	Rule 13
R.13	Waivers
R.13.1	<p>Subject as set out below, in any particular case or cases the Law Society shall have power to waive in writing the provisions of these Rules for a particular purpose or purposes expressed in such waiver, to place conditions on and to revoke such waiver. The Law Society shall not have power to waive any of the Principles, or any of the provisions of the following Rules:</p> <ul style="list-style-type: none"> a) R.2 (Confidentiality); b) R.3 (Duty to the court) c) R.6 (Conflict of interests); d) R.13 (Waivers).

Ref.	Rule 14
R.14	Application
R.14.1	<p>The Code of Conduct applies to:</p> <ul style="list-style-type: none"> a) all members of the Law Society, in relation to practice from offices in Jersey and outside Jersey; and b) an LLP or other legal services body recognized by The Law Society of Jersey, in relation to practice from offices in Jersey and outside Jersey.
R.14.2	<p>Reference to ‘members’ applies equally to all employees acting under the supervision of a member or for whom a member is otherwise responsible, so that:</p> <ul style="list-style-type: none"> a) members shall be responsible for procuring that such employees comply with this Code as if they were members; and b) an act or omission of such an employee which, if the employee were a member, would be a breach of the Code, shall be treated as the act or omission of the member(s) responsible for that employee. <p>Accordingly, members are responsible, under this Code of Conduct, only for the actions of their employees engaged in the delivery of legal services (as defined) or otherwise acting in the course of their employment.</p>
R.14.3	<p>The Principles and Rules in this Code of Conduct are mandatory and binding on members. While the Guidance notes in the Code of Conduct are not binding on members, a disciplinary committee will have regard to the Guidance when considering whether a breach of the Code of Conduct has occurred.</p>

GUIDANCE

Ref.	Guidance to the Principles
GP.1	The Principles provide the ethical infrastructure from which the Rules flow. Members must reasonably ensure that, in the course of their professional duties and/or the provision of legal services, everyone in the firm follows these fundamental Principles, regardless of whether they are client facing and/or legally qualified.
GP.2	Disciplinary action may be taken by the Society in relation to breaches of the Code of Conduct, whether it relates to a breach of one or more Principles or Rules.
GP.3	It is not possible to cover every ethical problem or issue which may arise in the course of legal practice, but these Principles will guide the ethical thinking of members and their employees in determining how to deal with a particular problem or issue.
GP.4	In following or considering a particular course of action, members and employees must ensure that they comply with the Code of Conduct.
GP.5	As officers of the court, members (and their employees) have a fundamental duty to uphold the rule of law and the proper administration of justice. Members must adhere to the oath sworn before the Royal Court.
GP.6	Certain standards of behaviour are required of members, both in their business activities and in their professional lives. Disgraceful conduct (including conviction of any criminal offence, other than a minor traffic offence) outside a member's practice may place them in breach of P.2.
GP.7	Members must adopt high standards and act with honesty, propriety, integrity and professionalism at all times. They should treat others as they would like to be treated, e.g. by being civil and courteous.
GP.8	Members must ensure that they have sufficient knowledge and experience (or access to the requisite knowledge and experience) for the provision of appropriate legal advice in all matters for which they are engaged.
GP.9	Members must maintain their independence at all times and not allow any other party to exercise undue influence when considering their actions. This not only relates to the independence of their advice but also the independence of their judgement.
GP.10	Subject to their overriding duty to the court (but see R.3.3), members must act in the best interests of their clients.
GP.11	Members must safeguard client money and assets by ensuring that there are proper systems and controls and that effective training on the requirements of the Accounts Rules is provided to all members and other appropriate employees in the firm.

GP.12	Members must manage their firms effectively and implement robust systems and controls, which are properly understood by members and their employees.
GP.13	The relationship between members (and their employees) and the Law Society must be open and transparent so that appropriate action can be taken to protect the public and assist members and their employees when there are difficulties.
GP.14	If there is a conflict between the Principles, public interest will take precedence, especially the public interest in the administration of justice. Compliance with the Principles, as with all the Rules, is subject to any overriding legal obligations.

Ref.	Guidance to Rule 1
G.1	Client relations - Guidance
G.1.1	Generally, members should consider carefully whether it would be in the interests of the client and in the interests of the firm to accept instructions.
G.1.2	Members are free to decide whether to take on a client, subject to R.1.4.
G.1.3	In determining whether to act, members must consider whether they have the knowledge, qualifications, expertise, time, support staff and, where relevant, access to external expertise to advise or represent the client properly.
G.1.4	Rule 1.1 sets out a range of circumstances in which instructions must be refused. A member or a firm must not act if they would be in breach of the law or of the Rules: examples are where money laundering is suspected or there is a conflict of interest (unless it is a conflict where, if certain conditions are satisfied, it is possible to act, and those conditions are satisfied), or where a member is dealing with a potential client who is unable to instruct a member or their firm due to a lack of mental capacity.
G.1.5	Members must be satisfied that the client is giving their instructions without duress or undue influence. There may be occasions when the member suspects that a client's instructions are the result of undue influence, in which case the member or employee will need to exercise their judgement whether they can proceed on the client's behalf; see G.1.6.
G.1.6	If a member suspects that a friend or relative or anyone else is exerting duress or undue influence, it would be prudent to see the client alone or with an independent third party or interpreter. If the client appears to want to act against what one would expect their best interests to be, the member should explain the consequences of the instructions and get confirmation in writing, that refers to the explanation given, that the client wishes to proceed – but this will not negate duress or undue influence if it exists.
G.1.7	If a member or firm would be professionally embarrassed by acting, even if there were no actual legal conflict, instructions should be refused. An example would be where, by accepting instructions to act against a former client (where no duties of confidentiality prevented the firm so acting), the member felt inhibited from doing their best for the new client.
G.1.8	If professional embarrassment is not a factor and there is no prohibition or impediment under the Rules from acting, whether by reason of conflict or otherwise, it will be a purely commercial decision whether to act against the interests of another client or former client.
G.1.9	Good client relations are critical for the success of a firm. Failure to manage expectations at the start of the retainer will frequently result in unhappy clients, and may result in negligence claims or complaints with the accompanying costs and frustration, not only for the client but also for the member.

G.1.10	Generally, paying attention to detail at the start of the relationship can pay dividends in the long term.
G.1.11	Members should not act for a client who has instructed another firm in the same matter, instead of the other firm, without that firm's agreement (R.1.9) But a second opinion can be provided if the member has sufficient information and clarity of instructions to be able to provide proper advice.
G.1.12	If, under R.1.19, there is an objection to a member accepting a new instruction, nothing shall prevent the member from acting on an urgent matter for a new client pending resolution of the dispute where the interests of justice so require.
G.1.13	The client should be provided with an explanation of the relationship of the lawyer to the client including the duty of confidentiality, the need for the utmost good faith between lawyer and client and the duty of the lawyer to exercise reasonable skill and care. This is part of what is to be covered by the terms of business/letter or terms of engagement. The expression ' <i>client care information</i> ' used in this Guidance includes the points referred to in this paragraph, and typically all client care information will be set out in terms of business or a letter or terms of engagement.
G.1.14	It is important that the client and the member have a clear mutual understanding of what work is going to be undertaken (including any limitations as to scope), the timescales and the level of service and, if such reports are appropriate or required, the frequency of progress reports, as this will minimise the risk of misunderstanding, complaints or claims. Poor communication is a major source of complaints and can result in increased costs.
G.1.15	Treating the client fairly does not necessarily mean that the client will be satisfied but ensuring that the client has all the necessary information, that there is good communication and clarity about costs, and updates to these and desired outcomes, should mean that even if the client is dissatisfied at the outcome, they do not complain or make a claim, because they have been treated fairly.
G.1.16	Clients must be told of the name and, if appropriate, the status and qualifications of the person(s) responsible for the day to day work and the overall supervision of the matter. Failure to tell the client the status of the person(s) with such responsibilities can result in misunderstandings as to whether the person is legally qualified or not, the proper level of responsibility borne by that person, and how appropriate it is to have different persons in the firm engaged on the matter with different responsibilities.
G.1.17	If the person dealing with the matter leaves the firm, the client must be told as soon as possible and informed who will take over the matter, their status and any impact on cost for the client. Clients must be informed of material changes to the composition of the firm which will affect that client.

G.1.18	A member and a client can agree either that certain information (of the information otherwise required under this Code) is not required or, once the terms of engagement are in place, to vary the contractual arrangements between the firm and the client, provided that the client understands the consequences and the agreed variation is in writing or evidenced in writing.
G.1.19	Existing clients, for whom a new matter is undertaken, must be provided with information about any changes in the client care information. A client may agree with the member or employee that new terms of engagement are not required for every new instruction but the member must ensure that the client is provided with sufficient client care information on each instruction.
G.1.20	If instructions are received from someone other than the client, the client must be given or also be given the relevant client care information although there may be exceptions to this particularly in relation to attorneys or persons lacking mental capacity. Such client care information can be given to the client via a reputable intermediary (as the case may be a professional client or other person giving the instructions).
G.1.21	Accurate information about costs enables the client to budget and reach informed decisions as to what they can afford, before making commitments. As the matter proceeds, providing the client with up to date costs information reduces the risk of complaints.
G.1.22	The basis on which fees and expenses are to be charged must be explained to the client, i.e. (in the case of fees) whether the fees are an estimate or set/fixed fees, or hourly rates. The client must be advised of any factors or circumstances which may affect the level of fees and expenses such as the complexity and novelty of the matter, the specialised legal knowledge required, the monetary amount or other value of the matter, the number and length of documents, the urgency of the matter and the place and time of day when the work is to be carried out, the importance of the matter to the client and the time to be expended.
G.1.23	It may not be possible to tell at the outset what the overall costs will be but the member needs to provide the client, after careful consideration, with a reasonable indication of likely fees and disbursements, both at the outset and as a matter progresses, including risks as to the responsibility for other costs, unless otherwise agreed with the client. If it is not possible to give a precise figure at the outset, the reason should be explained to the client. An agreement should be reached, in such circumstances, with the client as to how the client will be updated as to current and future costs. The member must tell clients when pre-agreed limits or caps on legal costs are reached or are likely to be inadequate and agree revised limits or alternative strategies.
G.1.24	Clients must also be told the terms of payment and the time for payment, the rate of interest (if any) chargeable on late payment, the frequency of billing, and of their right at any time to be informed, on request, of the fees incurred to date.

G.1.25	Depending on the nature of the instruction, it may be necessary to provide additional costs/fees information, for example, ensuring that clients understand the cost implications of any offers of settlement, including details of the costs to be deducted and how the figures are calculated.
G.1.26	The client must be advised of the liability for costs in contentious matters including a clear statement of the principles of the extent of recovery of costs awarded against an opposite party and a clear statement of the likely difference between the level of costs recoverable on an award of costs against such a party and the level of costs which the member will charge to the client.
G.1.27	If any financial benefit (other than legal fees payable by or on behalf of the client) is received during the course of or as a result of acting for the client, then the client must be informed about the benefit and how it will be dealt with. As a fiduciary, the member (or their firm) is not permitted to make a secret profit.
G.1.28	The importance of ongoing client care cannot be underestimated. By keeping the client informed about how the matter is progressing, what the cost implications might be and dealing with clients politely and, in any event, fairly and correctly, members should avoid claims and complaints.
G.1.29	The client's right to complain is an important public protection so it is important that they know about their right and how to complain. Clients must be confident that if they have a complaint, it will be dealt with promptly, fairly and effectively. They must be told to whom the complaint should be addressed, about the dispute provisions referred to in R.1.6 and of the existence of the right of a client to refer a matter to the Law Society in the event that their complaint cannot be resolved satisfactorily through the firm's complaints procedures.
G.1.30	The complaints procedure must be set out in writing (normally in the terms of engagement). The procedure should be clear and easy for clients to use, allowing complaints to be made by any reasonable means, i.e. not necessarily in writing. (This will allow complaints to be made by clients who are vulnerable or who have a disability.)
G.1.31	Complaints must be dealt with effectively, which requires decisions to be based on a proper investigation of the circumstances leading to the complaint, and promptly. If a complaint is justified, an appropriate remedy or redress must then be offered where appropriate. It is important that everyone in the firm, or at least those dealing with clients, understands the firm's procedure and the importance of good complaints handling.
G.1.32	Clients must be advised about what will happen on the termination of a retainer, including details of the file closure procedures and of where documents will be held and the date upon which the file will be destroyed.

G.1.33	On the termination of a retainer, a member must account to the client for any money still held on behalf of the client and if so requested deliver to the client all papers or property to which the client is entitled, or otherwise held to the client's order. The handing over of documents (which means letters, faxes, emails and other documents whether hand written, printed or stored electronically) on the termination of a retainer must be in accordance with the provisions of Annex 1.
G.1.34	Where a client on termination of a retainer so requests, a member's firm, upon payment of a reasonable fee for such copying, shall supply copies of correspondence sent by such firm to the client, of correspondence sent by the client to such firm, of correspondence sent to third parties on behalf of the client and of the written authorities and instructions sent by the client to such firm.
G.1.35	Where the only record of a document is held by a member's firm electronically and if it had been held physically, it would belong to the client, a printout shall be provided to the client on request.
G.1.36	Notwithstanding the provisions in G.1.32 – G.1.35 (including the guidance on ownership of documents at Annex 1), all files or records of any material matter shall be retained by a member's firm in either physical form or, if not reasonably affecting the status or value of the document concerned, electronically, for at least 11 years from the last material entry on the file/record and shall not then be destroyed unless it is reasonable to do so in the circumstances. In any event, members may destroy files and records, other than original documents or items of intrinsic value or currency (e.g. wills, promissory notes) after 20 years from their date or the last material entry, whichever is the later, whether they have the consent of the client or not.
G.1.37	A member or a member's firm is not obliged to maintain the hardware of the computer system upon which such files or records or other may be stored for this 20 year period.

Ref.	Guidance to Rule 2
G.2	Confidentiality – Guidance
G.2.1	R.2.1 sets out the fundamental duty to keep all clients' affairs confidential, which applies to everyone in the firm. The duty applies to all information held about a client and its affairs that is not in the public domain, regardless of the source of the information. Even the fact that the firm acts for a client can be confidential, and likewise for the client's address. There are some limited exceptions to the duty as explained below.
G.2.2	All employees must be trained or instructed on the fundamental duty of confidentiality as well as on the firm's policies and procedures in this area. It needs to be made clear that failing to keep clients' affairs confidential can result in disciplinary action, not only by the firm but also by the Law Society.
G.2.3	There is a difference between the duty of confidentiality and the concept of legal privilege. Legal privilege protects certain communications with a client from being disclosed even in court. However, not all communications, in particular those with third parties, are protected from such disclosure and reference should be made to the appropriate authority on the law of evidence.
G.2.4	Members need to have robust systems and controls in place to ensure that client information is kept confidential (and also to comply with the data protection legislation), and need to identify if there are risks to client confidentiality and how those risks will be managed. Such systems and controls will need to take account of the impact of technology, the risks associated with social media and data security challenges.
G.2.5	Systems and controls to identify and forestall the particular risks associated with partners and staff leaving one firm and joining another will also be required. An individual joining a new firm could not act personally for the client of the new firm if they hold or maintain knowledge of relevant confidential information about a relevant client of the former firm.
G.2.6	Where there is a merger or acquisition between firms, the new or acquiring firm will need to ensure that there can be no breach of confidentiality by identifying the clients of both firms and whether any confidential information is held (which of course ordinarily will be the case). If confidential information is held, the firm will need to take appropriate steps to protect the information or advise any relevant client to seek alternative representation.
G.2.7	The duty of confidentiality continues after the end of the retainer and the right to confidentiality passes to the personal representatives upon the death of a client. After the death of the client, the contents of a will can only be disclosed to or with the consent of the executor(s), until probate has been obtained.

G.2.8	Where there are joint clients in a joint retainer, the relevant information – including information provided by one of the joint clients – must be available to both or all clients. Both or all clients must agree to any information being disclosed to a third party. If information is disclosed or provided to the firm by a person who is one of the joint clients when the firm is acting for that person on a separate matter, that information can only be disclosed to the other joint client(s) with the consent of the "disclosing" client.
G.2.9	If a lender asks for a conveyancing file, where the firm has kept a joint file for the lender and borrower clients, the whole file cannot be sent to the lender without the borrower's consent unless the firm is satisfied that there is a prima facie case of fraud. If consent is not forthcoming, only the parts of the file that relate to work done for the lender may be sent. The borrower may only be sent the parts of the file that relate to work undertaken on behalf of the borrower.
G.2.10	Firms must always consider whether a particular course of action will result in a breach of confidentiality, for example, sharing office services with other businesses, selling book debts to a factoring company or outsourcing services such as word processing, call handling or photocopying. It may be possible to protect confidentiality by putting robust contractual arrangements in place, which include confidentiality undertakings, which are then checked to ensure compliance. In such cases, it may be prudent to inform clients of the arrangements.
G.2.11	Information received in relation to a prospective client may still be confidential even if that prospective client does not instruct the member. In addition, the receipt of that information may subsequently prevent the firm from acting for another party.
G.2.12	<p>The duty of confidentiality may be overridden by law or regulation or by a court order. There are various statutes which empower government and other bodies e.g. the Comptroller of Taxes to require persons to disclose documents and/or information. Any disclosure made in accordance with a statutory authority or court order must be strictly limited to what is required by law. If requested by a government or other body or the police to provide information, the member or employee should:</p> <ul style="list-style-type: none"> • ask under which statutory power the information is sought; • ask whether the client's consent can be sought; • consider the relevant provisions; and • assess whether privileged information is protected from disclosure.
G.2.13	Where there are circumstances in which the member, employee or firm has strong prima facie evidence that they have been or are being used by the client for an unlawful purpose, the duty of confidentiality may fall away. If a member, employee or firm is unsure whether that is the case, it may be necessary to obtain specialist legal advice.

G.2.14	<p>Exceptional circumstances in which a member or firm should consider of its own motion revealing confidential information to an appropriate authority are:</p> <ul style="list-style-type: none"> • either for the sole purpose of avoiding the probable commission of a serious criminal offence; or • for the purpose of preventing the suicide of, or imminent serious physical or psychological harm (including self-harm) to, the client or to another person.
G.2.15	<p>The money laundering legislation overrides the duty of confidentiality in certain circumstances. When deciding whether a report needs to be made to the relevant authorities, the firm's money laundering reporting officer (MLRO) will consider the law, the extent to which confidentiality is overridden and whether there is information which is subject to legal privilege. It may be necessary to obtain specialist legal advice.</p>
G.2.16	<p>If a client becomes insolvent, the firm will need to determine to whom the duty of confidentiality is owed. Reference should be made to the relevant legislation to assess whether the statutory power to require disclosure overrides confidentiality and, if so, to what extent. Any disclosure made must be strictly limited to what is required by the law.</p>
G.2.17	<p>Confidential information may be disclosed to the firm's insurer or The Law Society either to deal with a negligence claim or where a member, employee or the firm's conduct is under investigation.</p>
G.2.18	<p>Under R.2.2, there is a duty to disclose to the client all information material to the client's matter. That duty is limited to information of which the member is aware but is not limited to information obtained while acting on the client's matter. It is however subject to the qualifications set out in that Rule.</p>
G.2.19	<p>"Information which is material to the client's matter" is not defined but must be information which is relevant to the particular retainer and must be information which might reasonably be expected to affect the client's decision making in relation to the retainer in a significant way. There may be circumstances in which the client instructs the member, employee or the firm because of their specialist knowledge and agrees that the usual duty to disclose information about other clients (such duty being albeit always subject to the R.2.2 qualifications and G.2.21) would not apply. The duty to disclose information about other clients necessarily does not apply in R.6.3 circumstances.</p>
G.2.20	<p>If, during the course of a matter, a member receives information or documents from either a client or a third party, which clearly appear to have been (a) disclosed inadvertently or (b) obtained improperly, the member must return such information or documents to the rightful owner without use being made of the information or documents.</p>
G.2.21	<p>Where it is not clearly apparent that the information or document (or documents) has been mistakenly disclosed, but it appears that this may be the case, the member must inform his or her opponent of their intention to use the document and the circumstances (so far as are known) in which the information or document has been obtained. If the opponent objects to the use of such information or documents, reference to the court may be necessary.</p>

G.2.22	Where there is a conflict between the duty of confidentiality and the duty of disclosure, it will normally be necessary to stop acting or to refuse instructions. This reflects the fiduciary duty of loyalty which exists at common or customary law.
G.2.23	A member (or their firm) should consider carefully whether it can act for the adversary of a former client. Firstly, an assessment must be made whether any confidential information, which is relevant to the dispute, is held by the member or the firm. Secondly, the member and the firm should assess whether it would be professionally embarrassing to act for the adversary. The reputational damage of acting against a former client may outweigh the benefits of acting for the adversary.
G.2.24	Members must ensure that child witness evidence of other evidence relating to sensitive issues is kept securely and not released to clients or third parties.
G.2.25	Disclosure to the authorities is permitted where the client has been a victim of abuse or discloses abuse by him/herself or another of or against a child or vulnerable adult but refuses to allow any disclosure.

Ref.	Guidance to Rule 3
G.3	Duty to the Court - Guidance
G.3.1	Knowingly misleading the court includes the situation where, having inadvertently misled the court, a member later realises that they have misled the court, and fails to correct the position. Recklessness means being indifferent to the truth, or not caring whether something is true or false. The duty continues to apply for the duration of the case.
G.3.2	Members must take reasonable steps to ensure that the court has before it all relevant decisions and statutory provisions, which includes drawing to the attention of the court any decision or provision which may be adverse to the interests of their client. It is particularly important where a member is appearing against a litigant who is not legally represented.
G.3.3	<p>R.3.2 makes it clear that a member's duty to act in the best interests of their client is subject to their duty to the court, but subject to R.3.3. For example, if a client were to tell a member that he had committed the crime with which he was charged, in order to be able to ensure compliance with R.3.1 to R.3.4:</p> <ul style="list-style-type: none"> • the member would not be entitled to disclose that information to the court without their client's consent; and • the member would not be misleading the court if, after their client had entered a plea of 'not guilty', they were to test in cross-examination the reliability of the evidence of the prosecution witnesses and then address the jury to the effect that the prosecution had not succeeded in making them sure of their client's guilt. <p>However, they would be misleading the court and would therefore be in breach of R.3.1 and R.3.4 if they were to set up a positive case inconsistent with the confession, as for example by:</p> <ul style="list-style-type: none"> • suggesting to prosecution witnesses, calling their client or their witnesses to show, or submitting to the jury, that their client did not commit the crime; or • suggesting that someone else had done so; or • putting forward an alibi. <p>If there is a risk that the court will be misled unless a member discloses confidential information which they have learned in the course of their instructions, the member should ask the client for permission to disclose it to the court. If their client refuses to allow them to make the disclosure they must cease to act, and return their instructions. In these circumstances the member must not reveal the information to the court.</p> <p>For example, if the client tells a member that he has previous convictions of which the prosecution is not aware, the member may not disclose this without their consent. However, in a case where mandatory sentences apply, the non-disclosure of the previous convictions will result in the court failing to pass the sentence that is required by law. In that situation, the member must advise their client that, if consent is refused to the member revealing the information, the member will have to cease to act. In situations where mandatory</p>

	<p>sentences do not apply, and the client does not agree to disclose the previous convictions, a member can continue to represent their client but in doing so must not say anything that misleads the court. This will constrain what they can say in mitigation. For example, a member could not advance a positive case of previous good character knowing that there are undisclosed prior convictions. Moreover, if the court asks the member a direct question they must not give an untruthful answer and therefore they would have to withdraw if, on their being asked such a question, their client still refuses to allow them to answer the question truthfully. The member should explain this to their client.</p> <p>Similarly, if a member becomes aware that their client has a document which should be disclosed but has not been disclosed, they cannot continue to act unless their client agrees to the disclosure of the document. In these circumstances the member must not reveal the existence or contents of the document to the court.</p>
G.3.4	Members must not discuss the merits of a case with a member of the judiciary before whom a case is pending or by whom it may be heard unless invited to do so in the presence of the lawyer for the other side.
G.3.5	A member's duty to the court does not permit or require them to disclose confidential information which they have obtained in the course of their instructions and which their client has not authorised them to disclose to the court. However, R.3.4 requires a member not knowingly to mislead the court or to permit the court to be misled.
G.3.6	<p>Members are obliged by P.4 to promote and to protect each of their client's interests so far as that is consistent with the law and with their overriding duty to the court under P.1. Their duty to the court does not prevent them from putting forward their client's case simply because they do not believe that the facts are as their client states them to be (or as they, on their client's behalf, state them to be), as against <u>knowing</u> their client's case to be false, as long as any positive case put forward accords with their instructions and the member does not mislead the court. The member's role when acting as an advocate or conducting litigation is to present their client's case, and it is not for them to decide whether their client's case is to be believed.</p> <p>For example, a member is entitled, and it may often be appropriate, to draw to the witness's attention other evidence which appears to conflict with what the witness is saying and the member is entitled to indicate that a court may find a particular piece of evidence difficult to accept. But if the witness maintains that the evidence is true, it should be recorded in the witness statement and the member will not be misleading the court if they call the witness to confirm their witness statement. Equally, there may be circumstances where a member calls a hostile witness whose evidence they are instructed is untrue. A member will not be in breach of R.3.4 if they make the position clear to the court.</p>
G.3.7	Where a client admits to having committed perjury or having misled the Court in any material matter relating to ongoing proceedings, the member must not act further in those proceedings unless the client agrees to correct the position.

G.3.8	Members must not institute proceedings on behalf of a client which the member reasonably believes to be instituted only for the purpose of gratifying the client's anger, ill will or malice towards another person or persons.
G.3.9	There is no objection to reasonable expenses, and reasonable compensation for loss of time attending court, being paid to witnesses.

Ref.	Guidance to Rule 4
G.4	Honesty, integrity and independence - Guidance
G.4.1	A member's honesty, integrity and independence are fundamental. The interests of justice (P.1) and the client's best interests (P.4) can only be properly served, and any conflicts between the two properly resolved, if a member conducts themselves honestly (P.3) and maintains their independence from external pressures (P.5).
G.4.2	Other Rules deal with specific aspects of their obligation to act in their client's best interests (P.4) while maintaining honesty and integrity (P.3) and independence (P.5).
G.4.3	R.4.1 addresses how a member's conduct is perceived by the public. Conduct on their part which the public may reasonably perceive as undermining their honesty, integrity or independence is likely to diminish the trust and confidence which the public places in them or in the profession, in breach of P.2.
G.4.4	<p>Examples of how members may be seen as compromising their independence.</p> <p>The following may reasonably be seen as compromising a member's independence in breach of R.4:</p> <ul style="list-style-type: none"> • offering, promising or giving: <ul style="list-style-type: none"> • a gift (apart from items of modest value), to any client, professional client or other intermediary; or • lending money to any such client, professional client or other intermediary; or • accepting any money (whether as a loan or otherwise) from any client, professional client or other intermediary, unless it is a payment for their professional services or reimbursement of expenses or of disbursements made on behalf of the client. <p>If a member is offered a gift by a current, prospective or former client, professional client or other intermediary, they should consider carefully whether the circumstances and size of the gift would reasonably lead others to think that their independence had been compromised. If this would be the case, the gift should be refused.</p> <p>The giving or receiving of entertainment at a disproportionate level may also give rise to a similar issue and so should not be offered or accepted if it would reasonably lead others to think that their independence had been compromised.</p>

Ref.	Guidance to Rule 5
G.5	Acting in the best interests of each client - Guidance
G.5.1	A member's duty is to their client, not to their professional client or other intermediary (if any).
G.5.2	R.5.1 and R.5.2 are expressed in terms of the best interests of each client. This is because a member may only accept instructions to act for more than one client if they are able to act in the best interests of each client, as P.4 requires of them, as if that client were their only client. See R.1 on the circumstances when members are obliged to advise their client to seek other legal representation and R.6 on conflicts of interest, and the guidance to those Rules.
G.5.3	<p>P.6 requires not only that a member provide a competent standard of work but also a competent standard of service to their client. R.1 and R.5 are not exhaustive of what a member must do to ensure their compliance with P.4 and P.6. By way of example, a competent standard of work and of service includes:</p> <ul style="list-style-type: none"> • treating each client with courtesy and consideration; and • seeking to advise their client, in terms they can understand; and • taking all reasonable steps to avoid incurring unnecessary expense; and • reading their instructions promptly. <p>This latter obligation may be particularly important if there is a time limit or limitation period. If a member fails to read their instructions promptly, it is possible that they will not be aware of the time limit until it is too late.</p>
G.5.4	In order to be able to provide a competent standard of work, members should keep their professional knowledge and skills up to date, regularly take part in professional development and educational activities that maintain and further develop their competence and performance. Merely complying with the minimum Continuing Professional Development requirements may not be sufficient to comply with R.7.
G.5.5	Members should also ensure that they comply with any specific training requirements of the Law Society before undertaking certain activities – for example, they should not attend a police station to advise a suspect or interviewee as to the handling and conduct of police interviews unless they have complied with such training requirements as may be imposed by the Law Society in respect of such work. Similarly, they should not undertake public law work without successfully completing any required training specified by the Law Society.
G.5.6	Members should remember that their client may not be familiar with legal proceedings and may find them difficult and stressful. They should do what they reasonably can to ensure that the client understands the process and what to expect from it and from the member. Members should also try to avoid any unnecessary distress for their client. This is particularly important where members are dealing with a vulnerable client.

G.5.7	The duty of confidentiality is central to the administration of justice. Clients who put their confidence in their legal advisers must be able to do so in the knowledge that the information they give, or which is given on their behalf, will stay confidential. In normal circumstances, this information will be privileged and not disclosed to a court.
G.5.8	R.2.1 acknowledges that a member's duty of confidentiality is subject to an exception if (amongst other things) disclosure is required or permitted by law. For example, members may be obliged to disclose certain matters by the Proceeds of Crime (Jersey) Law, 1999, or other legislation. Subject to any appropriate challenge, disclosure in those circumstances would not amount to a breach of R.2.1. In other circumstances, a member may only make disclosure of confidential information where it is in the firm's own interests to do so or where their client gives informed written consent to the disclosure.
G.5.9	There may be circumstances when a member's duty of confidentiality to their client conflicts with their duty to the court. (See also G.3.5.)
G.5.10	Similarly, there may be circumstances when a member's duty of confidentiality to their client conflicts with their duty to their regulator.

Ref.	Guidance to Rule 6
G.6	Conflicts of interest - Guidance
G.6.1	If there is a conflict of interest or a significant risk of conflict, in the same or related matter, either between the duty to act in the best interests of two or more clients or between the interests of a member (or their firm) and a client, then – as a general and not absolute statement – the client’s best interests cannot be served, which would be a breach of P.4. Qualified as a general statement, given what underlies the exception at R.6.3, clients can choose to waive the general Rule, and there can be important commercial advantage (practicality, convenience, cost, expeditious mutual understanding) in having the same firm (albeit in different persons) act for both or more interests.
G.6.2	Identifying conflicts of interest is a major challenge for lawyers and it is critical for firms to have effective systems and controls to identify and manage and avoid conflicts of interest, or achieve clients' consent as referred to in R.6.3. A system will not be effective if insufficient relevant information is obtained from the client e.g. about adverse or potentially adverse parties, other names (e.g. maiden or marital) and associated or related persons, including other advisers. The systems and controls must be set up to ascertain commercial as well as legal conflicts. A firm must also be alert, in considering whether it can take on instructions, to the conflicts of interest provisions of panel terms or equivalent, typically of financial institutions, by which they may be bound.
G.6.3	Members and employees must be properly trained on what a conflict of interest is, what information to seek from potential clients and how to manage and avoid conflict of interest situations.
G.6.4	The definition of conflict in R.6.2 requires an assessment whether two matters are "related". A related matter will always include any other matter which involves the same asset or liability or transaction. If the asset or liability or transaction is not the same, then there will need to be some reasonable degree of relationship of the clients' respective interests for a conflict to arise.
G.6.5	Members and firms will need to make a judgement on the facts and, in doing so, should take into account the view of the existing client, if obligations of confidentiality to the prospective client allow the matter to be raised with the existing client. Consideration will also need to be given to whether any relevant confidential information relating to the existing client is held and if so, whether R.2 can be complied with if the new client is taken on.
G.6.6	In considering whether there is a conflict of interest or whether it is appropriate to seek consent to act from all clients under R.6.3, a member must take into account the obligation to act in the best interests of each client, the duty owed to each individual client and the extent to which such duty continues in respect of a former client following termination of the retainer.

G.6.7	R.6.3 only applies to non-contentious matters, and there must be informed written consent (which is freely given). The member or firm must be satisfied that the clients understand the implications of the consent, or that the advantages to the clients of the firm acting for more than one client outweigh possible conflicts of interest or duty. If there is a risk that the parties do not fully understand the implications, or that the advantages do not outweigh possible conflicts, or any of the parties are vulnerable or subject to undue influence, it is likely to be prudent to ensure that they are separately represented. Without prejudice to the application of R.6.4 in the circumstances where it applies, it is a good practice, when entering into arrangements to act for two or more clients in the same matter or related matters, for the firm to agree with the clients which of the clients the firm will act for if the relations between the clients become contentious. See G.6.11.
G.6.8	In accepting instructions in a R.6.3 situation, the member or firm must be satisfied that they can act even-handedly for both or all clients, so that one client is not favoured at the expense of the other and that unfettered advice can be given which is in the best interests of each client in accordance with P.4. The question of whether it remains reasonable to continue to act for both clients must be kept under review.
G.6.9	Where it is decided to act under R.6.3, it would be prudent to set out the issues relating to conflict in the terms of business letter, or otherwise in writing, including how a conflict might affect the clients as the matter progresses. Written records of discussions with clients about the implications of acting for them as well as other(s) on the same matter or related matters, including that the firm may have to cease acting for one or more of the clients, should always be retained for the avoidance of doubt and for evidential reasons.
G.6.10	There may be circumstances where, when acting for two or more clients on a matter or related matters, it will be necessary to cease acting for one or more clients. There may not have been any indication of conflict at the outset but subsequently either a conflict or significant risk of conflict arises. In such circumstances, if it is not possible or appropriate to achieve consent from the clients under R.6.3 or otherwise, the disruption to the clients should be limited as far as reasonably possible. Care should be taken to ensure that there is no breach of confidentiality and proper effort should be made to help the client/s to obtain further legal representation.
G.6.11	An own interest conflict is not restricted to economic issues, for example there may be circumstances in which there is a personal relationship which impairs the ability to act in the best interests of the client. The fiduciary relationship with the client prevents a member or a firm from taking advantage of the client (the 'no profit' rule) or acting where there is a conflict or potential conflict of interest with the client (the 'no conflict' rule).
G.6.12	Where a member or a firm is in doubt whether there is an own interest conflict, particularly where there is likely to be a perception that there is an own interest conflict, the member or firm should err on the side of caution and either insist that the client obtain independent legal advice or stop acting.

G.6.13	The public offices and appointments covered by R.6.8 include membership of the States Assembly, Procureurs du Bien Public, Connétables, judicial appointments and similar appointments which could give rise to a perception of conflict or unfair advantage.
G.6.14	<p>When assessing whether there is any conflict or significant risk of conflict under R.6.8, the following issues should be considered:</p> <ul style="list-style-type: none"> • Is there any political or other interest in or arising from the office or appointment that may conflict with or affect the duty to act in the best interests of clients (including the ability to advise impartially and independently)? • Are there any duties which arise from the office or appointment that may conflict with or affect the duty to act in the best interests of clients (including the ability to advise impartially and independently)? • Do the terms of the appointment or any statutory provisions restrict the ability of the individual to act in any particular matter or for any class of potential clients? and • Is there likely to be a public perception that the individual or the firm has been or will or may be able to obtain an unfair advantage for clients as result of the office or appointment?
G.6.15	Where a member or employee of the firm or a family member has accepted (or is considering whether to accept) a public office or appointment, the firm should consider whether there is or may be a public perception of the firm obtaining or being able to obtain an unfair advantage for its clients, or of the firm being constrained from advising its own clients unaffected by such office or appointment.
G.6.16	Where a number of gifts are made to members or employees of the firm or their family members, they should be amalgamated for the purpose of determining whether the gift exceeds the limit specified in R.6.9.
G.6.17	A member should always assess the risks of preparing a will or other document for a family member particularly where that member is to receive a significant gift from the estate or otherwise and consider whether, even when acting would be within R.6.9, it would be more sensible to refuse to act. The member should always consider whether there might be a perception of undue influence.
G.6.18	Members must ensure that all employees of the firm understand and comply with the provisions of R.6.9.
G.6.19	R.6.10 provides that a member must not stand bail for a client (except with the consent of the Committee of the Law Society) as standing bail for a client is likely to create a conflict of interest. At all times members (and employees) must maintain their independence as officers of the court.

G.6.20	<p>A member must not appear as an advocate at a trial or otherwise act in the litigation if it is clear or probable that the member, or anyone within their firm, will be called as a witness, unless they are satisfied that this will not prejudice the member's independence as an advocate (or that of the employee) or the interests of their client or the interests of justice. The factors to consider include:</p> <ol style="list-style-type: none"> a. the nature of the evidence, its importance to the case and whether it is purely formal or likely to be contested; or b. whether there is likely to be a conflict of interest between the member or their firm and the client; and c. the effect on the client if, having already accepted instructions to act, the member (or employee) has to stop acting.
G.6.21	<p>If there is a significant risk that a member, or an employee of their firm, will be called as a witness if, for example, they had witnessed events which were material to the issue being tried, consideration should be given whether there is a conflict of interest or whether giving evidence might adversely affect the client's interests. In the event of uncertainty as to the appropriate course of action, the overarching principles and a member's duty to uphold the rule of law and the proper administration of justice must be considered, and may result in the conclusion that the member has to stop acting.</p>

Ref.	Guidance to Rule 7
G.7	Business Management – Guidance
G.7.1	Members must manage their business in compliance with all the Principles, including the overriding duty to the court. The culture of the firm comes from the principal or partners, and members must ensure that they (and their employees) uphold the rule of law and proper administration of justice by acting ethically at all times.
G.7.2	To manage their business effectively and efficiently, firms must have clear governance and a management structure with defined reporting lines and clarity over supervision responsibilities so everyone knows who is responsible for what and where to go for help or to report or raise a problem.
G.7.3	<p>A well-run business will identify and manage risk effectively. Having identified the risks for the firm, the firm will implement robust systems and controls to manage and mitigate those risks, which should include periodic reviews. The main types of risk are:</p> <ul style="list-style-type: none"> a) strategic, for example, external factors (economic, political, legal changes, competition), internal factors (reliance on one area of work, merger risks, badly managed teams, loss of key partners or employees); b) financial, for example, lack of income, loss of client money, credit risks, poor financial hygiene (lack of regular billing, excessive write offs, poor budgetary controls); c) operational, for example, lack of IT and physical security, IT systems failures, damage to offices; d) regulatory, for example, breaches of the Code or Rules, negligence claims, complaints, CDD/KYC, money laundering and data protection risks.
G.7.4	<p>A firm's systems and controls to mitigate the risks identified will cover at least the following:</p> <ul style="list-style-type: none"> a) client care, costs information and complaints handling including compliance with R.1; b) confidentiality of client information; c) a systematic approach to identifying and avoiding conflicts of interests; d) the exercise of appropriate supervision over all employees and proper supervision of clients' matters; e) the training of individuals working in the firm to maintain a level of competence appropriate to their work and level of responsibility; f) supervision of less senior or experienced staff; g) compliance with the key regulatory requirements of the Law Society including professional indemnity cover, Accounts Rules/delivery of accountants' reports and obligations to co-operate with and report information to the Law Society; h) compliance with all legal and other regulatory requirements, for example, the money laundering legislation and data protection legislation and the regulatory requirements of the Jersey Financial Services Commission (under the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008); i) the giving and control of undertakings;

	<ul style="list-style-type: none"> j) the identification and safekeeping of documents and assets entrusted to the firm, including client money, wills and investments; k) the continuation of the firm in the event of absences and emergencies, with the minimum interruption to clients' business; and l) the management of risk (in accordance with G.7.3).
G.7.5	<p>R.7.2 c) states the need to maintain appropriate records including good file management, as this is essential to an ethical and competent practice. This includes keeping appropriate notes and records of communication which will have the added effect of protecting employees and the firm in the event of a complaint or claim. Good practice includes:</p> <ul style="list-style-type: none"> a) a clear and risk-avoiding policy relating to records and file management; b) clear file opening procedures that ensure all necessary information is obtained and recorded and communicated as is requisite; c) robust filing systems; d) prudent file review procedures including a system for diarising reviews; e) file closing procedures that check material risks (e.g. prescription periods, any outstanding CDD); f) a clear and prudent policy for archiving, retention and destruction of files; and g) clear backup systems, both paper and electronic, including disaster recovery procedures.
G.7.6	<p>Members and their firms need to ensure that employees are properly trained or informed about the systems and controls and provided with easy access to the policies and procedures. Regular reminders of the importance of compliance will help to ensure that employees understand their obligations and comply with the requirements of R.7.</p>
G.7.7	<p>There are two key elements to R.7.4; firstly, the obligation to protect client money and assets and secondly, the obligation to ensure that the firm remains financially viable by ensuring there is financial control of budgets, expenditure, work in progress, invoicing and cashflow.</p>
G.7.8	<p>The impact of the failure of a firm is significant not only for clients who are directly affected but also for the reputation of the profession. Well-run firms tend to employ an experienced and capable financial manager or similar individual with strong financial skills.</p>
G.7.9	<p>Robust systems and controls to protect client money and assets are required to minimise the risk of dishonesty or inappropriate use of client account. A good understanding of the Accounts Rules is essential not only for the members/partners but also for all employees who have anything to do with client money and assets. Every such person in the firm needs to know what the requirements are and what the implications are of a failure to comply.</p>

G.7.10	<p>Strong internal financial controls should enable the management of the firm to to:</p> <ul style="list-style-type: none"> a) measure and control financial performance; b) avoid over reliance on borrowing/overdraft facilities; c) ensure that drawings and remuneration do not exceed profits; d) avoid over-commitment to high fixed costs, such as premises and vehicles; e) implement efficient invoicing processes to obtain payment for work done in a timely way; f) ensure that any acquisitions follow proper legal and financial due diligence based on a well-thought-out business plan to control the associated risks; g) plan properly for any diversification of the firm, in accordance with the business plan and using the right skills and the right people; and h) avoid failure of the firm caused by over-dominant partners refusing to accept the seriousness of the firm’s financial position.
G.7.11	<p>Effective supervision is essential for the success of the firm. Firms need to ensure that their supervisory arrangements are effective and robust and kept under regular review. The consequences of a lack of effective supervision include:</p> <ul style="list-style-type: none"> a) errors resulting in negligence claims or complaints; b) loss of business due to dissatisfied clients (even if they do not complain); c) loss of employees and knowledge (due to lack of motivation and dissatisfaction as a result of the poor supervision); d) disciplinary action including fines and/or reputational impact; and e) closure or failure of business.
G.7.12	<p>Effective supervision mechanisms are likely to include:</p> <ul style="list-style-type: none"> a) the provision of clear and complete instructions regarding the work to employees, including appropriate background information and details of the end result required and how it is to be achieved; b) regular meetings to discuss progress in both client work and the individual’s own development; c) the use of established and clear management policies and systems covering conflict checks, file management, work allocation on a file, documentation and communication; d) a level of supervision which is proportionate to the ability and experience of the person being supervised; e) the effective use of mentoring, where appropriate.
G.7.13	<p>The supervisor’s duty to ensure that the member or employee is effectively supervised applies no less where the member or employee is working at home or from a “virtual” office.</p>
G.7.14	<p>If a complaint is made about work carried out by a member or employee, firms may have to demonstrate that their supervision arrangements are effective and regular. Work for clients that is subject to supervision includes the handling of client money and compliance with R.1 (Client relations).</p>

G.7.15	R.7.6 requires members and firms to ensure that all employees are properly trained and competent. 'Competent' is defined as being able to perform a task or role to a required standard by the application of essential knowledge, skill and understanding.
G.7.16	It is for members and firms to decide what approach to securing and maintaining competence will work for their business model but it may be necessary to provide evidence to demonstrate that issues of competence are addressed in the firm's procedures in relation to, for example, recruitment, ongoing work assessment and training and the degree to which such assessment or training is formally structured.
G.7.17	Undertaking CPD assists members and employees in staying up to date with changes in the law. It is the responsibility of members, employees and the firm to ensure that the CPD undertaken is relevant and will help the individual to maintain a level of competence appropriate to their work and level of responsibility.
G.7.18	The requirement to file the CPD return with The Law Society each year is linked to P.9 and the requirement to deal with regulators in an open, timely and co-operative manner.

Ref.	Guidance to Rule 8
G.8	Publicity and communications – Guidance
G.8.1	When publicising the firm or any of the activities of the firm, members must comply with P.2 and P.3 and ensure that all publicity and communications comply with the high ethical and technical standards of the legal profession.
G.8.2	Members and firms must ensure that all publicity is clear, fair and not misleading or inaccurate. All publicity must comply with the general law on advertising, including provisions designed to protect consumers.
G.8.3	Advertising material may contain any factual statement the truth of which a member is able to justify. Members must not make disparaging references to or disparaging comparisons with the services or fee structures of others.
G.8.4	If a member or firm is in doubt as to whether the publicity relating to charges is clear, they should err on the side of caution and re-word the publicity or provide further information.
G.8.5	R.8.4 prohibits unsolicited visits or telephone calls but not unsolicited emails. However the terms of the agreement with the internet service provider may restrict unsolicited email. In addition, members, employees and firms must comply with the requirements of the Data Protection (Jersey) Law 2005 and any restrictions in relation to direct marketing by email.
G.8.6	When contacting prospective clients, care must be taken to ensure that any publicity does not constitute harassment. Approaching people in the street, in hospital or at the scene of an accident, without invitation, will be in breach of R.8.4.
G.8.7	The letterhead, website and emails of a member's practice must comply with all legal and regulatory requirements including the Code of Conduct. Members are expected to be familiar with the legal and regulatory requirements relating to advertising.
G.8.8	Other than where specifically referenced in a reported case or judgment, clients can only be named in publicity if they have given consent.

Ref.	Guidance to Rule 9
G.9	Referrals/fee sharing – Guidance
G.9.1	The Rule sets out the circumstances in which fees can be shared and the situations in which a referral fee can be paid to another lawyer. Regardless of whether there is a financial arrangement, members, employees and firms must ensure that P.3, P.4 and P.5 are observed at all times.
G.9.2	Fee sharing can take a variety of forms and includes arrangements where a payment is made by reference to a percentage of the fees charged to a client in respect of a particular matter, or a percentage of gross or net fees, or a firm's profits. Sharing fees within a firm, or with current or former other members, or the dependants of former partners, is permitted as it is unlikely to constitute a risk to the independence of the firm's members.
G.9.3	Firms must comply with R.11 (Practice framework), which sets out the types of business through or with which members including those within LLPs may practise. Members and firms must ensure that they do not enter into an unauthorised partnership inadvertently, by sharing fees.
G.9.4	The term "payment" in R.9 shall be deemed to include any form of consideration or benefit, but shall not include payments made in respect of normal hospitality or other normal business expenses.
G.9.5	If arrangements are made for the referral of clients between law firms or to non-lawyer third parties, such arrangements must, in accordance with the Principles, and therefore: <ul style="list-style-type: none"> a) be or be intended to be in the best interests of the client; b) not interfere with the professional judgement of a member or employee in the advice given to clients; c) not compromise the duty to be independent; d) allow a member or employee to provide a good standard of work and service to the client.
G.9.6	Further to G.9.5, members and employees must comply with R.6 (Conflict of interests) so that there is no conflict between the interests of the client and the member's/employees' own interests due to any agreement with a third party. If the third party becomes a client, the member or employee must ensure a conflict of interests does not arise and that the relationship with the third party does not affect the advice given to or actions taken on behalf of other clients.

G.9.7	It is prudent to keep such arrangements under regular review to ensure compliance with the Code of Conduct. Issues that are likely to need to be considered include whether the arrangement involves confidential client information being disclosed to an introducer and what consent was obtained from the client, whether the introducer's publicity could affect the firm's reputation, whether the member retains full control of the work done for clients and whether there is any attempt to influence the member's ability to communicate directly with the client. If the arrangement is working against compliance with the Code of Conduct, or is otherwise unsuitable or unsatisfactory, it must be ended.
G.9.8	There may be occasions when a client is entering into or has already entered into a scheme or arrangement with an introducer which is not in their best interests, for example where the client is paying unnecessary or unreasonable fees. In such circumstances, the client should be advised accordingly. If a client has been misled into instructing the firm by a third party or been pressured into instructing the firm, the member or employee should not accept that referral. It is important that the client's freedom of choice is maintained.
G.9.9	If the Law Society requests information regarding the firm's fee sharing or referral arrangements, that information must be provided promptly (within 14 days or as otherwise determined), in accordance with R.12. The Law Society will respect the commercial sensitivity of any information supplied to it.

Ref.	Guidance to Rule 10
G.10	Relations with other members and third parties - Guidance
G.10.1	P.2 requires members to avoid bringing the profession into disrepute in their dealings with other members and third parties. (The same requirement in relation to clients is at R.1.5.)
G.10.2	It would, for example, be a breach of R.10.1 to send correspondence or otherwise communicate with another member or any other party in any manner which is inconsistent with the proper tone of a professional communication from a lawyer.
G.10.3	Correspondence from other members or firms should be answered with reasonable promptness. Where correspondence is received from a third party properly involved in a matter, and which requires a response, it should also be answered with reasonable promptness.
G.10.4	If a member of another firm involved in a matter is not responding to correspondence, they should be reminded of their duties under R.10.1 and the guidance at G.10.3. If, despite those reminders, the member of the other firm refuses to respond, the matter should be raised with the Law Society.
G.10.5	A member or employee should not make an electronic recording of a conversation with another member or employee of another member's firm without prior written notice having been given that the conversation will be recorded and the provision, if required, within a reasonable time, of a transcript to the other member or the other member's firm at a reasonable cost.
G.10.6	There may be situations where it is inappropriate for members to use their professional qualification in advancing their personal interests.
G.10.7	Care should be taken when members are dealing with someone who does not have legal representation. It is important to find the right relation between acting with a view to the best interests of the client and not taking unfair advantage of another person. If an unrepresented opponent provides badly drawn documentation, members should suggest that they obtain legal representation. If such an opponent refuses to do so, members should ensure that a balance is maintained between doing their best for the client and not taking unfair advantage of the opponent's lack of legal knowledge and drafting skills.
G.10.8	When dealing with an unrepresented third party, members should ensure that a contractual relationship is not inadvertently created and that the third party understands clearly that the member is acting for its client and does not owe the third party any duty to act in their interests.

G.10.9	It would be unfair to demand anything that is not recoverable through proper legal process.
G.10.10	If a person sends a member documents or money subject to an express condition, the member must return the documents or money if they are unwilling or unable to comply with the condition. If members are sent documents or money on condition that they are held to the sender's order, members must return the documents or money to the sender on demand. If members ask anyone to supply copies of documents, they should expect to pay a proper charge for them.
G.10.11	Members must give due consideration, taking into account the exceptions in Rule 10.3 (as if it applied) whether it is appropriate to contact another party to a matter, if that party is represented by a lawyer or a business carrying on the practice of a lawyer.
G.10.12	R.10.3 is not intended to prevent members from dealing with other types of representative, if appropriate. Any such dealings will of course be subject to other, applicable, provisions of this Code.
G.10.13	An undertaking is any statement, made by a member or an employee of their firm, that the member or their firm will do something or cause something to be done, or refrain from doing something or causing something to be done, given to someone who reasonably relies upon it. It can be given orally or in writing and need not include the word "undertake". It is recommended that oral undertakings be confirmed or recorded in writing for evidential purposes.
G.10.14	The requirement under R.10.4 is to perform an undertaking in a timely manner and therefore it is important that there is a clear time frame within which an undertaking should be fulfilled. If the undertaking does not contain a timeframe, fulfilment is likely to be expected "within a reasonable time". What that amounts to will depend on the circumstances but the giver should ensure the recipient is kept informed of the likely timescale and any delays to it.
G.10.15	Members and firms must maintain an effective system which controls the giving of undertakings (who can give them and in what circumstances) and records when undertakings have been given and when they have been discharged. Employees need to be provided with training on how to comply with the professional obligations arising.
G.10.16	The particular issues which arise in property transactions relating to undertakings are set out in Annex 2 and a member or their firm must comply with those requirements.
G.10.17	R.10.5 does not apply when a member merely introduces or refers a client to a lawyer of another jurisdiction. However, when a member instructs such a lawyer, the member or their firm will be accepting the liability to pay the lawyer's proper fees unless otherwise agreed. If, for example, they do not hold money on account and the client is declared bankrupt, the member or their firm may have to pay the lawyer's proper fee out of their own funds.

G.10.18	The fees of a lawyer of another jurisdiction may be regulated by a scale approved by the relevant bar association or law society.
G.10.19	In the event that a dispute arises concerning the payment of the fees of a lawyer of a CCBE (The Council of Bars and Law Societies of Europe) state, the relevant CCBE guidance should be consulted and the necessary action taken before starting any proceedings.

Ref.	Guidance to Rule 11
G.11	Practice framework - Guidance
G.11.1	R.11.1 makes it clear that no person may practise law as an advocate or a solicitor (other than where they are employed by the Law Officers' Department or come within other categories of person as The Law Society of Jersey Law 2005 may also refer to) unless they are an ordinary member of the Law Society.

Ref.	Guidance to Rule 12
G.12	Conduct, rights and obligations of practice – Guidance
G.12.1	The aim of R.12 is to set out certain practice obligations of members in particular in their relation with the Law Society (as principal regulatory body), including the duty to co-operate with the Law Society as required by P.9.
G.12.2	The duties imposed under this Rule may be restricted by a member's legal obligations to their clients or others, for example, the obligation to protect client confidentiality and privilege. Even so, members are expected to co-operate with the Law Society by, as the case may be, redacting information or providing information on an anonymised or confidential basis or by obtaining their client's consent before proceeding.
G.12.3	Restrictions or conditions may be imposed by the Committee of the Law Society on a member or non-practising member or employee in accordance with the Bye-Laws for failure to comply with any regulatory obligations. Failure to comply with those restrictions or conditions may result in further sanction.
G.12.4	Failure to provide information within the stipulated timescale is likely to lead to disciplinary action and/or the imposition of conditions or restrictions on their ability to practise.
G.12.5	R.12.1 d) does not require reporting of matters dealt with at Parish Hall Enquiries in Jersey.
G.12.6	R.12.1 e) and f) exist to protect the public and the integrity of the profession. It is not unusual for professional colleagues to be aware of serious misconduct (such as dishonesty or deception) and/or risk arising from a firm's financial problems before any complaint has been made. There may be concerns that reporting such concerns would be unethical or discourteous. However, failure to do so places the public at risk and may result in damage to the good repute of the profession.
G.12.7	Unless members are required by law to report a matter, R.12.1 e) and f) do not apply to confidential and/or privileged information disclosed by another lawyer to the member.
G.12.8	If the Law Society is notified, under R.12.1 e) or f), it can take appropriate and timely action, minimise the impact on clients which should reduce the ultimate costs, both for the Law Society and for the member. The Law Society will consider information of this nature on an anonymous basis if requested.
G.12.9	If members discover serious issues regarding the competence and fitness and propriety of employees or members, the members must take appropriate action internally, in addition to the obligations under R.12.1 f). See also G.12.10.

G.12.10	If a member becomes aware of serious misconduct on the part of a member or employee in the same firm, they should bring the matter to the attention of the partners or members of the firm so they can report the matter under R.12.1 f). If a report is made by those members on behalf of the firm, they should discuss the issues with their insurer and take the steps required to limit any liability.
G.12.11	Where a firm concludes that it is not financially viable, the Law Society must be informed immediately and the responsible members must take appropriate steps either to ensure an orderly wind down or to obtain assistance so that the firm becomes financially viable. Failure to notify the Law Society and take appropriate steps is a breach of P.8 and P.9.
G.12.12	Where a practice closes, whether as a result of financial issues or otherwise, the members must ensure that there are appropriate arrangements for the orderly transfer of clients' property and any assets held and that clients are provided with relevant information as to where their property or assets will be transferred.
G.12.13	<p>No agreement, whether with a client or a third party, can affect the rights of the Law Society to investigate misconduct or to consider complaints. To attempt to make such an agreement would breach R.12.4. Examples are:</p> <ul style="list-style-type: none"> a) accepting instructions to act for a client which involve any agreement preventing the Law Society from investigating a member's conduct or the conduct of a member or employee of the firm; b) improperly offering or making payment in return for not reporting alleged misconduct; c) improperly demanding or accepting payment in return for not reporting a fellow member for misconduct; and d) harassing or bringing improper pressure to bear on a complainant or potential complainant.
G.12.14	It would not be improper to try to persuade the client that the client's complaint is unfounded, provided that is the case and, in a case of inadequate professional services, to make a genuine attempt to propose an agreement to compensate the aggrieved client. However, a member may not make the withdrawal of a complaint already made to the Law Society a condition of compensating a client. Where a complaint is withdrawn for any reason, the Law Society may continue with a complaint in its own name.

G.12.15	<p>The Law Society may use or disclose any information obtained under R.12:</p> <ul style="list-style-type: none"> a) in proceedings before a Disciplinary Committee or the Royal Court or other disciplinary tribunal; b) to the police or the Attorney General for use in investigating the matter and in any subsequent prosecution, if it appears that a member or any employee or member of a member's firm may have committed a serious criminal offence; and/or c) to the professional body of which the accountant who has signed an accountant's report under the Accounts Rules is a member, or by which the accountant is regulated (and the information and report may also be taken into account by the Law Society in relation to a possible disqualification of that person from signing an accountant's report in future).
G.12.16	<p>Any notice served under this Rule must be in writing and left at, or sent by registered post or recorded delivery to, the most recent address held by the Law Society, or delivered by the Law Society's appointee and will be deemed to have been received upon proof of its having been delivered at the practising address or last known practising address 48 hours (excluding Saturdays, Sundays and Bank or Public Holidays) after posting.</p>
G.12.17	<p>Members and their employees must comply with all reasonable requests from the Law Society or its appointee as to (a) the form in which documents held electronically are produced, and (b) photocopies of any documents to take away. The Law Society is not entitled to remove original documents.</p>
G.12.18	<p>A sole practitioner must, in accordance with R.12.6, make appropriate and adequate provision for the running of the firm in the event of illness, death, incapacity or other absence. Proper arrangements need to be made for the supervision of the practice and employees, the operation of client and office accounts and the orderly closure or transfer of the practice, where necessary.</p>
G.12.19	<p>It is a matter for the sole practitioner as to the details of supervisory arrangements and for ensuring that the supervisor has sufficient experience. The firm's bank should be notified of the arrangements in advance so that the client and office accounts can be effectively managed.</p>
G.12.20	<p>If a sole practitioner decides to stop practising or is unable to practise for any reason such as disciplinary action, the clients must be informed so that they can instruct another firm. Failure to do so could amount to misconduct or negligence.</p>

Ref.	Guidance to Rule 13
G.13	Waivers - Guidance
G.13.1	Waivers will only be granted in exceptional or very particular circumstances. The application will need to explain why the circumstances are exceptional or very particular in order for the grant of a waiver to be considered. Waivers will not be granted where to do so would place clients or clients' money or assets at risk or where the grant is likely to be in conflict with the purpose of the Rule.
G.13.2	The list in R.13 should not be taken as an indication that any other Rule may be waived in any given circumstances. Each application will be considered in the broader context of the Principles.
G.13.3	Any waivers granted prior to this Code coming into force are automatically rescinded.

Ref.	Guidance to Rule 14
G.14	Application - Guidance
G.14.1	The Principles and Rules apply to all members, whether they are practising in Jersey or elsewhere.
G.14.2	If the member is practising in another jurisdiction, and subject to the legal practice regulatory regime in that jurisdiction, the member must comply with the rules of that jurisdiction, when the member is carrying out an activity regulated by that jurisdiction's regulator. The key is for the member to be clear when he or she is carrying out work or running a legal practice, under whose regulatory jurisdiction the work or practice falls. If the member should be subject at the same time to differing regulatory regimes, the member will have to comply with the more onerous regime. In the unlikely event of a conflict of regulatory requirements, the member should apply for a waiver.
G.14.3	It must be clear to the client, to whom, and in which jurisdiction, they can complain.
G.14.4	Certain Principles and Rules also apply outside practice as follows: a) Under P.2, members and their employees must not behave in a way which brings or which may bring the profession or the provision of legal services into disrepute. P.2 applies to the conduct of members and their employees, both in relation to their professional practice and outside it, since an officer of the court or an employee of an officer of the court must not behave inappropriately; b) Under R.10.2 (Not taking unfair advantage), members and their employees must not take unfair advantage of their position, whether this is in relation to their professional practice or outside it.

Ref.	Annex 1
A.1	Annex 1 to Rule 1 – Ownership of Documents
A.1.1	<p>On the termination of a retainer, a firm must consider which documents belong to the client, which documents belong to the firm and whether any documents belong to a third party, and accordingly what should be done with the documents in each category.</p> <p>The categories, and what should be done with the documents in this category, are as follows:</p> <ul style="list-style-type: none"> a) Physical documents, in existence before the retainer, held by the member's firm as agent for and on behalf of a client or third party belong to that client or third party; b) Physical documents which belong to a client or a third party must be dealt with in accordance with the instructions of the client or third party subject to the firm's lien (if any); c) Physical documents which come into existence during the retainer and for the purpose of the retainer fall into four broad categories; <ul style="list-style-type: none"> i. Documents prepared by a member's firm for the benefit of the client which have been paid for by the client, either directly or indirectly, belong to the client. <p>Examples are: instructions and briefs; most attendance notes; drafts; copies made for the client's benefit of letters received by the member; copies of letters written by the member to third parties if contained in the client's case or transaction file and used for the purpose of the retainer;</p> ii. Documents prepared by a member's firm for the member's firm's own benefit or protection, the preparation of which is not regarded as an item chargeable against the client, belong to the member's firm; <p>Examples are: copies of letters written to the client; copies made for the member's own benefit of letters received by the member; copies of letters written by the member to third parties if made for the member's own benefit; intra-office memoranda; entries in diaries; timesheets; office journals; books of account;</p> iii. Documents sent to a member by the client during the retainer, the property in which was intended at the date of dispatch to pass from the client to the member, belong to the member; <p>Examples are: letters, authorities and instructions written or given by the client;</p>

	<p>iv. Documents prepared by a third party during the course of the retainer and sent to the member (other than at the member's expense) belong to the client;</p> <p>Examples are: receipts and vouchers for disbursements made on behalf of the client; medical and witness reports; counsel's advices and opinions; letters received by a member from third parties.</p>
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Ref.	Annex 2
A.2	Annex 2 to Rule 10 – Undertakings in Property Transactions
A.2.1	<p>The firm of a member acting for a buyer of immovable property is deemed to have given an express undertaking to the lawyer acting for the seller that the firm:</p> <ul style="list-style-type: none"> (i) either has the purchase monies or the balance due from the buyer as funds in the firm's hands; or (ii) is satisfied that the firm will have funds in its hands on the second working day after the contract has been passed ("settlement day") to pay the outstanding consideration on behalf of the firm's client.
A.2.2	<p>The firm acting on behalf of the buyer will only have discharged the obligation to be "satisfied" if the firm has an express or implied undertaking from the firm of another member that (subject to a) below) the requisite funds will be transmitted to the buyer's firm on or before the day on which they are required to be paid to the seller's lawyer; and</p> <ul style="list-style-type: none"> a) the buyer's lawyer is unaware of any circumstances which might give rise to any impediment to making such payment as referred to in b) below; and b) subject to any order of the Royal Court which has the effect of arresting the funds in the buyer's lawyer's hands or otherwise preventing him or her from making the requisite payment, and subject to the contract not being nullified for any reason, the buyer's lawyer will pay to the seller's lawyer on settlement day such of the outstanding consideration as is in the buyer's lawyer's hands pursuant to a) above; and c) will apply immediately to the Court to vary any order which has the effect of arresting the funds in the buyer's lawyer's hands or otherwise prevents him or her from making the requisite payment.
A.2.3	<p>A similar undertaking applies as regards a contract of simple conventional hypothec substituting "lender" for "buyer" and "borrower" for "seller", and also in the case of exchange and counter exchange where the party paying the "equivalent" shall be considered to be the buyer. No such undertaking applies in relation to judicial hypothecs or leases.</p>