

# SRA Indemnity Rules 2012

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These rules form the annex to the SRA Indemnity (Enactment) Rules 2012.

## Part 1: General provisions and interpretation

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### Rule 1: Authority

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#### 1.1

These Rules are made on 22 June 2012 by the Solicitors Regulation Authority Board under sections 37, 79 and 80 of the Solicitors Act 1974, section 9 of the Administration of Justice Act 1985, and paragraph 19 of Schedule 11 to the Legal Services Act 2007, with the approval of the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007.

#### 1.2

These Rules regulate indemnity provision in respect of the practices of **solicitors**, **recognised bodies**, **REs**, **RFLs**, and **licensed bodies** in respect of their **regulated activities** and certain other European lawyers, carried on wholly or in part in England and Wales.

Glossary terms

**solicitor (2012)**

**recognised body (2012)**

**REL (2012)**

**RFL (2012)**

**licensed body (2012)**

**regulated activity (2012)**

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## Rule 2: Citation

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2.1 These Rules may be cited as the SRA Indemnity Rules 2012.

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## Rule 3: Definitions and interpretation

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3.1

The SRA Handbook Glossary 2012 (the Glossary) shall apply and unless the context otherwise requires:

a.2

all italicised terms shall be defined in accordance with the Glossary;

b.3

terms shall be interpreted in accordance with the Glossary;

c.4

a reference to a Rule is to a Rule forming part of these Rules, except in relation to Schedule 1 where a reference to a rule is to a rule in the Solicitors' Indemnity Rules 1999;

d.5

the Schedule to these Rules forms part of these Rules; and

e.6

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

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## Rule 4: Establishment and maintenance of fund

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#### 4.1

The **Society** shall maintain the **fund** in accordance with these Rules.

#### 4.2

The purpose of the **fund** is to provide indemnity against loss as mentioned in section 37 of the **SA** as extended by section 9 of the **AJA**, Schedule 4 paragraph 1(3) of the European Communities (Lawyer's Practice) Regulations 2000 and section 89 of the Courts and Legal Services Act 1990 in the circumstances, to the extent and subject to the conditions and exclusions specified by the Solicitors' Indemnity Rules 1987 as the same have been and are in force and amended and applied from time to time and by any future Rules continuing, amending, adding to, applying or re-enacting such or other Rules to provide such indemnity in respect of annual **indemnity periods** (starting in 1987) unless and until otherwise determined by future Rules.

#### 4.3

The **fund** shall be maintained by **contributions** previously made by or on behalf of **solicitors**, **recognised bodies**, **REs** and **RFLs** in respect of each **indemnity period** in accordance with Part III of the **SRA** Indemnity Rules 2011 (or any earlier corresponding provisions), and by any additional **contributions** in accordance with Rule 16.

#### 4.4

The **Society** may maintain the **fund** as a single continuous **fund**, and any deficiency in respect of one **indemnity period** may be met in whole or part from **contributions** in respect of another **indemnity period** or **indemnity periods** and any balance in respect of one **indemnity period** may be applied to the benefit of any other **indemnity period** or **indemnity periods**.

#### 4.5

The **fund** shall be held, managed and administered in accordance with Part IV of these Rules by Solicitors Indemnity Fund Limited, a company set up by the **Society** for this purpose, or by such other **person** or **persons** (including the **Society** itself) as the **Society** may designate for such purpose, in place of Solicitors Indemnity Fund Limited. References in these Rules to Solicitors Indemnity Fund Limited shall include any such other **person** or **persons**.

Glossary terms

**Society (2012)**

**fund (2012)**

**SA (2012)**

**AJA (2012)**

**indemnity period (2012)**

[contributions \(2012\)](#)  
[solicitor \(2012\)](#)  
[recognised body \(2012\)](#)  
[REL \(2012\)](#)  
[RFL \(2012\)](#)  
[person \(2012\)](#)

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## Rule 5: Indemnity Periods before 1 September 1987

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### 5.1

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

Glossary terms

[Society \(2012\)](#)

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## Rule 6: Application of the Rules

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6.1 These Rules shall apply to a **practice** carried on by:

.2 a sole **solicitor**;

.3 an **REL** practising as a **sole practitioner**;

.4 a **recognised body**;

.5

a **partnership** consisting of one or more **solicitors** and/or **RELS** and/or **recognised bodies** and/or **licensed bodies**;

.6

a **partnership** consisting of one or more **solicitors** and/or **RELS**, together with one or more **RFLs**;

.7

a **partnership** consisting of one or more **RELS** with or without one or more **RFLs**, together with one or more **non-registered European lawyers** practising from one or more offices in any state to which the **Establishment Directive** applies, but outside England and Wales; and

.8

a **licensed body** in respect of its **regulated activities**.

Glossary terms

**practice (2012)**

**solicitor (2012)**

**REL (2012)**

**sole practitioner (2012)**

**recognised body (2012)**

**partnership (2012)**

**licensed body (2012)**

**RFL (2012)**

**non-registered European lawyer (2012)**

**Establishment Directive (2012)**

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## Rule 7: Scope of indemnity

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7.1

The following **persons**, namely:

.2

solicitors, former solicitors, REs, persons formerly practising as REs, RFLs practising in partnership with solicitors or REs, persons formerly practising as RFLs in partnership with solicitors or REs, non-registered European lawyers practising in partnership with REs, and persons formerly practising as non-registered European lawyers in partnership with REs;

.3

employees and former employees of the above;

.4

recognised bodies and former recognised bodies;

.5

officers and employees and former officers and employees of recognised bodies and former recognised bodies;

.6

licensed bodies and former licensed bodies in respect of their regulated activities; and

.7

regulated persons , including officers and employees and former officers and employees of licensed bodies,

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

Glossary terms

person (2012)

solicitor (2012)

REL (2012)

RFL (2012)

partnership (2012)

non-registered European lawyer (2012)

recognised body (2012)

licensed body (2012)

regulated activity (2012)

regulated person (2012)

fund (2012)

private practice (2012)

## Part 2: Indemnity cover

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### Rule 8: Indemnity

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#### Indemnity for ceased practices

##### 8.1

Any member of a previous practice which ceased on or before 31 August 2000 who has at any time been either:

##### .2

an assured as a result of the issue of a certificate under one or more of the master policies, or

##### .3

a person entitled to be indemnified by virtue of the issue of a receipt under the Solicitors' Indemnity Rules 1987-1990 or a payment of Contribution and Value Added Tax thereon as stated in the Solicitors' Indemnity Rules 1991-1999,

and who is not, at the time during the indemnity period when a claim is first made or intimated against him or her or when circumstances which might give rise to such a claim are first notified by him or her to Solicitors Indemnity Fund Limited, a person entitled or required to be indemnified in respect of claims arising from that previous practice by a policy of qualifying insurance or otherwise under the SIIR,

and the previous practice

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

.4

all loss (including liability for third party claimants' costs) incurred by the previous practice or any member thereof at any time arising directly from:

.5

any claim(s) first made or intimated against the previous practice or any member thereof during the indemnity period in respect of any description of civil liability whatsoever which may have been incurred in private practice by the previous practice or by a member as a member of such previous practice;

.6

any claim in respect of any such description of civil liability as aforesaid, made or intimated against the previous practice or any member thereof, whether during or subsequent to the indemnity period arising out of circumstances notified to Solicitors Indemnity Fund Limited during the indemnity period as circumstances which might give rise to such a claim; and

.7

all costs and expenses incurred with the consent of Solicitors Indemnity Fund Limited (such consent not to be unreasonably withheld) in the defence or settlement or compromise of any such claim as aforesaid.

#### **Eligible former principals**

**8.2**

Rule 8.1 shall apply in addition in respect of any principal of a previous practice that is an eligible former principal.

**8.3**

In respect of any claim referred to in Rule 8.2 made by an eligible former principal, the extent of the indemnity (if any) to be provided by Solicitors Indemnity Fund Limited shall be limited to an amount equal to the lesser of:

.4

the Due Proportion of the Deductible (excluding any Penalty Deductible) in respect of the **eligible former principal** that would have been disregarded by Solicitors Indemnity Fund Limited in relation to the claim had it been made under the Solicitors' Indemnity Rules 1999; and

.5

such amount if any which the **relevant successor practice** is entitled to and seeks to recover from the **eligible former principal** in relation to the claim.

8.6

For the purposes of Rule 8.3, "Due Proportion", "Deductible" and "Penalty Deductible" shall have the meanings respectively given to them by the Solicitors' Indemnity Rules 1999, as set out in Schedule 1 to these Rules.

#### Expired run-off claims

8.5

Any firm or **person** shall be entitled to indemnity out of the **fund** in the manner, to the extent and subject to the conditions and exclusions set out in this Rule 8.5, in relation to an **expired run-off claim**, provided that:

.6

such claim is first notified to Solicitors Indemnity Fund Limited at any time between 1 September 2007 and 30 September 2020; and

.7

there is no **preceding qualifying insurance** which provides cover for such claim; and

.8

such claim does not relate to or arise out of any **claim** first made against an **insured** or **circumstances** first notified to the provider of such **preceding qualifying insurance**, in either case at a time when such **preceding qualifying insurance** was required to provide cover in respect thereof; and

.9

such **person** was an **insured** under the relevant **preceding qualifying insurance**.

Notwithstanding any other provision of these Rules:

.10

the obligations of the **fund** and/or any **insured** in respect of an **expired run-off claim** shall be in accordance with, and limited to, the **expired run-off cover**; and

.11

any obligation owed by any **insured** under the **preceding qualifying insurance** to the qualifying insurer which issued such insurance shall be deemed to be owed to Solicitors Indemnity Fund Limited in place of such qualifying insurer, unless and to the extent that Solicitors Indemnity Fund Limited in its absolute discretion otherwise agrees.

Glossary terms

**member (2012)**

**previous practice (2012)**

**master policy (2012)**

**person (2012)**

**indemnity period (2012)**

**qualifying insurance (2012)**

**SIIR (2012)**

**fund (2012)**

**private practice (2012)**

**principal (2012)**

**eligible former principal (2012)**

**relevant successor practice (2012)**

**expired run-off claim (2012)**

**preceding qualifying insurance (2012)**

**claim (2012)**

**insured (2012)**

**circumstances (2012)**

**expired run-off cover (2012)**

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## **Rule 9: Exclusions from cover**

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## 9.1

The **fund** shall not afford any indemnity in respect of any loss arising out of any claim:

.2

for death, bodily injury, physical loss or physical damage to property of any kind whatsoever (other than property in the care, custody and control of the **previous practice** or **member** thereof in connection with its, his or her **private practice** for which it, he or she is responsible, not being property occupied or used by it, him or her for the purposes of the **previous practice**);

.3

for any alleged breach or other relief in respect of any **partnership** or **partnership** agreement between the **principals** in the **previous practice** or between any **principal** therein and any other **person** as **principals** in any other **previous practice**;

.4

for wrongful dismissal or termination of articles of clerkship or training contract or any other alleged breach or any other relief by either party in respect of any contract of employment by the **previous practice** or any **member** thereof; and/or for wrongful termination or any other alleged breach or any other relief by either party in respect of any contract for supply to or use by the **previous practice** or any **member** thereof of services and/or materials and/or equipment and/or other goods;

.5

for the payment of a trading debt incurred by the **previous practice** or any **member** thereof;

.6

in respect of any undertaking given by any **principal** in the **previous practice** or by a **recognised body** or **licensed body** or on his, her or its behalf (whether in his, her or its own name or in the name of the **previous practice**) to any **person** in connection with the provision of finance, property, assistance or other advantage whatsoever to or for the benefit of such **principal** or any other **principal** or of his or her or any other **principal's** spouse or children or of such **recognised body** or **licensed body** or of any business, firm, company, enterprise, association or venture owned or controlled by him, her or it or any other **principal** or in a beneficial capacity whether alone or in concert with others, EXCEPT to the extent that the **person** seeking indemnity shall establish that he, she or it was unaware that the undertaking was or was likely to be connected with the provision of

any such finance, property, assistance or other advantage;

.7

in respect of any dishonest or fraudulent act or omission, but nothing in this exclusion shall prevent any particular **member** of the **previous practice** who was not concerned in such dishonesty or fraud being indemnified in accordance with these Rules in respect of any loss arising out of any claim in respect of any dishonest or fraudulent act or omission by any other such **member**;

.8

in respect of any liability incurred in connection with an **overseas practice**. In relation to a **previous practice** having any **overseas** offices deemed by paragraph (ii) of the definition of **separate practice** in Rule 3.1 to form a **separate practice**, a liability shall be deemed to have been incurred in connection with the office where or from which the major part of the work out of which the loss arose in respect of which indemnity is sought was being done. In the event of doubt as to which (if any) office satisfies this requirement, the liability shall be deemed to have been incurred in connection with the office to which the **person** who accepted the initial instructions was most closely connected;

.9

in respect of any liability incurred in connection with a **previous practice** in relation to which the obligation to pay **contribution** has been exempted under Rule 27 of the Solicitors' Indemnity Rules 2006 (or any earlier corresponding Rule) or, unless otherwise provided by the terms of the waiver, waived by the **Council** under Rule 19 (or under any corresponding earlier Rule);

.10

arising out of any circumstances or occurrences which have been notified under the **master policy** or any certificate issued under the **master policy** or any other insurance existing prior to 1 September 1987;

.11

in respect of any adjustment by way of claims loading or loss of discount which may at any future date or in respect of any future period be made by reference to any claim or claims first made or intimated during any **indemnity period**;

.12

in respect of any liability incurred by any **person** in his, her or its capacity as a shareholder or beneficial owner of a share in a body corporate that is either a **recognised body**

or **licensed body** notwithstanding the definition of **principal** in Rule 3.1;

**.13**

in respect of any act or omission on the part of any **principal** whilst acting on behalf of the **previous practice** or any **member** thereof in connection with any matter affecting the business of the **previous practice** provided that at the time of such act or omission such **principal** was a **principal** in the **previous practice**;

**.14**

where the **previous practice** or any **member** thereof is entitled to indemnity under any insurance except in respect of any amount greater than the amount which would have been payable under such insurance in the absence of the indemnity provided by the **fund**.

**9.15**

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

**9.16**

The exclusions set out in this Rule 9 shall not apply in relation to an **expired run-off claim**, in respect of which the provisions of Rule 8.5 shall apply.

Glossary terms

**fund (2012)**

**previous practice (2012)**

**member (2012)**

**private practice (2012)**

**partnership (2012)**

**principal (2012)**

**person (2012)**

**recognised body (2012)**

**licensed body (2012)**

**overseas practice (2012)**

**overseas (2012)**

**separate practice (2012)**

**contributions (2012)**

**Council (2012)**

## Rule 10: Manner of indemnity

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- 10.1** Such indemnity shall be provided, according to the decision of Solicitors Indemnity Fund Limited as set out in Rule 10.2, in any one or any combination of the following ways:
- .2** by payment, in or towards satisfaction of the claim and/or claimant's costs and expenses, to or to the order of the claimant making the claim;
- .3** by payment, in respect of the claim and/or claimant's costs and expenses and/or costs and expenses incurred in respect of the defence or settlement or compromise of the claim, to or to the order of the **person** against whom the claim is made;
- .4** by payment, in or towards discharge of costs and expenses incurred in respect of the defence or settlement or compromise of the claim, to or to the order of the legal advisers, adjusters or other persons by whom or in respect of whose services such costs and expenses were incurred;
- .5** by payment to any firm or **person** in relation to an **expired run-off claim** who was an **insured** under the relevant **preceding qualifying insurance**.
- 10.6** Solicitors Indemnity Fund Limited shall in any particular case, and notwithstanding the insolvency or bankruptcy of any **person** for whom indemnity is provided, have the sole and absolute right to decide in which way or combination of ways indemnity is provided.

person (2012)  
expired run-off claim (2012)  
insured (2012)  
preceding qualifying insurance (2012)

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## Rule 11: Source of indemnity

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

Glossary terms

fund (2012)  
Society (2012)  
Council (2012)  
person (2012)

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## Rule 12: Maximum liability of the fund

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### 12.1

The liability of the **fund** as stated in Rule 8.1(c) shall in no event exceed in respect of each such claim the indemnity limit for the **relevant indemnity period**.

### 12.2

All claims arising from the same act or omission (whether or not made or intimated or arising out of circumstances notified during the same **indemnity period** and whether or not involving the same or any number of different **practices** or **previous practices** and/or **members** of such **practices** or **previous practices**) shall be regarded as one claim.

### 12.3

If a payment exceeding the indemnity limit is made to dispose of any such claim (or, in circumstances within Rule 12.2, claims) for loss (including claimants' costs) such as stated in Rule 8.1(c), then any liability of the **fund** for costs and expenses under Rule 8.1(d) shall be limited to such proportion of such costs and expenses as the indemnity limit bears to the amount of the payment so made.

### 12.4

The provisions of this Rule 12 shall not apply in relation to an **expired run-off claim**, in respect of which the provisions of Rule 8.5 shall apply.

## Glossary terms

**fund (2012)**

**relevant indemnity period (2012)**

**indemnity period (2012)**

**practice (2012)**

**previous practice (2012)**

**member (2012)**

**expired run-off claim (2012)**

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## Rule 13: Indemnity limit

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13.1 Save in relation to an **expired run-off claim**, in respect of which the provisions of Rule 8.5 shall apply, the indemnity limit shall be £1,000,000 each and every claim (including claimants' costs).

Glossary terms

**expired run-off claim (2012)**

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## Rule 14: Conditions

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14.1 The **previous practice** and each **member** thereof shall procure that notice to Solicitors Indemnity Fund Limited shall be given in writing as soon as practicable of:

.2 any claim(s) the subject of Rule 8 made or intimated during the **relevant indemnity period** against it, him or her of any claim for or likely to be for more than £500; or

.3 the receipt by it, him or her of notice of any intention to make any such claim(s).

14.4 The **previous practice** and any **member** thereof may also give notice in writing to Solicitors Indemnity Fund Limited of any circumstances of which it, he or she shall become aware which may (whether during or after the **relevant indemnity period**) give rise to any such claim(s).

14.5 Any notice given under Rule 14.2, will be effective only if, at the date when such notice was given, the circumstances known to and notified by the **previous practice** and/or **member**

thereof, represent sufficient ground for a genuine and reasonable supposition on the part of the **previous practice** or **member** that those circumstances may give rise to a claim the subject of indemnity under Rule 8.

#### 14.6

If notice is given to Solicitors Indemnity Fund Limited under Rule 14.1(b) or 14.2, any claim subsequently made (whether during or after the **relevant indemnity period**) pursuant to such an intention to claim or arising from circumstances so notified shall be deemed to have been made at the date when such notice was given.

#### 14.7

The **previous practice** and each **member** thereof shall not admit liability for, or settle, any claim falling within Rule 8 or incur any costs or expenses in connection therewith without the prior consent of Solicitors Indemnity Fund Limited (such consent not to be unreasonably withheld).

#### 14.8

Subject to Rule 14.7:

#### .9

the **previous practice** and each **member** thereof shall procure that Solicitors Indemnity Fund Limited shall be entitled at the **fund's** own expense at any time to take over the conduct in the name of the **previous practice** or **member** of the defence or settlement of any such claim, including any claim in respect of which the **previous practice** or **member** may become entitled to partial indemnity under any insurance with any insurers; and

#### .10

Solicitors Indemnity Fund Limited may after taking over the defence or settlement of any such claim conduct the same as it may in its absolute discretion think fit notwithstanding any dispute or difference, whether or not referred to arbitration under Rule 15, which may exist or arise between it and the **previous practice** or **member**.

#### 14.11

No **previous practice** or **member** thereof shall be required to contest any legal proceedings unless a Queen's Counsel (to be mutually agreed upon or failing agreement to be appointed by the President of the **Society** for the time being) shall advise that such proceedings should be contested.

#### 14.12

Without prejudice to Rules 14.5, 14.6 and 14.7, the **previous practice** and each **member** thereof shall keep Solicitors Indemnity Fund Limited informed in writing at all times, whether or not Solicitors Indemnity Fund Limited shall specifically so request, as to the development and handling of any claim, intimated claim, notice or circumstances the subject of or arising subsequent to any notice given to Solicitors Indemnity Fund Limited under Rule 14.1 or 14.2; and shall consult and co-operate with Solicitors Indemnity Fund Limited in relation thereto as Solicitors Indemnity Fund Limited may request, whether or not Solicitors Indemnity Fund Limited shall take over the conduct thereof.

#### 14.13

The **fund** waives any rights of subrogation against any **member** of the **previous practice** save where those rights arise in connection with

#### .14

a dishonest or criminal act by that **member**; or

#### .15

the provision of indemnity under the exception to Rule 9.1(e); or

#### .16

a claim to indemnity in circumstances where that **member** has received a net benefit to which he or she was not entitled as a consequence of another **member** being provided with indemnity out of the **fund**;

and save as otherwise expressly provided in these Rules.

#### 14.17

If the **previous practice** or any **member** thereof shall prefer any claim to indemnity out of the **fund** knowing the same to be false or fraudulent as regards amount or otherwise, it, he or she shall forfeit any claim to any such indemnity in respect of any claim or future claim against the **previous practice** or **member** to which the false or fraudulent claim to indemnity out of the **fund** may have related or relate.

#### 14.18

Where there has been a failure to pay any instalment of any **contribution** due or any Value Added Tax payable in accordance with the Solicitors' Indemnity Rules 1987 to 2007 or the SRA Indemnity Rules 2011 or 2012 and a claim has been made or intimated against the **previous practice** or any **member** thereof in respect of which such **previous practice** or **member** would otherwise have been entitled to be provided with indemnity, Solicitors Indemnity Fund Limited

shall provide such indemnity by payment (up to the indemnity limit) in or towards satisfying, or enabling the **previous practice** or **member** concerned to satisfy, the claim and claimants' costs and such **previous practice** shall thereafter upon request reimburse to Solicitors Indemnity Fund Limited on behalf of the **fund** the whole or such part as Solicitors Indemnity Fund Limited may request of any payment so made and of any costs and expenses incurred in its defence, settlement or compromise, and each **principal** therein shall be jointly and severally responsible to Solicitors Indemnity Fund Limited for such reimbursement accordingly. Provided always that Solicitors Indemnity Fund Limited shall require such reimbursement only to the extent of (a) any increase which in its opinion may have occurred in the total payable out of the **fund** (including costs and expenses) as a result of such failure, together with (b) such amount as may be necessary to satisfy any unpaid **contribution** and Value Added Tax and interest thereon at the rate of 4% above Barclays Bank base rate with quarterly rests or at such other rate as the **Society** may from time to time publish in the Law Society's Gazette.

#### 14.19

Where non-compliance with any provision of these Rules by any **previous practice** or any **member** thereof claiming to be entitled to indemnity out of the **fund** has resulted in prejudice to the handling or settlement of any claim in respect of which such **previous practice** or **member** is entitled to indemnity hereunder, such **previous practice** or **member** shall reimburse to Solicitors Indemnity Fund Limited on behalf of the **fund** the difference between the sum payable out of the **fund** in respect of that claim and the sum which would have been payable in the absence of such prejudice. Provided always that it shall be a condition precedent of the right of the **fund** to such reimbursement that it shall first have provided full indemnity for such **previous practice** or **member** by payment (up to the indemnity limit) in or towards satisfying, or enabling such **previous practice** or **member** to satisfy, the claim and claimants' costs in accordance with the terms hereof.

#### 14.20

In respect of any loss arising from any claim or claims as described by Rule 8.1(c) arising out of any dishonest or fraudulent act or omission of any **member** of the **previous practice**, the **fund** shall nonetheless be available to afford indemnity in accordance with these Rules to the **previous practice** and any **member** thereof, other than and excluding in each case the particular **member** concerned in such dishonesty or fraud. Provided always that at the request of Solicitors Indemnity Fund Limited, the **previous practice** or **member** being indemnified shall:

take or procure to be taken at the fund's expense all reasonable steps to obtain reimbursement for the benefit of the fund from or from the personal representatives of any such member concerned in such dishonesty or fraud, and

**.22**

procure that any reimbursement so obtained together with any monies which but for such fraud or dishonesty would be due to such member concerned in such dishonesty or fraud shall be paid to the fund up to but not exceeding the amounts paid by the fund in respect of such claim together with any expenditure reasonably incurred by the fund in obtaining such reimbursement.

**14.23**

In the event of indemnity being afforded under the exception to Rule 9.1(e), the previous practice or member being indemnified shall take or procure to be taken at the fund's expense all reasonable steps to obtain reimbursement for the benefit of the fund from any person to whom any benefit arising from the giving of any undertaking accrues in the circumstances set out in Rule 9.1(e). Provided always that such reimbursement shall not exceed:

**.24**

the amount paid by the fund by way of indemnity together with any expenditure reasonably incurred by the fund in obtaining such reimbursement, or

**.25**

the amount of any benefit accruing to such person,

whichever is the lesser.

**14.26**

In respect of any claim to indemnity, Solicitors Indemnity Fund Limited may appoint panel solicitors to act on its behalf and on behalf of the previous practice or any member thereof, and panel solicitors shall:

**.27**

act at the sole direction of the fund for any purpose falling within the scope of these Rules, including acting on the Court record for the previous practice or any member thereof, and

**.28**

disclose to Solicitors Indemnity Fund Limited as required any statement or information given to or which becomes known to **panel solicitors** in the course of so acting, and such disclosure shall be treated as having been made directly to Solicitors Indemnity Fund Limited by the **previous practice** or **member**.

#### 14.29

The provisions of this Rule 14 shall not apply in relation to an **expired run-off claim**, in respect of which the provisions of Rule 8.5 shall apply.

#### Glossary terms

**previous practice (2012)**

**member (2012)**

**relevant indemnity period (2012)**

**fund (2012)**

**Society (2012)**

**contributions (2012)**

**principal (2012)**

**person (2012)**

**panel solicitors (2012)**

**expired run-off claim (2012)**

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## Rule 15: Arbitration

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## 15.1

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

Glossary terms

**person (2012)**

**Society (2012)**

**fund (2012)**

## Part 3: Contributions

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### Rule 16: Power to require contributions

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## 16.1

The **Society** shall have power to require **principals** to make **contributions** of such amount and on such basis as the **Society** may from time to time determine. Value Added Tax, to the extent chargeable on any relevant supply which takes or may be treated as taking place under or by virtue of these Rules, will be charged and payable in addition to and at the same time as any **contributions** payable hereunder.

## 16.2

Solicitors Indemnity Fund Limited may at any time give to any **practice** written notice correcting any inaccuracy in the calculation of any **contribution** under these Rules. Any reimbursement or any payment of **contribution** hereby required shall be made forthwith upon, respectively, issue or receipt of such a notice, together with any Value Added Tax applicable and (in the case of any amount payable to Solicitors Indemnity Fund Limited upon correction of an inaccuracy in

calculation) interest at a rate of 4% above Barclays Bank base rate with quarterly rests or at such other rate as the **Society** may from time to time determine and publish in the Law Society's Gazette.

### 16.3

Solicitors Indemnity Fund Limited may at any time, to the extent that it is reasonably practicable for it to do so, recalculate any claims adjustment applicable to any **practice** under the Solicitors' Indemnity Rules 2006 (or any earlier corresponding Rules) as a result of the receipt by Solicitors Indemnity Fund Limited of any sum from any third party relating to any indemnity provided to that **practice** out of the **fund** under these Rules or any earlier corresponding Rules, after deduction of the reasonable costs and expenses incurred by Solicitors Indemnity Fund Limited.

### 16.4

Solicitors Indemnity Fund Limited shall not be entitled, at any time after 30 September 2008, to require any **practice** to make any **contribution** under the Solicitors' Indemnity Rules 2006 (or any earlier corresponding Rules) which would otherwise be payable by reason of an inaccuracy in calculation, unless that inaccuracy is attributable to a failure to provide information or to a material inaccuracy in information provided by or on behalf of that **practice** under Part III of the Solicitors' Indemnity Rules 2006 (or any earlier corresponding Rules).

### 16.5

The **Society's** decision shall be final and binding on all affected on any question arising as to:

.6

any obligation to make a **contribution**; or

.7

any sum due to any **person** out of the **fund**;

under this Rule 16.

Glossary terms

**Society (2012)**

**principal (2012)**

**contributions (2012)**

**practice (2012)**

**fund (2012)**

**person (2012)**

## Part 4: Management and administration of the fund

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### Rule 17: Powers of the Society

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17.1 Solicitors Indemnity Fund Limited shall hold, and have full power to manage and administer, the fund, subject only to:

.2 such directions, conditions and/or requirements as the Society may from time to time issue to or impose upon it expressly pursuant to this provision, and/or

.3 such further detailed arrangements as the Society may from time to time agree with it.

17.4 Without limiting the generality of Rule 17.1, the management and administration of the fund shall include power to:

.5 collect and recover contributions due to the fund in accordance with these Rules;

.6 deposit or invest in such manner as Solicitors Indemnity Fund Limited may determine all or any part of the fund, including any interest, dividends, profits, gains or other assets accruing to or acquired by the fund;

.7

arrange such insurances as Solicitors Indemnity Fund Limited may determine in respect of the **fund** and/or its assets and/or the **fund's** liability under these Rules to afford indemnity in respect of claims and costs and expenses; and to handle all aspects of any such insurances, including the payment of premiums thereon out of the **fund** and the making and recovery of claims thereunder;

**.8**

receive, investigate and handle claims to indemnity and other notices prescribed to be given to Solicitors Indemnity Fund Limited by these Rules, including settlement and compromise and making of ex gratia payments out of the **fund** in respect thereof and conduct of any dispute or difference referred to arbitration under Rule 15;

**.9**

receive, investigate and handle any claim made or intimated against any **person** in respect of which they are or may be entitled to be provided with indemnity out of the **fund** (whether or not a claim to indemnity hereunder has been made) and/or in respect of which the conduct is by these Rules assigned to Solicitors Indemnity Fund Limited, including settlement and compromise and making of ex gratia payments and conduct of any proceedings arising in respect of such claim;

**.10**

claim and recover reimbursement in respect of any sums paid by way of indemnity in any circumstances in which such reimbursement may under these Rules be claimed;

**.11**

exercise any right of subrogation save where such rights are waived in accordance with these Rules;

**.12**

maintain full and proper records and statistics (which subject to Rule 18, shall at all reasonable times be available on request to the **Society** for inspection and copying) as to the **fund** and all aspects of its management and administration;

**.13**

make to and review with the Council of the **Society** annually and at any other time that the **Council** may require, written and (if the **Council** so requires) oral reports as to the **fund** and, subject to Rule 18, its management and administration, including inter alia recommendations as to the **contributions** which are or may be required in respect of past, present and/or future **indemnity periods** and the circumstances in which, extent to

which and conditions and exclusions subject to which indemnity should in any future indemnity period be afforded out of the fund;

.14

engage the assistance of any third party in respect of all or any aspect(s) of the management and administration of the fund;

.15

delegate to any third party all or any aspect(s) of the management and administration of the fund;

.16

institute and/or conduct such proceedings as it may consider necessary or appropriate for the due management and administration of the fund in its own name or (subject to prior consent of the Society) in the name of the Society;

.17

disburse and/or reimburse out of the fund all administrative and legal and other costs, overheads, fees and other expenses and liabilities incurred in respect of the fund, including without prejudice to the generality of the foregoing any such costs, overheads, fees and other expenses and liabilities incurred by the Society in respect of the establishment or maintenance, or the management, administration or protection, of the fund;

.18

disburse and/or reimburse out of the fund payments for any educational, charitable or other useful purpose which in its opinion is likely directly or indirectly to lead to the reduction or prevention of claims on the fund or otherwise to further the purpose or interests of the fund;

.19

disburse and/or reimburse out of the fund the costs, fees and expenses of the handling after 31 August 1987 of claims and potential claims against assureds notified under the master policies and master policy certificates;

.20

effect out of the fund or by arrangement with third parties the funding pending reimbursement by master policy insurers of such claims and potential claims and to bear out of the fund the costs, fees and expenses incurred thereby.

Glossary terms

fund (2012)

Society (2012)

contributions (2012)

person (2012)

Council (2012)

indemnity period (2012)

master policy (2012)

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## Rule 18: Use of information

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### 18.1

Without prejudice to the **Society's** power under Rule 4.5 to designate itself as the **person** responsible for holding, managing and administering the **fund**, information and documents obtained by Solicitors Indemnity Fund Limited about any particular **practice** or **member** thereof in the course of investigating and handling any claim made or intimated or any circumstances notified as mentioned in Rule 21, may be utilised by Solicitors Indemnity Fund Limited for the purpose of preparation of general records, statistics, reports and recommendations (not identifying the particular **practice** or **member**) for or to the **Society**.

### 18.2

Solicitors Indemnity Fund Limited may bring to the attention of the **Society** at any time and without notice to the **practice** or **person** concerned:

#### .3

any failure to provide information in respect of any **practice** as required by Part III of the Solicitors' Indemnity Rules 2006 (or any earlier corresponding provisions) or any material omission or inaccuracy in such information;

#### .4

any failure to pay any **contribution** or other sum due when required to do so under these Rules (or any earlier corresponding Rules) or to reimburse any amount due by way of a Deductible, Due Proportion or Penalty Deductible, or (in the case of an **expired run-off claim**) which falls within a policy excess;

.5

a material inaccuracy in any proposal form submitted by or on behalf of a **practice**;

.6

(in the case of an **expired run-off claim**) any matter or circumstances that would permit the **expired run-off cover** to be avoided or but for the provisions of clause 4.1 of the **MTC** (and/or the corresponding of the **expired run-off cover**);

.7

any dishonesty or fraud suspected on the part of any **person** in relation to any **practice** or **member** thereof, or any other person subject to these Rules or any earlier corresponding Rules, or any **insured**; and

.8

any claim of inadequate professional services of which it becomes aware made against any such **practice**, **member** or **person** or any **insured**.

**18.9**

Such information and documents shall not otherwise be disclosed or available to the **Society** without the prior consent of the **practice** (or any subsequent or successor **practice** thereto) or **member** concerned, except where Solicitors Indemnity Fund Limited or the **Society** have reason to suspect dishonesty on the part of any **practice**, **previous practice**, subsequent or successor **practice** or any **member** or former **member** thereof, or **insured**.

**18.10**

Any information and documents held by Solicitors Indemnity Fund Limited about a particular **practice** or **member** thereof may be disclosed or available to the **Society** without the prior consent of the **practice** (or any subsequent or successor **practice** thereto) or **member** concerned where the **Society** has been requested by any **practice**, subsequent or successor **practice** or **member** thereof to grant, amend or revoke any waiver under Rule 19 or to make a determination under Rule 20.

**18.11**

Solicitors Indemnity Fund Limited may pass to the **Society** the name of any **practice** (including any subsequent, successor or **previous practice**) or any **member** or former **member** thereof in circumstances where Solicitors Indemnity Fund Limited has cause for concern having regard to:

**.12**

the nature, incidence or value of paid and/or reserved claims in respect of any such **practice** or **member**; or

**.13**

the existence of circumstances which are considered by the **fund** to create an increased risk of claims occurring in respect of that **practice** or **member**; or

**.14**

failure on the part of a **practice** or **member** thereof, or any **insured**, to comply with their obligations under these Rules (or any earlier corresponding Rules);

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

**18.15**

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

**18.16**

In respect of any information that may be brought to the attention of the **Society** in accordance with Rules 18.1 to 18.6:

**.17**

the **Society** shall keep all such information confidential;

**.18**

the **Society** shall not (except where and to the extent required by law or in the proper performance by the **Society** of its regulatory functions) at any time reveal any such information to any **person** other than a duly authorised employee of the **Society** or any of its subsidiaries; and

.19

any privilege attaching to such information shall not be regarded as having been waived whether by virtue of such information having been provided to the **Society** or otherwise;

but the provisions of this Rule 18.7 shall not prevent the **Society** from making use of any such information for the purpose of bringing disciplinary proceedings against any **person**.

Glossary terms

**Society (2012)**

**person (2012)**

**fund (2012)**

**practice (2012)**

**member (2012)**

**contributions (2012)**

**expired run-off claim (2012)**

**expired run-off cover (2012)**

**MTC (2012)**

**insured (2012)**

**previous practice (2012)**

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## Rule 19: Waivers

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19.1

The **Society** shall have power in any case or class of cases to waive in writing prospectively or retrospectively any obligation on any **solicitor**, **recognised body**, **licensed body** or **foreign lawyer** under these Rules and to amend or revoke any such waiver.

19.2

Any application by any **person** for:

**.3**

a waiver of any obligation under these Rules or under the Solicitors' Indemnity Rules 2001 or any Rules subsequent thereto; or

**.4**

a correction or recalculation of any sum paid or payable to the **fund** under these Rules, or under the Solicitors' Indemnity Rules 2001 or any Rules subsequent thereto;

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

**19.5**

No application by any **person** for:

**.6**

a waiver of any obligation under the Solicitors' Indemnity Rules 2000 or any Rules made prior thereto; or

**.7**

a correction or recalculation of any sum paid or payable to the **fund** under the Solicitors' Indemnity Rules 2000 or any Rules made prior thereto;

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

**19.8**

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

**19.9**

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

Glossary terms

**Society (2012)**

**solicitor (2012)**

**recognised body (2012)**

**licensed body (2012)**

**foreign lawyer (2012)**

**person (2012)**

**fund (2012)**

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## **Rule 20: Decisions by the Society**

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### **20.1**

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

Glossary terms

**Society (2012)**

**person (2012)**

**SA (2012)**

## **Part 5: Maintenance and termination of the fund**

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## Rule 21: Maintenance and termination of the fund

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### 21.1

The **fund** shall continue to be held, managed and administered by Solicitors Indemnity Fund Limited for so long as and to the extent that the **Society**, in the light of the reports made to it by Solicitors Indemnity Fund Limited, may consider necessary or appropriate for the purpose of providing indemnity in respect of any claim(s) made or intimated during any **indemnity period** and/or during or subsequent to any **indemnity period** arising out of circumstances notified during any **indemnity period** as circumstances which might give rise to such claim(s).

### 21.2

As and when the **Society** no longer considers it necessary or appropriate that all or any part of the **fund** should be so held, managed and administered, the **Society** may require all or any part of the **fund** not so required to be released to the **Society** which shall apply the same if and to the extent the **Society** considers it reasonably practicable for the purpose of providing indemnity in any other way permitted by section 37(2) of the **SA** and otherwise for the overall benefit of the **solicitors'** profession in such manner as it may decide.

Glossary terms

**fund (2012)**

**Society (2012)**

**indemnity period (2012)**

**SA (2012)**

**solicitor (2012)**