

12.04 Liability of solicitors for barristers' fees

In the absence of reasonable excuse a solicitor is personally liable as a matter of professional conduct for the payment of a barrister's proper fees. Failure to obtain funds on account of a barrister's fees shall not of itself constitute reasonable excuse.

Commentary

1. A barrister does not have a contractual relationship with his instructing solicitor or the client and therefore cannot sue for his fees. He is, however, entitled to demand payment of the fee on delivery of the brief except in legal aid cases.
2. This principle applies equally to a solicitor not in private practice. See also principle 2.10.
3. The liability of a sole principal and of partners for the liabilities of their co-partners is a continuing one and is not cancelled or superseded by any transfer of the practice, without the barrister's express consent. Equally, a partner or partners in a firm remain liable for the payment of barrister's fees incurred on behalf of the firm by a deceased, bankrupt or otherwise defaulting former partner of the firm. If a transfer of a practice is contemplated, consideration should be given to outstanding barrister's fees on files taken over.
4. In normal circumstances it is recommended as per principle 4.07 that agreement be sought from the client that he will make payment on account of disbursements to be incurred. What constitutes a reasonable excuse will be determined by the Solicitors Disciplinary Tribunal on a case-by-case basis. An example of what may be considered reasonable excuse is the unexpected bankruptcy of a client in circumstances where the credit worthiness of the client was considered beyond question and the necessity to obtain funds on account of barrister's fees was not obvious.
5. For guidance on agreeing fees for counsel in civil matters, see Circular 97-279.

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CHAPTER 14

PROFESSIONAL UNDERTAKINGS

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- Circular 92-53 'Conveyancing Practice'
- Circular 93-54 'Solicitors' Undertakings in Conveyancing Transactions'

¹ Item 3, 07/05/02

14.01 Definition

An undertaking is any unequivocal declaration of intention addressed to someone who reasonably places reliance on it and made by:

- (a) a solicitor in the course of his practice, either personally or by a member of his staff; or
- (b) a solicitor as 'solicitor', but not in the course of practice.

A solicitor becomes personally bound by an undertaking given by him, his partners and staff.

Commentary

1. A professional undertaking may be given orally or in writing and need not necessarily include the word 'undertake'.
2. Although an oral undertaking has the same effect as a written one, there may be evidential problems as to its existence unless there is available a contemporaneous note, transcript or written confirmation of its terms. If the recipient confirms the terms of the oral undertaking and the giver does not promptly repudiate those terms, this is likely to be accepted as sufficient evidence of the existence and terms of the undertaking.
3. There is no obligation on a solicitor either to give or accept an undertaking. Although there is a duty to act in a client's best interests this does not imply a duty to assume or underwrite a client's financial or other obligations.
4. A promise to give an undertaking at some future date will be treated as an undertaking, provided the promise sufficiently identifies the terms of the undertaking and provided any conditions precedent have been satisfied.
5. Promises to give the 'usual undertaking' or an undertaking on the 'usual terms' should be avoided as there may be doubt as to what is 'usual'. The terms of an undertaking should always be set out with clarity in order to avoid disputes.

If the terms of the undertaking are to be limited and reliance is placed exclusively upon the qualifications set out in the annex to Circular 82-91, the undertaking may refer to 'the usual Law Society qualifications'.

6. Where a solicitor asks another solicitor to supply him with copies of documents, there is an implied undertaking to pay a proper charge for them. The charges for photocopying are set out in the *Solicitors (General) Costs Rules*.
7. If a solicitor sends to another solicitor documents or money subject to an express condition, the recipient is subject to an implied undertaking to return the documents or money forthwith, without making copies of the documents, if he is unwilling or unable to comply with the condition upon which they were sent. Further, if documents or money are sent to a solicitor subject to the condition that they should be held to the sender's order, the recipient is subject to an implied undertaking that he will return the documents or money to the sender on demand. In these circumstances, cheques or drafts must not be presented for payment without the consent of the sender.
8. A solicitor who has undertaken to accept service of an originating process on behalf of a client should as far as practicable endorse acceptance of service and return it on the day of receipt.
9. In the absence of an express term, there is an implied term in a professional undertaking that it is to be performed within a reasonable time having regard to its nature. If there is any delay, the giver is under an obligation to keep the recipient of the undertaking informed.

14.02 Performance of undertakings

A solicitor shall honour the terms of a professional undertaking.

Commentary

1. The wording and extent of any undertaking should be carefully considered before it is given since a solicitor becomes personally bound by any undertaking given by him, his partners or staff. The giving of an undertaking by a solicitor is not to be taken lightly and an undertaking should never be given unless the solicitor giving it is certain that he personally can comply with it. See also commentary 1 to principle 14.08.
2. The Council expects an undertaking to be honoured by a solicitor for so long as his name remains on the roll and regardless of whether he holds a current practising certificate or not.
3. The Council will not intervene where there is a genuine dispute as to whether the undertaking has been performed or where the performance of the undertaking turns on a disputed point of law. These are matters for the court to resolve.
4. The Council has no power to order the release of a solicitor from the terms of an undertaking. This is a matter for the person entitled to the benefit of the undertaking or the court.
5. A solicitor cannot claim to be released from an undertaking on the basis that the recipient has been slow in drawing his attention to the breach.
6. An undertaking procured by the fraud or deceit of the recipient will not bind the maker. See also principle 14.12, commentary 2.

14.03 Undertaking binds giver and receiver only

An undertaking will normally be required to be honoured only as between the giver and the recipient.

Commentary

1. Where a solicitor has received an undertaking for the benefit of his client and the client instructs another solicitor in his place, then unless for good reason the former solicitor objects or by its terms the undertaking provides to the contrary, the benefit of the undertaking will remain vested in the client and can be enforced at the client's request by the new solicitor.
2. A solicitor cannot assign the burden of an undertaking (and thus claim to be released from its terms) without the express approval of the recipient.
3. Where a solicitor acquires a practice from another and consequently takes over the conduct of a matter in which there is an undertaking outstanding, the acquiring solicitor

² Item 3, 07/05/02 (Leave more space in between each principle)

³ Item 3, 07/05/02 (Leave more space in between each principle)

is not liable on the undertaking unless he accepts liability by expressly or impliedly adopting the undertaking. If he does adopt the undertaking, the giver of the original undertaking nevertheless remains liable under it until he expressly obtains a release from the recipient.

4. There is no implied term in an undertaking that a solicitor is deemed to be released should he subsequently cease to act for the particular client. If this term is desired, it should be incorporated in the undertaking.

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14.04 Ambiguous undertakings

An ambiguous undertaking is generally construed in favour of the recipient.

Commentary

1. Care should be taken to word undertakings in precise terms.
2. This principle is particularly applicable if the undertaking is given to a layman.
3. Care should be taken when giving or accepting an undertaking which includes words such as 'to use best endeavours' or 'best efforts'. What constitutes 'best endeavours' or 'best efforts' is arguable and each case must be construed on its own facts. Generally, such phrases and other such potentially ambiguous terms should be avoided.

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14.05 Implied terms

In general no terms will be implied into a professional undertaking.

Some exceptions are:

1. In an undertaking as to the payment of costs:
 - (a) **when a solicitor gives an undertaking to pay another solicitor's costs in connection with a matter, the undertaking will be discharged if the matter does not proceed unless, in the undertaking, there is an express provision that the costs are payable in any event;**
 - (b) an undertaking to pay another solicitor's costs is deemed to be an undertaking to pay 'proper costs' whether expressed to be so or not. Unless otherwise stated proper costs are those which would be allowed on taxation. For this reason it is always open to the giver of an undertaking to require the bill to be taxed, provided that this requirement is communicated promptly and the undertaking then takes effect on the bill as taxed;
 - (c) an undertaking to pay the costs of a professional agent other than a solicitor is similarly an undertaking to pay 'proper costs'. However, unless the agent's professional body has means whereby it can determine whether the costs are proper or not, a bona fide dispute as to quantum will have to be resolved through the court.

⁴ Item 3, 07/05/02 (Leave more space in between each principle)

⁵ Item 3, 07/05/02 (Leave more space in between each principle)

2. If an undertaking is given to pay money out of a fund at some specified time, there is an implied warranty that the fund will be sufficient for that purpose. Accordingly, if so desired, it is crucial that this warranty is negated in the undertaking itself.
3. Where an undertaking is given to pay a sum of money out of the proceeds of sale of an asset, there is no implied term that the sum is payable out of the net proceeds. Consequently, it is essential that any undertaking of this nature should stipulate what deductions have been agreed.
4. See also commentaries 6, 7 and 9 of principle 14.01.

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14.06 Undertakings in conveyancing matters

In an undertaking given in conveyancing matters:

- (a) an undertaking to redeem a mortgage means that the mortgage must be redeemed in the normal course of business. To delay doing so in order to arrange refinancing for a client would constitute a breach of the undertaking;
- (b) a reply to a requisition on title in the course of a conveyancing transaction can and often does amount to an undertaking. For example, if the reply to the standard requisition concerning the discharge of mortgages before completion or the furnishing of an undertaking in lieu is 'this will be done', the vendor's solicitor will have undertaken to do one or the other if the matter proceeds to completion. Following completion, it is no valid reason for non-compliance that at the particular time, the vendor's solicitor was unaware of the existence of any charge on the property, even though the purchaser's solicitor may have had that knowledge. Accordingly, it is recommended that when replying to this requisition, the seller's solicitor should make quite clear which mortgage or mortgages will be discharged on completion;
- (c) in an undertaking to pay money out of the proceeds of sale of a property, a term is not implied that the undertaking is intended to take effect only if the proceeds of sale actually come into the hands of the solicitor giving the undertaking. Accordingly, if this restriction is intended, it is crucial that a term to that effect is incorporated in the body of the undertaking itself, otherwise the solicitor giving the undertaking may find himself having to satisfy the payment out of his own resources;
- (d) a solicitor who post-dates an assignment or mortgage may be in breach of an undertaking to forward the assignment or mortgage within the specified time limit (see Circular 90-92);
- (e) some of the other relevant Circulars are 90-169 'Conveyancing Practice Apportionment Account', Circular 91-60 'Conveyancing Practice Solicitors Undertaking', Circular 92-3 'Solicitors' Undertaking', Circular 92-53 'Conveyancing Practice' and Circular 93-54 'Solicitors' Undertaking in Conveyancing Transactions'. However see the decision in *Chong Kai Tai Ringo & Ors v Lee Gee Kee & Ors* Privy Council Appeal 27 of 1996.

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14.07 Consideration

⁶ Item 3, 07/05/02 (Leave more space in between each principle)

⁷ Item 3, 07/05/02 (Leave more space in between each principle)

An undertaking does not have to constitute a legal contract for disciplinary action to be taken in respect of a breach.

Commentary

1. Breach of an undertaking can give rise to disciplinary action even if no consideration was given for the undertaking.
2. If an undertaking is expressed to be given for consideration but, through no fault of the solicitor giving the undertaking, that consideration has failed, the undertaking will be discharged. Consequently, where there is consideration, it should be expressly stated in the undertaking itself.

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14.08 Undertakings binding even if beyond control

An undertaking is still binding even if it is to do something outside the solicitor's control.

Commentary

1. Before giving an undertaking a solicitor must carefully consider whether he will be able to implement it. It is no defence to a complaint of professional misconduct that the undertaking was to do something outside the solicitor's control (for example, that it was dependent upon action being taken by a third party and that the action has not been taken) unless the undertaking was suitably qualified. See also commentary 1 to principle 14.02.
2. If an undertaking involves the payment of money, a solicitor must decide whether he is able to give such an undertaking, since he can be required to discharge this out of his own and his partners' resources. If asked to give such an undertaking, a solicitor must consider the possibility of his client being made bankrupt; a client's bankruptcy will not discharge such an undertaking. Further, the client's trustee in bankruptcy may have a prior claim over the fund from which the solicitor has agreed to remit monies, as may a garnishee. See also paragraph 2 of principle 14.05.
3. An undertaking will not be affected by events which occur subsequently, unless these events are provided for in the undertaking itself.

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14.09 Undertakings 'on behalf of' clients and others

A solicitor will be held personally liable to honour an undertaking which he has given on behalf of a client or another person unless such liability is expressly and clearly disclaimed in the undertaking itself.

Commentary

1. Accordingly, where it is not the solicitor's intention to be personally bound, the undertaking should be worded so as to exclude personal liability on the part of the solicitor.

⁸ Item 3, 07/05/02 (Leave more space in between each principle)

⁹ Item 3, 07/05/02 (Leave more space in between each principle)

2. There is a distinction between a professional undertaking (including one given on behalf of a client) and a mere statement of a client's intentions or an agreement between solicitors as agents for their clients which is clearly without the assumption of any personal liability.
3. Since a solicitor will be personally bound to honour his undertakings, it is essential that before giving an undertaking he has his client's express or implied authority to do so. Where a solicitor gives an undertaking without such authority and as a result, his client suffers loss, the client's remedies may include, where appropriate, a claim in negligence against his own solicitor.

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14.10 Responsibility for undertakings of staff

A solicitor is responsible for honouring an undertaking given in the course of his practice by a member of his staff, whether admitted or not.

Commentary

1. An employee (whether admitted or not) who gives an undertaking which is not honoured may also be subject to disciplinary proceedings. See section 2(2) of the *Legal Practitioners Ordinance*.
2. See also *United Bank of Kuwait Ltd v Hammoud* [1988] 3 All ER 418 concerning an undertaking by a salaried partner.

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14.11 Employed solicitors

A solicitor in employment outside private practice is personally responsible for honouring his professional undertakings.

Commentary

1. A solicitor in employment outside private practice must carefully consider the personal implications of an undertaking, particularly those given in the course of his employment, for example, because of the possibility that the employer might become insolvent or otherwise refuse to fulfil the undertaking. This will not affect the personal responsibility of the solicitor for the undertaking.
2. A solicitor who is the head of a legal department in commerce, industry or Government is responsible for undertakings given by members of his department. This applies whether they are given by admitted or unadmitted staff in his department.
3. Solicitors who accept an undertaking from legal departments in commerce, industry or local Government should take particular care where the head of the department is an unadmitted person to ensure that the undertaking was given by a solicitor.

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¹⁰ Item 3, 07/05/02 (Leave more space in between each principle)

¹¹ Item 3, 07/05/02 (Leave more space in between each principle)

14.12 Responsibility of partners

Where a solicitor in partnership gives an undertaking in the course of his practice, all partners are responsible for its performance.

Commentary

1. A partner will remain responsible for his firm's undertakings even after he leaves the firm or the partnership is dissolved.
2. A fraudulent undertaking given by one partner without any actual or implied authority will still be binding upon the innocent partners. See *United Bank of Kuwait Ltd v Hammoud* [1988] 3 All ER 418.

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14.13 Clients' instructions

A solicitor cannot avoid liability on an undertaking by pleading that to honour it would be a breach of his duty owed to his client.

Commentary

1. A solicitor cannot avoid liability on an undertaking on the ground that his client has changed his instructions. Furthermore, a solicitor should not act on his client's instructions where to do so would breach an undertaking given by him on or in accordance with his client's previous instructions.
2. A solicitor cannot avoid the obligations on an undertaking by claiming set-off or lien unless he has qualified the undertaking appropriately.

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14.14 Demanding payment for not complaining

A solicitor must not demand compensation for refraining from reporting an alleged breach of undertaking.

¹² Item 3, 07/05/02 (Leave more space in between each principle)

¹³ Item 3, 07/05/02 (Leave more space in between each principle)

¹⁴ Item 3, 07/05/02 (Leave more space in between each principle)

APPENDIX¹⁵

PRINCIPLE 14.01, COMMENTARY 5

CIRCULAR 82-91

28 December 1982

SOLICITORS' UNDERTAKINGS

1. Members' attention is drawn to the following passage from *A Guide To The Professional Conduct of Solicitors* (1974) Edition at page 70:—

‘2:15 In general, a solicitor should not give an undertaking which he is unable to implement personally. The Council consider that the breach of an undertaking which the solicitor is personally unable to perform is just as much unbefitting conduct as breach of an undertaking which the solicitor is able to perform.’
2. The Council has in the past received numerous complaints about failure on the part of members to honour their undertakings, particularly in conveyancing transactions where documents are not delivered within the specified period. It is clear that the whole system of giving undertakings in conveyancing transactions is falling into disrepute and it is high time that the Council restated the position.
3. The main reasons why solicitors fail to honour their undertakings fall, for the most part, into two areas, namely:
 - (a) Delay on the part of mortgagees, particularly banks and deposit-taking companies, in executing and returning reassignments to their solicitors.
 - (b) Delay on the part of developers in executing and returning assignments and other necessary documents to their solicitors.
4. There appear to be two main reasons why mortgagees delay in executing reassignments:
 - (a) Some mortgagees, particularly banks and deposit-taking companies, only allow their common seals to be used at certain intervals of time.
 - (b) Receipted demand notes for Rates and Property Tax covering the mortgage period are required to be produced before mortgagees will execute reassignments.
5. As you are aware, the Society has taken up this matter with the Hong Kong Association of Banks which has agreed to request its members to co-operate with solicitors: cf. Circular to Solicitors' Firms dated 11 August 1981. The question of production of receipted demand notes for rates covering the mortgage period has been largely resolved: cf. Circular To Members No. 56/81. These Circulars to members make it clear that arrears of rates are now shown on the latest demand note (save in exceptional circumstances). The remaining hurdle is property tax which the Council has taken up with the Commissioner of Inland Revenue. Before a resolution is found, however, solicitors acting for mortgagees should ask their clients to notify mortgagors from the outset to retain receipted demand notes for property tax (if any) covering the mortgage period and that failure to do so may delay or even prejudice the subsequent sale of their properties.
6. A practice has grown up among developers whereby they delay in executing and returning assignments and other necessary documents to their solicitors, although no such delay exists in the handover of the purchase money. Delays of six months or more are not uncommon between completion and the return of duly executed assignments and other necessary documents.

¹⁵ Item 3, 07/05/02 (Head up the appendix to each chapter on a new page)

7. The Council takes the view that there is no reason why developers, like all other vendors, should not be asked to execute assignments and other necessary documents on completion when the outstanding balance of the purchase money is handed over.

The Council has written to the Real Estate Developers Association drawing their attention to the situation.

8. As a guide, the Council has prepared two series of standard forms of undertaking which are attached to this Circular. These forms are at this time not being made mandatory but it is sincerely hoped that they will be followed in almost all cases.
9. The first series is designed to cover completion of the first sale of a flat or house by a developer in a recently completed building. The second series is designed to cover all other cases.
10. (a) On the sale by a developer in addition to supplying the purchaser's/mortgagee's solicitor with the proforma assignment the developer's solicitors will supply a draft of the form of undertaking on which they are prepared to complete. This form should impose on the developer's solicitor the usual time limits which will be designed to give ample time for stamping and registration to be effected within the thirty-day time limits by all concerned. In addition where the property is mortgaged the developers' solicitor should supply details as to how the completion payment is to be split.
(b) All solicitors should be on notice that if they decline to give an undertaking in the appropriate form suggested in this Circular then they must expect the other solicitors to request formal completion.
11. On any other sale a draft of the undertaking required to be given by the vendor's solicitors will be forwarded by the purchaser's solicitors with the draft assignment and will be approved with such draft.
12. It will be assumed that completion will take place by way of undertaking unless the solicitors concerned notify the other side in good time that standard undertakings will not apply and that formal completion is required. In all cases, the right to require formal completion remains, but in such event, as a matter of professional courtesy, a solicitor should use every endeavour to give at least three working days' notice before the date fixed for completion.
13. In future, the usual time limits between receipt of the consideration money and delivery of duly executed documents will be as follows:
 - (a) Where only two solicitors' firms are involved, the period is 21 days.
 - (b) Where three or more solicitors' firms are involved, the period is 21 days for the first solicitor giving the undertaking, 17 days for the second solicitor and 12 days for the third solicitor.
14. The usual undertaking set out in the standard forms is subject to such standard qualifications as may from time to time be approved by the Council, to be known collectively as 'the usual Law Society Qualifications'.
15. Members are reminded that failure to honour an undertaking is always a disciplinary matter. The Council will take a serious view of any such failure by a solicitor.

THE LAW SOCIETY QUALIFICATIONS

Reference in an undertaking given in regard to a conveyancing transaction to 'the usual Law Society Qualifications' shall be deemed to be the following qualifications:—

If for any reason the party whose execution of a document (hereinafter called 'the relevant document') is required by the undertaking is unable or unwilling to execute the same, all moneys sent against the undertaking must immediately and in any event not later than the period prescribed in the undertaking be returned from whence they came and the undertaking given would thereupon automatically stand discharged without prejudice however to the rights of the parties to the transaction in question.

Example of cases to which these qualifications apply are as follows:—

- (a) The death, injury or bankruptcy of the party concerned preventing him from validly executing the relevant document;
- (b) The categorical refusal of the party concerned to execute the relevant document;
- (c) A Court Order restraining the party concerned from executing the relevant document;
- (d) The receipt by the party concerned prior to execution of the relevant document of a notice made by the Commissioner under section 14(A) of the *Prevention of Bribery Ordinance*.

The examples given are not intended to be exhaustive and similar events of a like nature would be considered valid reasons for returning the money in discharge of the undertaking. In addition where the fulfilment of one firm's undertaking depends on the fulfilment of another firm's undertaking to which any justifiable excuse is applicable that also would be considered a valid reason for returning the money in discharge of the first undertaking. In order that the Council can monitor the workings of conveyancing undertakings, whenever action is taken to return moneys for the above or any other reason a copy of the letter doing so should be forwarded to the Secretary of the Law Society.

I N D E X

STANDARD FORMS OF UNDERTAKINGS

PART I

FIRST SALE OF RECENTLY COMPLETED UNITS

FIRST LETTER

Letter from the solicitors representing the purchaser's mortgagees to the purchaser's solicitors.

SECOND LETTER

Letter from the purchaser's solicitors to the vendor's solicitors where the property is unmortgaged (one cheque/cashier order is required).

THIRD LETTER

Letter from the purchaser's solicitors to the vendor's solicitors where the property is mortgaged (two cheques/cashier orders are required).

FOURTH LETTER

Letter from the vendor's solicitors to the solicitors representing the vendor's mortgagees.

PART II

SUBSEQUENT SALES OF COMPLETED UNITS AND SALES OF ENTIRE LOTS

FIRST LETTER

Letter from the solicitors representing the purchaser's mortgagees to the purchaser's solicitors.

SECOND LETTER

Letter from the purchaser's solicitors to the vendor's solicitors where the property is unmortgaged (one cheque/cashier order is required).

THIRD LETTER

Letter from the purchaser's solicitors to the vendor's solicitors where the property is mortgaged (two cheques/cashier orders are required).

FOURTH LETTER

Letter from the vendor's solicitors to the solicitors representing the vendor's mortgagees.

Note :

1. The usual time limits between receipt of the consideration money and delivery of duly executed documents are as follows:—
 - (a) Where only two solicitors' firms are involved, the period is 21 days;
 - (b) Where three or more solicitors' firms are involved, the period is 21 days for the first solicitor giving the undertaking, 17 days for the second solicitor and 12 days for the third solicitor.
2. In view of the contents of the undertakings in cases where the contents of the undertaking have not been agreed care should be taken that the money should reach the solicitor giving the undertaking in time to request a revision thereof.

PART I

FIRST LETTER

To: ABC (name under which the firm practises)

Dear Sirs,

Re: Identify clearly the property involved
Mortgagor(s): (Purchaser here)

With reference to your letter dated we write to advise that your client, the above Mortgagor(s) has (have), executed a Mortgage of the above property in favour of our clients, the Mortgagees, in escrow pending completion of the purchase of the above property to take place on ('the completion date'). To enable your client to complete the purchase, we are instructed to send you herewith our cheque (cashier order) for representing the net amount to be advanced to your client.

This cheque (cashier order) is sent to you against your firm's personal undertaking (which is however subject to the usual Law Society qualifications):—

1. To send to us within 21 days from the date of your receipt of this letter:—

- (a) Assignment of the above property duly executed by the appropriate parties thereto (who must be properly identified) and attested, assigning the above property to the above Mortgagor(s) free from all incumbrances together with the Memorial thereof duly completed and signed by you;
 - (b) The necessary Questionnaire for stamping purposes relating to the said Assignment duly completed and the certificate signed by the solicitor concerned certifying the correctness of the information and dates included in the said Questionnaire to enable stamping thereof to be effected without delay;
 - (c) Your cheque covering all stamp duty and registration fees payable on the said Assignment so as to enable us to attend to its stamping and registration;
 - (d) All title deeds and documents including attested copies of the occupation permit and certificate of compliance (if applicable) to which the purchaser is entitled other than those set out in item (3) below.
2. ***[To send to us within the said twenty-one days either**
- (a) the Partial Reassignment of the above property from the existing mortgage duly executed and attested together with Memorial thereof duly completed and signed by you or by the solicitor who prepared the same **[together with signed memorandum of satisfaction for filing with the Companies Registry and the filing fees]** and the registration fees payable on such reassignment; or
 - (b) an attested copy of the Reassignment reassigning (inter alia) the above property from the existing mortgage and confirmation that the same has been dated (no later than the date scheduled for completion of the present transaction) and registered or delivered for registration so that subject to stamping no impediment will exist to immediate registration of the assignment forwarded to us.]

***Note:**

To be deleted if property not mortgaged by Vendor.

3. To send to us an attested copy of the Deed of Mutual Covenant and of the Management Agreement (if any) (both of which documents must be dated no later than the completion date) within fourteen days of their receipt by you.
4. To be responsible to pay to us any additional registration fees which may be imposed should any documents sent to us for registration as aforesaid be stopped or withheld from registration as a result of your fault or omission.

[Your undertaking will be deemed given unless you advise us to the contrary in writing as soon as practicable indicating the revisions to the undertaking you require. If however, you so request a revision of the undertaking and we are unable to agree a revised form of undertaking you will return the money to us on demand.

*[As the undertaking follows strictly the draft form of undertaking already agreed in correspondence and the amount sent is exactly as per your letter your undertaking will be deemed given.]

***Note:**

If form of undertaking already agreed the alternative paragraph should be adopted.

In the meantime and subject as aforesaid you may present the cheque (cashier order) for payment.

Yours faithfully,

PART I
SECOND LETTER

[It is assumed to be in the form of a letter enclosing a cheque or cashier order]

To: ABC (name under which the firm practises)

Dear Sirs,

Re: (Identify clearly the property involved)

On behalf of the client and in order to complete the purchase of the above property on ('the completion date') we enclose herewith a cheque (cashier order) in your favour for the sum of \$ representing the amount payable to complete the purchase and to obtain possession as mentioned in your letter of .

This cheque (cashier order) is sent to you against your firm's personal undertaking (which is however subject to the usual Law Society qualifications):-

1. To send to us within [twenty-one (21) / seventeen (17)] days from the date of your receipt of this letter:-
 - (a) The enclosed Assignment of the above property duly executed by your client(s) (who must be properly identified) and attested;
 - (b) All title deeds and documents including attested copies of the occupation permit and certificate of compliance (if applicable) to which the purchaser is entitled other than those set out in Item 2 below;
2. To send to us an attested copy of the Deed of Mutual Covenant and of the Management Agreement (if any) (both of which documents must be dated no later than the completion date) within 14 days of their receipt by you; and
3. To forward to us forthwith the keys of the above property or the necessary written authority to collect the keys so that possession can be taken without delay.
4. To obtain and send us within 21 days from the date of receipt of this letter a statutory declaration by the vendor under section 5 of the *Power of Attorney Ordinance* that at the time of the Assignment to the vendor (Memorial No.) executed by (Donee) as attorney of (Donor) he, the vendor, did not know of any revocation of the Power of Attorney under which the Assignment to the vendor was executed.]

[Your undertaking will be deemed given unless you advise us to the contrary in writing as soon as practicable indicating the revisions to the undertaking you require. If you so request a revision of the undertaking and we are unable to agree a revised form of undertaking you will return the money to us on demand.

*[As the undertaking follows strictly the draft form of undertaking already agreed in correspondence and the amount sent is exactly as per your letter your undertaking will be deemed given.]

***Note:**

If form of undertaking already agreed the alternative paragraph should be adopted.

In the meantime and subject as aforesaid you may present the cheque (cashier order) for payment.

Yours faithfully,

PART I
THIRD LETTER

[It is assumed to be in the form of a letter enclosing two cheques or cashier orders]

To: ABC (name under which the firm practises)

Dear Sirs,

Re: (Identify clearly the property involved)

On behalf of our client and in order to complete the purchase of the above property on ('the completion date') we enclose herewith two cheques (cashier orders) for the total sum of \$ which are split up as follows:-

1. One cheque (cashier order) in favour of your client's mortgages for the sum of \$ representing the total amount of principal and interest calculated up to outstanding on the existing mortgage of the above property as mentioned in your letter dated :
2. One cheque (cashier order) in your favour for the sum of \$ representing the balance of the sum payable upon completion after repayment of the said sum of \$ to your client's mortgagees as mentioned in item (1) above.

The two cheques (cashier orders) are sent to you against your firm's personal undertaking (subject to the usual Law Society qualifications):-

1. To send to us within [twenty-one (21) / seventeen (17)] days from the date of your receipt of this letter:-
 - (a) The enclosed Assignment of the above property duly executed by your client(s) (who must be properly identified) and attested;
 - (b) Either (i) the Reassignment of the existing mortgage duly executed and attested together with the Memorial thereof duly completed and signed by the solicitor who prepared the same and your cheque for the registration fees payable on the Reassignment [together with signed memorandum of satisfaction for filing with the Companies Registry and the filing fees therefor]; or (ii) an attested copy of the reassignment reassigning (inter-alia) the above property from the existing mortgage and confirmation that the same has been dated (the date being no later than the completion date) and registered or delivered for registration so that subject to stamping no impediment will exist to immediate registration of the assignment forwarded to us;
 - (c) All title deeds and documents including attested copies of the occupation permit and Certificate of Compliance (if applicable) to which the purchaser is entitled other than those set out in item 3 below;
2. To be responsible for any additional registration fees which may be imposed should any document(s) sent by you to us for registration be stopped or withheld from registration as a result of your fault or omission.

3. To send to us an attested copy of the Deed of Mutual Covenant and of the Management Agreement (if any) [both of which documents must be dated no later than the completion date] within fourteen (14) days of their receipt by you.
4. To forward to us forthwith the keys of the above property or the necessary written authority to collect the keys so that possession can be taken without delay.
- [5. To obtain and send us within twenty-one days from the date of receipt of this letter a Statutory Declaration by the vendor under section 5 of the *Power of Attorney Ordinance* that at the time of the Assignment to the vendor (Memorial No.) executed by (Donee) as attorney of (Donor) he, the vendor, did not know of any revocation of the power of attorney under which the Assignment to the vendor was executed.]

[Your undertaking will be deemed given unless you advise us to the contrary in writing as soon as practicable indicating the revisions to the undertaking you require. If you so request a revision of the undertaking and we are unable to agree a revised form of undertaking you will return the money to us on demand.

*[As the undertaking follows strictly the draft form of undertaking already agreed in correspondence and the amount sent is exactly as per your letter your undertaking will be deemed given.]

***Note:**

If form of undertaking already agreed the alternative paragraph should be adopted.

In the meantime and subject as aforesaid you may present the cheque drawn in your favour (cashier order) for payment and forward the other cheque to the vendor's mortgagee's solicitors against their usual undertaking relative to the Reassignment.

Yours faithfully,

PART I

FOURTH LETTER

To: ABC (name under which the firm practises)

Dear Sirs,

Re: Identify clearly the property involved
Mortgagor(s): (Vendor here)

On behalf of our client we enclose herewith a cheque (cashier order) in your favour for the sums of \$ representing the total amount of principal and interest calculated up to outstanding on the existing Mortgage of the above property as mentioned in your letter dated .

This cheque (cashier order) is sent to you against your firm's personal undertaking (subject to the usual Law Society qualifications):—

1. To send to us within [twenty-one (21) / seventeen (17) / twelve (12)] days from the date of your receipt of this letter:
 - (a) Reassignment of the existing Mortgage duly executed and attested together with the Memorial thereof duly completed and signed [together with signed memorandum of satisfaction for filing with the Companies Registry and the filing fee therefor];
 - (b) The following title deeds and documents relating to the said property:—

(i)

(ii)

(c) All other title deeds remaining in your or your client's possession to which the Mortgagor is entitled and a certified copy of the Power of Attorney (if any) appointing the Mortgagee's representative(s) to execute the Reassignment.

2. To be responsible for any additional registration fees which may be imposed should any document(s) sent by you to us for registration be stopped or withheld from registration as a result of your fault or omission.

We confirm that this building has only just been completed and no Rates or Property Tax have yet become payable.

[Your undertaking will be deemed given unless you advise us to the contrary in writing as soon as practicable indicating the revisions to the undertaking you require. If however, you so request a revision of the undertaking and we are unable to agree a revised form of undertaking you will return the money to us on demand.

*[As the undertaking follows strictly the draft form of undertaking already agreed in correspondence and the amount sent is exactly as per your letter your undertaking will be deemed given.]

***Note:**

If form of undertaking has already been agreed the alternative paragraph should be adopted.

In the meantime and subject as aforesaid you may present the cheque (cashier order) for payment.

Yours faithfully,

PART II

FIRST LETTER

To: ABC (name under which the firm practises)

Dear Sirs,

Re: Identify clearly the property involved
Mortgagor(s): (Purchaser here)

With reference to your letter dated we write to advise that your client, the above Mortgagor(s) has (have), executed a Mortgage of the above property in favour of our clients, the Mortgagees, in escrow pending completion of the purchase of the above property to take place on ('the completion date'). To enable your client to complete the purchase, we are instructed to send you herewith our cheque (cashier order) for representing the net amount to be advanced to your client.

This cheque (cashier order) is sent to you against your firm's personal undertaking (which is however subject to the usual Law Society qualifications):-

1. To send to us within 21 days from the date of your receipt of this letter:-
 - (a) Assignment of the above property duly executed by the appropriate parties thereto (who must be properly identified) and attested, assigning the above property to the above Mortgagor(s) free from all incumbrances together with the Memorial thereof duly completed and signed by you;
 - (b) The necessary Questionnaire for stamping purposes relating to the said Assignment duly completed and the certificate signed by the solicitor concerned certifying the correctness of the information and dates included in the said Questionnaire to enable stamping thereof to be effected without delay;
 - (c) Your cheque covering all stamp duty and registration fees payable on the said Assignment so as to enable us to attend to its stamping and registration;
 - (d) All title deeds and documents including attested copies of the occupation permit and certificate of compliance (if applicable) to which the purchaser is entitled and the Deed of Mutual Covenant and The Management Agreement (if any).
2. * [To send to us within the said 21 days either
 - (a) the Partial Reassignment of the above property from the existing mortgage duly executed and attested together with Memorial thereof duly completed and signed by you or by the solicitor who prepared the same [together with signed memorandum of satisfaction for filing with the Companies Registry and the filing fees] and the registration fees payable on such reassignment; or
 - (b) an attested copy of the Reassignment reassigning (inter alia) the above property from the existing mortgage and confirmation that the same has been dated (no later than the date scheduled for completion of the present transaction) and registered or delivered for registration so that subject to stamping no impediment will exist to immediate registration of the assignment forwarded to us.]

***Note:**

To be deleted if property not mortgaged by Vendor.

3. To be responsible to pay to us any additional registration fees which may be imposed should any document sent to us for registration as aforesaid be stopped or withheld from registration as a result of your fault or omission.

[Your undertaking will be deemed given unless you advise us to the contrary in writing as soon as practicable indicating the revisions to the undertaking you require. If however, you so request a revision of the undertaking and we are unable to agree a revised form of undertaking you will return the money to us on demand.

*[As the undertaking follows strictly the draft form of undertaking already agreed in correspondence and the amount sent is exactly as per your letter your undertaking will be deemed given.]

***Note:**

If form of undertaking has already been agreed the alternative paragraph should be adopted.

In the meantime and subject as aforesaid you may present the cheque (cashier order) for payment.

Yours faithfully,

PART II
SECOND LETTER

[It is assumed to be in the form of a letter enclosing a cheque or cashier order]

To : ABC (name under which the firm practises)

Dear Sirs,

Re: (Identify clearly the property involved)

On behalf of our client and in order to complete the purchase of the above property on ('the completion date') we enclose herewith a cheque (cashier order) in your favour for the sum of \$ representing the amount payable to complete the purchase (and to obtain possession) as mentioned in your letter of .

This cheque (cashier order) is sent to you against your firm's personal undertaking (which is however subject to the usual Law Society qualifications):-

1. To send to us within [twenty-one (21) / seventeen (17)] days from the date of your receipt of this letter:
 - (a) the enclosed Assignment of the above property duly executed by your client(s) (who must be properly identified) and attested;
 - (b) an apportionment account in respect of the above property showing the balance due from or payable to our client and in the event of any money being payable by your client to our client as per such apportionment account to send us a cheque for the amount so payable. Conversely should there be a balance payable by our client to your client subject to the apportionment account being verified and agreed we will arrange a remittance of the amount so payable to you or your client.
 - (c) all title deeds and documents including attested copies of the Deed of Mutual Covenant, the Management Agreement (if any), the occupation permit and the certificate of compliance (if applicable) to which the purchaser is entitled;
- *[2. To forward to us forthwith the keys of the above property or the necessary written authority to collect the keys so that possession can be taken without delay.]

***Note:**

Delete if possession not being given or otherwise identify the arrangements regarding delivery of vacant possession.

- [3. To obtain and send us within twenty-one days from the date of receipt of this letter a statutory declaration by the vendor under section 5 of the *Power of Attorney Ordinance* that at the time of the Assignment to the vendor (Memorial No.) executed by (Donee) as attorney of (Donor) he, the vendor, did not know of any revocation of the Power of Attorney under which the Assignment to the vendor was executed.]

As the undertaking follows strictly the draft form of undertaking approved by you and the amount sent is exactly as per your letter your undertaking will be deemed given.

Accordingly you may present the cheque (cashier order) for payment.

Yours faithfully,

PART II
THIRD LETTER

[It is assumed to be in the form of a letter enclosing two cheques or cashier orders]

To : ABC (name under which the firm practises)

Dear Sirs,

Re: (Identify clearly the property involved)

On behalf of our client and in order to complete the purchase of the above property on ('the completion date') we enclose herewith two cheques (cashier orders) for the total sum of \$ which are split up as follows:-

- (1) One cheque (cashier order) in favour of your client's mortgagees for the sum of \$ representing the total amount of principal and interest calculated up to outstanding on the existing mortgage of the above property as mentioned in your letter dated ;
- (2) One cheque (cashier order) in your favour for the sum of \$ representing the balance of the sum payable upon completion after repayment of the said sum of \$ to your client's mortgagees as mentioned in item (1) above.

The two cheques (cashier orders) are sent to you against your firm's personal undertaking (subject to the usual Law Society qualifications):-

1. To send to us within [twenty-one (21) / seventeen (17)] days from the date of your receipt of this letter:-
 - (a) the enclosed Assignment of the above property duly executed by your client(s) (who must be properly identified) and attested;
 - (b) an apportionment account in respect of the above property showing the balance due from or payable to our client and in the event of any money being payable by your client to our client as per such apportionment account to send us a cheque for the amount so payable. Conversely, should there be a balance payable by our client to your client subject to the apportionment account being verified and agreed we will arrange a remittance of the amount so payable to you or your client.
 - (c) either (i) the Reassignment of the existing mortgage duly executed and attested together with the Memorial thereof duly completed and signed by the solicitor who prepared the same and your cheque for the registration fees payable on the Reassignment (together with signed memorandum of satisfaction for filing with the Companies Registry and the filing fees therefor); or (ii) an attested copy of the reassignment reassigning (inter alia) the above property from the existing mortgage and confirmation that the same has been dated (the date being no later than the completion date) and registered or delivered for registration so that subject to stamping no impediment will exist to immediate registration of the assignment forwarded to us;
 - (d) all title deeds and documents including attested copies of the occupation permit and Certificate of Compliance (if applicable) to which the purchaser is entitled and the Deed of Mutual Covenant and the Management Agreement (if any).

2. To be responsible for any additional registration fees which may be imposed should any document(s) sent by you to us for registration be stopped or withheld from registration as a result of your fault or omission.

*[3. To forward to us forthwith the keys of the above property or the necessary written authority to collect the keys so that possession can be taken without delay.]

***Note:**

Delete if possession not being given or otherwise identify the arrangements regarding delivery of vacant possession.

- [4. To obtain and send us within 21 days from the date of receipt of this letter a statutory declaration by the vendor under section 5 of the *Power of Attorney Ordinance* that at the time of the Assignment to the vendor (Memorial No.) executed by (Donee) as attorney of (Donor) he, the vendor, did not know of any revocation of the Power of Attorney under which the Assignment to the vendor was executed.]

[Your undertaking will be deemed given unless you advise us to the contrary in writing as soon as practicable indicating the revisions to the undertaking you require. If however, you so request a revision of the undertaking and we are unable to agree a revised form of undertaking you will return the money to us on demand.

*[As the undertaking follows strictly the draft form of undertaking already agreed in correspondence and the amount sent is exactly as per your letter your undertaking will be deemed given.]

***Note:**

If form of undertaking already agreed the alternative paragraph should be adopted.

You may therefore present the cheque drawn in your favour (cashier order) for payment and forward the other cheque to the vendor's mortgagee's solicitors against their usual undertaking relative to the Reassignment.

Yours faithfully,

PART II

FOURTH LETTER

To : ABC (name under which the firm practises)

Dear Sirs,

Re: Identify clearly the property involved
Mortgagee(s): (vendor here)

On behalf of our client we enclose herewith a cheque (cashier order) in your favour for the sum of \$ representing the total amount of principal and interest calculated up to outstanding on the existing Mortgage of the above property as mentioned in your letter dated .

As regards the rates and property tax (if any) payable in respect of the property during the period of the existing mortgage now to be reassigned we now enclose *[letter from the Treasury, Hong Kong Government, confirming the due payment up to the date of the Reassignment of all Rates and Property Tax payable in respect of the above property duly receipted demand notes in respect of Rates and Property Tax aforesaid for the period of the Mortgage.]

***Note:**

Delete whichever inapplicable.

#[We undertake to pay any rates or property tax that may be outstanding in the event that we are unable to supply you within six weeks with evidence of payment in the form of either a letter from the Treasury, Hong Kong Government, confirming the due payment up to the date of the Reassignment of all Rates and Property Tax payable in respect of the above property, or duly receipted demand notes in respect of Rates and Property Tax aforesaid for the period of the Mortgage.]

#Note:

This paragraph is an alternative to paragraph 2.

This cheque (cashier order) is sent to you against your firm's personal undertaking (subject to the usual Law Society qualifications):—

1. To send to us within [twenty-one (21) / seventeen (17) / twelve (12)] days from the date of your receipt of this letter:
 - (a) Reassignment of the existing Mortgage duly executed and attested together with the Memorial thereof duly completed and signed (together with signed memorandum of satisfaction for filing with the Companies Registry and the filing fees therefor);
 - (b) A certified copy of the Power of Attorney (if any) appointing the Mortgagee's representative(s) to execute the Reassignment;
 - [(c) The following title deeds and documents relating to the said property:—
OR
(c) All other title deeds remaining in your or your Client's possession to which the Mortgagor is entitled;]
2. To be responsible for any additional registration fees which may be imposed should any document(s) sent by you to us for registration be stopped or withheld from registration as a result of your fault or omission.

Your undertaking will be deemed given unless you advise us to the contrary in writing as soon as practicable indicating the revisions to the undertaking you require. If, however, you so request a revision of the undertaking and we are unable to agree a revised form of undertaking you will return the money to us on demand.

In meantime and subject as aforesaid you may present the cheque (cashier order) for payment.

Yours faithfully,

PRINCIPLE 14.06(d)

CIRCULAR 90-92

7 May 1990

CONVEYANCING PRACTICE POSTDATING OF ASSIGNMENTS/MORTGAGES

The Council's attention has been drawn to the fact that a sizeable proportion of assignments/mortgages prepared by solicitors are post-dated. This is due to one or more of the following factors:—

- (a) Delay by a solicitor in forwarding assignments/mortgages to another solicitor within the specified time limit in breach of his undertaking.
- (b) Delay by developer-vendors in executing and returning assignments to their solicitors within the specified time limit.
- (c) Delay by mortgagee-banks in executing and returning discharges/releases to their solicitors within the specified time limit.

As members are aware, the postdating of assignments/mortgages may entail the following consequences:—

- (1) Purchasers/mortgagees are exposed to undue risk.
- (2) A solicitor who post-dates an assignment may be guilty of evading penalty payable for stamping the document out of time.

The object of this circular is to remind members to honour their undertaking and forward title deeds to their professional brethren within the specified time limit. The Council is writing to the Hong Kong Association of Banks and the Real Estate Developers Association asking them to urge their members to execute and return to their solicitors conveyancing documents within the time limit specified by their solicitors.

PRINCIPLE 14.06(e)

CIRCULAR 90-169

3 September 1990

CONVEYANCING PRACTICE APPORTIONMENT ACCOUNT

1. The standard form of undertaking regarding an apportionment account reads:—
 ‘This cheque is sent to you against your firm’s personal undertaking (which is however subject to the usual Law Society qualifications):—
 (a) To send to us within [17 or 21] days from the date of your receipt of this letter:
 - (i)
 - (ii) an apportionment account in respect of the above property showing the balance due from or payable to our client [ie. the purchaser] and in the event of any money being payable by your client [ie. the vendor] to our client as per such apportionment account, to send us a cheque for the amount so payable. Conversely should there be a balance payable by our client to your client subject to the apportionment account being verified and agreed, we will arrange a remittance of the amount so payable to you or your client.’
2. Apportionment accounts have given rise to disputes between solicitors. This is due partly to the wording of the undertaking quoted above and partly to the fact that it is unclear whether a solicitor should be required to undertake to settle an apportionment account on his client’s behalf.
3. On the recommendations of the Committee on Land Law & Conveyancing, the Council has made the following ruling:—
 - (a) Solicitors should not be required to undertake to settle apportionment accounts for either the vendor or the purchaser, although they must render apportionment accounts and arrange payments.

- (b) Solicitors should render apportionment accounts to the other side as early as possible before completion with receipts or copies thereof for verification purposes;
- (c) Paragraph 1(b) of the Standard form of undertaking should be amended to read:—
 ‘an apportionment account in respect of the above property showing the balance due from or payable to our client, and in the event of any money being payable by your client to our client as per such apportionment account, to *arrange a remittance of the amount so payable to us*. Conversely should there be a balance payable by our client to your client subject to the apportionment account being verified and agreed, we will arrange a remittance of the amount so payable to you or your client.’
- (d) Solicitors should advise their clients of (1) above.

PRINCIPLE 14.06(e)

CIRCULAR 91-60

2 April 1991

CONVEYANCING PRACTICE SOLICITORS UNDERTAKING

1. The standard form of undertaking imposed by a mortgagee's solicitor on a mortgagor's solicitor is in the following terms:—
 ‘(a). To send to us within 21 days from the date of your receipt of this letter:—
 (i) Assignment of the above property duly executed by the appropriate parties thereto (who must be properly identified) and attested, assigning the above property to the above Mortgagor *free from all incumbrances* together with the Memorial thereof duly completed and signed by you’ (emphasis added).
 On the other hand, the standard form of undertaking imposed by a purchaser's solicitor on a vendor's solicitor does not contain the words ‘free from all incumbrances’.
2. The word ‘incumbrances’ has a very wide meaning. It includes mortgages, covenants, easements, tenancies and charges; even an occupier's right may amount to an incumbrance: see *Wong Chim Ying v Cheng Kam Wing* (HCA No. A2056/89). It is accepted that a mortgagor's solicitor is in no position to give an undertaking to discharge such incumbrances and should not be required to do so. Where there are any particular incumbrances to be discharged on completion, then such incumbrances should be expressly spelt out in the undertaking letter which will, of course, require the same to be discharged / released.
3. On the recommendation of the Committee on Land Law & Conveyancing, the Council has agreed that the words ‘free from all incumbrances’ contained in the standard form of undertaking set out in paragraph 1 above should be deleted. Should there be any existing incumbrances to be discharged / released on completion, specific mention should be made in the undertaking letter to identify such incumbrances and to require delivery of the relevant discharge / release.

PRINCIPLE 14.06(e)

CIRCULAR 92-3

6 January 1992

SOLICITORS' UNDERTAKING

1. I refer to Circular 82-91.
2. Paragraph 11 of that Circular reads:-

‘On any other sale, a draft of the undertaking required to be given by the vendor’s solicitors will be forwarded by the purchaser’s solicitors with the draft assignment and will be approved with such draft.’

The Council has received complaints that a large number of solicitors do not appear to have taken heed of para 11 in that no draft undertaking is forwarded by the purchaser’s solicitors to the vendor’s solicitors for approval before completion. When the undertaking is finally received on completion by the vendor’s solicitors who wish to revise it, a great deal of inconvenience is caused not only to the solicitors concerned but also to the parties, resulting in delay in payment of the balance of the purchase money to the vendor and disputes.
3. Members are requested to comply with para 11 (as well as the other paragraphs) of Circular 82-91 in order to facilitate completion. It is sincerely hoped that it will not be necessary to enforce compliance by means of a Practice Direction.

PRINCIPLE 14.06(e)

CIRCULAR 92-53

9 March 1992

CONVEYANCING PRACTICE

1. I refer to Circulars 90-169 ‘Appointment Account’ and 92-3 ‘Solicitors’ Undertaking’ (‘the Circulars’).
2. Since the issue of the Circulars, the Council has received complaints from members to the following effect:-
 - (a) Some solicitors still continue to use the old form of undertaking relating to apportionment accounts, ie. the form set out in paragraph 1 of Circular 90-169; and
 - (b) A large number of purchasers’ solicitors still fail to forward draft letters of undertaking to the vendors’ solicitors for approval before completion.
3. Failure to comply with the Circulars on the part of our members has resulted in inconvenience and dispute between the solicitors concerned to the detriment of the parties involved. The reasons for such failure are:-
 - (a) Some solicitors simply do not bother to read circulars issued by the Law Society. They are therefore unaware of the amendment made to the undertaking relating to apportionment accounts referred to in Circular 90-169.
 - (b) Some solicitors are in the habit of leaving the preparation of undertaking letters (and other conveyancing documents) entirely to their conveyancing clerks who are not aware of the Circulars. Such letters (and other conveyancing documents) are then sent out without them being approved by the solicitors in charge.
4. The effect of paragraph 3 Circular 90-169 is that under normal circumstance, a solicitor should not be required to undertake to settle an apportionment account on his client’s behalf and the revised undertaking set out in paragraph 3(3) should be followed. It is recognized that there are special circumstances which may justify such undertaking being imposed on a solicitor. In such event, it is for the solicitor imposing the undertaking to justify the same.
5. The Council will continue to monitor the situation and, if necessary, to enforce compliance with the Circulars by means of a Practice Direction. Meanwhile, members

are requested to report to the Council instances of failure to comply with the Circulars with particulars of the offenders.

PRINCIPLE 14.06(e)

CIRCULAR 93-54

15 February 1993

**SOLICITORS' UNDERTAKINGS IN CONVEYANCING
TRANSACTIONS**

The Law Society is concerned at the increase in the number of complaints of breaches of undertakings given by solicitors in conveyancing transactions. This is particularly marked in the case of failure to comply with an undertaking given to forward documents within a stipulated time after completion has taken place.

A common reason given by members following investigation by the Compliance Committee is that the fault was that of a member of their staff who had failed to carry out the necessary work to comply with the undertaking and not that of the person who had given the undertaking. This is not a valid reason for failure to comply with an undertaking given by or on behalf of the firm.

The opportunity is taken to remind members that they are obliged to exercise close supervision of all their staff for whom they are responsible. Failure to do so may well amount to professional misconduct and subsequent disciplinary proceedings.

