

## B6: Accounts, Accounts Certificates, Professional Practice & Guarantee Fund

### Part I – General

#### Definitions and Interpretation

**6.1.1** In this rule 6, unless the context otherwise requires, terms listed in the first column of rule 6.1.1 shall have the meanings respectively ascribed to them in the second column of that rule:

Term	Definition
2001 Rules	<p>the Solicitors (Scotland) Accounts, Accounts Certificate, Professional Practice and Guarantee Fund Rules 2001;</p> <p>(a) a period not exceeding six months in duration, or a period not exceeding twelve months in duration in the case of a practice unit which has not at any time during that period held clients' money, the first such period commencing on the expiry of the immediately preceding accounting period (under the 2001 Rules) after the commencement of this rule 6 and each period thereafter commencing on the expiry of the immediately preceding period; or</p>
accounting period	<p>(b) where there is no such immediately preceding accounting period a period not exceeding six months in duration, or a period not exceeding twelve months in duration in the case of a practice unit which has not at any time during that period held clients' money, the first such period commencing on the date on which Part II of this rule 6 applies to the practice unit or, having ceased to apply, applies again to that practice unit and each period thereafter commencing on the expiry of the immediately preceding period;</p>
accounting records	<p>all documents or permanent records held on a durable medium and commonly used for book-keeping systems (whether manual, mechanical or computerised), including, without limitation, client due diligence documents and client financial information obtained for the purposes of compliance with the Money Laundering Regulations, books and accounts, cash books, ledgers, loose-leaf books and cards, bank passbooks, loose leaf bank statements, deposit receipts, vouchers, documents of joint deposit, building Society pass books, local authority deposits, statements of account and statements of bank overdrafts or loans whether in the name of a practice unit or in the name of or for a client or clients;</p>
balance its books	<p>to prepare and bring to a balance a trial balance being a schedule or list of balances both debit and credit extracted from the accounts in both practice unit and client ledgers and including the cash and bank balances from the cash book;</p>

bank	the meaning given in sections 35(2) and (2A) of the 1980 Act;
building Society	a building Society within the meaning of the Building Societies Act 1986;
Certificate	a certificate in such form as the Council may from time to time prescribe and different forms may be prescribed for different circumstances;
client account	a current, deposit, or savings account or other form of account or a deposit receipt at a branch of a bank in the United Kingdom in the name of the practice unit in the title of which the word "client", "trustee", "trust", or other fiduciary term appears and includes an account or a deposit receipt with a bank, a deposit, share or other account with a building Society, a current or general account with a building Society operating such an account within the bankers automated clearing system or an account showing sums on loan to a local authority being in such cases in name of the practice unit for a client whose name is specified in the title of the account or receipt;
clients' money	money (not belonging to him) received by a regulated person whether as a regulated person or as a trustee in the course of his practice;
durable medium	any method by which information is stored in a way accessible for future reference for no less than the required retention period and which allows the unchanged reproduction of the information stored by visual record and by immediately available print-out;
holding ledger	a ledger, within the client ledgers, containing details of funds received which are to be held as undelivered, and specifying to whose order those funds are held and for what purpose;
independent legal professional	the meaning given in regulation 3(9) of the Money Laundering Regulations;
local authority	a Council within the meaning of the Local Government etc. (Scotland) Act 1994;
Money Laundering Regulations	the Money Laundering Regulations 2007 (S.I. 2007 No. 2157);
other financial institution	a financial institution as defined in regulation 3(3) of the Money Laundering Regulations, but not including a bank or building Society;
print-out	a printed or typewritten copy of any information stored in a durable medium;
required retention period	in relation to rules 6.7, 6.8 and 6.9, a period equal to the remainder of the financial year of the practice unit and a further six financial years of that practice unit;

## Application of rules

6.2.1 Parts II and III of rule 6 shall not apply to a regulated person who is in any of the employments mentioned in sub-sections (4)(a), (b) and (c) of section 35 of the 1980 Act so far as regards monies received, held or paid by him in the course of that employment.

6.2.2 Parts IV, V and VI of rule 6 shall not apply to such a regulated person as is referred to in rule 6.2.1 so far as regards anything done or omitted to be done by him in the course of that employment.

6.2.3 Subject to rules 6.2.1 and 6.2.2, where any of the provisions of rule 6 are stated to apply to a practice unit:

- (a) they shall also apply to the manager of the practice unit; and
- (b) no regulated person within the practice unit shall cause or knowingly permit the practice unit not to comply with any such provision.

## Part II - Accounts Rules

### Clients' money to be paid into client account or holding ledger

6.3.1 Subject to the provisions of rule 6.6 every practice unit shall -

(a) ensure that at all times the sum at the credit of the client account, or where there are more such accounts than one, the total of the sums at the credit of those accounts, shall not be less than the total of the clients' money held by the practice unit;

(b) pay into a client account without delay any sum of money exceeding £50 (or such other amount as the Council may from time to time prescribe) held for or received from or on behalf of a client; and

(c) pay into a client account, and make an entry in a holding ledger in respect of, any electronic transfer of funds received from or pursuant to instructions of a third party, that is required by that third party or pursuant to instructions received on behalf of that third party to be held as undelivered pending settlement of a transaction.

(d) ensure that payments into a client account are in respect of instructions relating to an underlying transaction (and the funds arising therefrom) or to a service within the course of a normal solicitor client relationship.

6.3.2 Where money is held by the practice unit in a client account in which the name of the client is specified and where no money is due to that client by the practice unit or the amount due is less than the amount in the specified client account, the sum in that account or, as the case may be, the excess, shall not be treated as clients' money for the purposes of rule 6.3.1(a).

6.3.3 Nothing contained in rule 6.3 shall:

- (a) empower a practice unit, without the express written authority of the client, to deposit any money held by the practice unit for that client with a bank or on share, deposit or other account with a building Society or on loan account with a local authority in the name of the practice unit for that client, except on such terms as will enable the amount of the share or deposit or loan or any part thereof to be uplifted or withdrawn on notice not exceeding one calendar month;
- (b) relieve a practice unit of its responsibilities to the client to ensure that all sums belonging to that client and held in a client account in terms of rule 6 are available when required for that client or for that client's purpose; and
- (c) preclude the overdraw by a practice unit of a client account in which the name of the client for whom it is held is specified where that client has given written authority to overdraw, and an overdraft on such account shall not be taken into account to ensure compliance with rule 6.3.1(a).

Duty to rectify breaches

6.4.1 A practice unit shall remedy any breach of rule 6 promptly upon discovery and shall, without limitation, replace any money improperly withheld or withdrawn from a client account.

Drawings from client account

6.5.1 So long as money belonging to one client is not withdrawn without his written authority for the purpose of meeting a payment to or on behalf of another client, there may be drawn from a client account:

- (a) money required for payment to or on behalf of a client;
- (b) money required for or to account of payment of a debt due to the practice unit by a client or in or to account of repayment of money expended by the practice unit on behalf of a client;
- (c) money drawn on a client's authority (including complying with lender instructions where the lender is a client);
- (d) money properly required for or to account of payment of the practice unit's professional account against a client which has been debited to the ledger account of the client in the practice unit books and where a copy of said account has been rendered;
- (e) money for transfer to a separate client account kept or to be kept for the client only; and
- (f) any fee taken as permitted by rule 6.11.

6.5.2 Where money drawn from a client account by cheque is payable to a person's account with any bank, building Society or other financial institution, the cash book and ledger entries relating thereto and said cheque shall include the name of the person whose account is to be credited with the payment.

6.5.3 Transfers or withdrawals from a client account must be in respect of instructions relating to an underlying transaction (and the funds arising therefrom) or to a service arising in the normal course of the solicitor client relationship.

Exceptions from Rule 6.3

6.6.1 Notwithstanding any of the provisions of this Part of rule 6, a practice unit shall not be obliged to pay into a client account, but shall be required to record in its accounting records, clients' money:

(a) in the form of cash which is without delay paid in cash to the client or a third party on the client's behalf;

(b) in the form of a cheque or draft or other bill of exchange which is endorsed over to the client or to a third party on the client's behalf and which is not passed by the practice unit through a bank account;

(c) which it pays without delay into a separate bank, building Society or local authority deposit account opened or to be opened in name of the client or of some person named by the client;

(d) which the client for his own convenience has requested the practice unit in writing to withhold from such account;

(e) for or to account of payment of a debt due to the practice unit from the client or in repayment in whole or in part of money expended by the practice unit on behalf of the client;

(f) expressly on account of a professional account incurred to the practice unit by the client, or as an agreed fee or to account of an agreed fee for business done by the practice unit for the client where a copy of said account has been rendered; or

(g) in the form of a third-party cheque to be passed on by the practice unit.

Accounts required to be kept in books of practice unit

6.7.1 A practice unit shall at all times keep properly written up such accounting records as are necessary:

(a) to show all its dealings with -

(i) clients' money;

(ii) any other money dealt with by it through a client account;

(iii) any bank overdrafts or loans procured by it in its own name for behoof of a client or clients; and

(iv) any other money held by the practice unit in a separate account in the title of which the client's name is specified; and

(b)

(i) to show separately in respect of each client all money of the categories specified in sub-paragraph

(a) which is received, held or paid by it on account of that client; and

(ii) to distinguish all money of the said categories received, held or paid by it from any other money received, held or paid by it; and

(c) to demonstrate compliance with the Money Laundering Regulations.

6.7.2 All dealings referred to in rule 6.7.1 shall be recorded:

(a) in a clients' cash book, or a clients' column of a cash book, or

(b) in a record of sums transferred from the ledger account of one client to that of another, as may be appropriate, and in addition in a clients' ledger or a clients' column of a ledger.

6.7.3 Every practice unit shall:

(a) at all times keep properly written up such accounting records as are necessary to show the true financial position of the practice unit; and

(b) balance its books monthly and on the last day of each accounting period.

6.7.4 A practice unit shall retain, for at least the required retention period from the date of the last entry therein, all accounting records required to be kept by it under rule 6.7.

6.7.5 A practice unit shall:

(a) retain paid cheques;

(b) retain a digital image of the front and back of each cheque supplied by the relevant bank or building Society; or

(c) have in place an arrangement with the relevant bank or building Society for the production, promptly upon request, of a digital image of the front and back of each cheque so requested;

in each case for at least the required retention period from the date of the cheque.

Client bank statements to be regularly reconciled

6.8.1 Every practice unit shall within one month of the coming into force of rule 6 or of its commencing practice, and thereafter at intervals not exceeding one month, cause the balance between the client bank lodged and drawn columns of its cash book or the balance of its client bank ledger account as the case may be to be agreed with its client bank statements and shall retain such reconciliation statements showing this agreement for at least the required retention period from the dates they were respectively carried out.

6.8.2 On the same date or dates specified in rule 6.8.1 every practice unit shall extract from its clients' ledger a list of balances due by it to clients and prepare a statement comparing the total of the said balances with the reconciled balance in the client bank account and retain such lists of balances and statements for at least the required retention period from the dates they were respectively carried out.

Client funds invested in specified accounts

6.9.1 Every practice unit shall within three months of the coming into force of rule 6 or of its commencing practice, and thereafter at intervals not exceeding three months and coinciding with the date of a reconciliation in terms of rule 6.8, cause the balance between the client deposited and withdrawn columns of its cash book or the balance on its client invested funds ledger account as the case may be to be agreed with its client passbooks, building Society printouts, special deposit accounts, local authority deposits, joint deposits or other statements or certificates and shall retain such reconciliation statements showing this agreement for at least the required retention period from the dates they were respectively carried out.

6.9.2 On the same date or dates specified in rule 6.9.1 every practice unit shall extract from its client ledger a list of funds invested by it in its name for specified clients and prepare a statement comparing the total of the said balances with the reconciled investment funds and retain such lists of balances and statements for at least the required retention period from the dates they were respectively carried out.

#### Interest to be earned for a client

6.10.1 Where a practice unit holds money for or on account of a client and, having regard to the amount of such money and the length of time for which it or any part of it is likely to be held, it is reasonable that interest should be earned for the client, the practice unit shall as soon as practicable place such money or, as the case may be, such part thereof, in a separate interest bearing client account in the title of which the client's name is specified and shall account to the client for any interest earned thereon, failing which the practice unit shall pay to the client out of its own money a sum equivalent to the interest which would have accrued for the benefit of the client if the sum it ought to have placed in such an interest bearing client account under rule 6.10 had been so placed.

6.10.2 Notwithstanding rule 6.10.1, interest shall not require to be earned for a client where the amount of interest which could be earned would be likely to be less than such amount as the Council may from time to time prescribe.

6.10.3 Nothing in rule 6.10 shall affect any arrangement in writing, whenever made, between a practice unit and its client as to the application of a client's money or interest thereon provided such arrangement was made prior to the said application.

6.10.4 For the purposes of rule 6.10 only, money held by a practice unit for or on account of a client:

- (a) for the purpose of paying stamp duty, recording dues or other outlays on behalf of the client; or
- (b) for or to account of the practice unit professional account where said account has been rendered,

shall not be regarded as clients' money.

#### Client balances held after the conclusion of a matter

6.11.1 Subject to the provisions of rule 6.11, a practice unit shall:

- (a) return money held for or on account of a client promptly as soon as there is no longer any reason to retain that money; and

(b) promptly pay to a client any money received for or on account of that client after a practice unit has already accounted to that client.

6.11.2 Rule 6.11.1 shall not apply to any matter in respect of which a practice unit acted for a client, which concluded or substantially concluded prior to the coming into operation of this rule 6, until 31 October 2013.

6.11.3 Notwithstanding rule 6.11.1, if a practice unit no longer has an up-to-date address or other contact details for a client and the balance held for or on account of that client is equal to or more than £10 (or such other amount as the Council may from time to time prescribe) ("the prescribed minimum") and less than £50 (or such other amount as the Council may from time to time prescribe) ("the prescribed maximum"), the practice unit may either remit the balance to the Office of the Queen's and Lord Treasurer's Remembrancer or to a registered charity of the practice unit choice. A practice unit may not take any fee from the balance.

6.11.4 If the balance held for or on account of a client is equal to or more than the prescribed maximum, a practice unit shall use reasonable endeavours, having regard to the actual amount of money held, to trace the client. A practice unit may charge a reasonable fee for work undertaken to trace the client.

6.11.5 Notwithstanding rule 6.11.1, if, having used reasonable endeavours in terms of rule 6.11.4, a practice unit cannot trace the client, the practice unit shall remit the balance held for or on account of that client (after deducting any fee as permitted by paragraph (4)) to the Office of the Queen's and Lord Treasurer's Remembrancer.

6.11.6 A practice unit who remits a balance in terms of rule 6.11.5 shall maintain a record of the action taken by or on behalf of the practice unit to trace the client.

6.11.7 Notwithstanding rule 6.11.1, whether or not a practice unit has an up-to-date address or other contact details for a client, and where the balance held for or on account of that client is less than the prescribed minimum, the practice unit may take that balance to a fee and may aggregate that balance with other balances which are less than the prescribed minimum in a single fee, provided that such single fee includes a list of each of the balances and related clients which are included.

#### Duty not to act dishonestly

6.12.1 A regulated person shall not act, or omit to act, in a manner which is dishonest, reckless or intentionally misleading in respect of:

- (a) the writing up of accounting records in respect of clients' money or of his practice;
- (b) balancing his books; or
- (c) the financial affairs of his clients or of his practice.

Cashroom Manager



6.13.1 Within one month of the coming into force of rule 6 or of its commencing practice on its own account every practice unit shall designate one or more of its manager as Cashroom Manager. A Cashroom Manager will be responsible for the supervision of the staff and systems employed by the practice unit to implement the provisions of rule 6 and for securing compliance by the practice unit with the provisions of rule 6. In the case of a sole practitioner, the sole practitioner shall be the Cashroom Manager.

6.13.2 A Cashroom Manager shall use reasonable endeavours to acquire and maintain the skills necessary to discharge his responsibilities throughout the period during which he is so designated.

6.13.3 A Cashroom Manager shall:

(a) use reasonable endeavours to advance and maintain the competence of all officers and employees of the practice unit;

(b) adequately supervise or arrange for the adequate supervision of all such officers and employees; and

(c) adequately train or arrange for the adequate training of all such officers and employees;

in each case so far as the duties of such officers and employees involve compliance with rule 6.

Savings of right of regulated person against client

6.14.1 Nothing in rule 6 shall deprive a regulated person of or prejudice him with reference to any recourse or right in law, whether by way of lien, set-off, counter-claim, charge or otherwise, against monies standing to the credit of a client account or against monies due to a client by a third party.

### Part III - Accounts Certificate

#### Obligation to deliver a Certificate

6.15.1 A practice unit shall deliver to the Council within one calendar month (or within such other period as the Council may prescribe) of the completion of each accounting period a Certificate in respect of that accounting period.

6.15.2 The Council shall be entitled to use the information contained in the Certificate to monitor compliance by the practice unit with rule 6, and to assess levels of risk in order to allow the Society effectively to target its regulatory activity. The Council may request a practice unit to provide a Certificate on a more frequent basis than provided for in terms of rule 6.15.1, and/or a Certificate containing more or less detailed information, according to its assessment of that practice unit's risk profile.

6.15.3 The Council may, in any case on cause satisfactory to it being shown, extend the period within which a Certificate is required to be delivered, but such extension shall in no case exceed three months from the date on which the Certificate should have been delivered.

6.15.4 If a practice unit fails to deliver a Certificate by the expiry of any extension period under rule 6.15.3 the Council will determine whether further action is to be taken against the practice unit or its managers in respect of such failure.

#### Who may sign a Certificate

6.16.1 Subject to rules 6.16.2 and 6.16.3, all sections of a Certificate required under rule 6 must be signed by two managers, one of whom must be a current Cashroom Manager.

6.16.2 Except where it is not required because the practice unit does not hold clients' money, the section of a Certificate relating to rule 6.23 must be signed by a current Cashroom Manager and the current Money Laundering Reporting Officer, provided that if the current Money Laundering Reporting Officer is also the only Cashroom Manager and is not a sole practitioner, it must also be signed by another manager.

6.16.3 A sole practitioner must sign all sections of the Certificate.

#### Where a practice unit practises in two or more places

6.17.1 In the case of a practice unit which has two or more places of business and where separate books and accounts are maintained for each such place of business a separate Certificate shall be submitted in respect of each such place of business. In any such case the client account balance shall be struck on the same date in respect of each place of business.

### Part IV - Inspections and Investigations

#### Inspections and investigations on behalf of Council

6.18.1 In rule 6.18, unless the context otherwise requires, "practice information" means accounting records and any other documents, records, correspondence and information concerning the conduct of a regulated person's practice.

6.18.2 The Council may carry out two types of investigation in terms of rule 6.18, namely:

- (a) a routine investigation, referred to in rule 6.18.3 as an inspection; and
- (b) a non-routine investigation, referred to in rule 6.18.4 as an investigation.

6.18.3 For the purposes of enabling:

- (a) the Council to ascertain whether or not rule 6 is being complied with;
- (b) the Society to discharge its duties as supervisory authority under the Money Laundering Regulations;
- (c) the Council to protect the Guarantee Fund;
- (d) the Council to promote high standards of financial compliance by the profession; and
- (e) the Society to assist the profession,

the Council may, by giving notice, require any regulated person to produce practice information for the inspection of a person authorised by the Council and at a date, time and place to be fixed by the Council. If the place fixed by the Council for the inspection requires the transfer to that place of practice information in physical form, the Council shall, on such conditions as to the cost and distance of such transfer as it may from time to time prescribe, pay the reasonable expenses incurred by the regulated person in respect of such transfer.

6.18.4 If at any time there is a reasonable apprehension on the part of the Council:

(a) that a regulated person has not complied with, is not complying with or may not comply with rule 6, or

(b) that the practice of the regulated person has been, is being or may be being carried on in such a manner as may put at risk the interests of the public or the interests of the profession,

the Council may authorise a person to conduct such investigation of the regulated person and his practice as the Council may consider appropriate. The Council shall give notice of its authorisation of such a person to conduct such investigation and of the date, time and place of such investigation.

6.18.5 The Council may, in any case on cause satisfactory to it being shown, extend the period within which a regulated person may produce practice information as required by a person authorised by the Council under rule 6.18.3 or 6.18.4, but such extension shall in no case exceed three months from the date on which practice information should have been produced.

6.18.6 If a regulated person fails to produce practice information prior to the expiry of any extension period under rule 6.18.5, the Council will determine whether further action is to be taken against the regulated person in respect of such failure.

6.18.7 A regulated person shall provide a person authorised by the Council under rule 6.18.3 or 6.18.4 reasonable co-operation in the conduct of that person's inspection or investigation (as the case may be) including, without prejudice to the foregoing generality, the production of practice information as such person may reasonably require and, in the case of an investigation, the granting of authorisation (including by way of mandate) to contact clients or third parties for the production by such clients or third parties of documents, records and other information as such person may reasonably require.

6.18.8 Any person authorised by the Council under rule 6.18.3 shall report to the Council on the result of his inspection to the extent he considers it necessary to do so. Any person authorised by the Council under rule 6.18.4 shall report to the Council on the result of his investigation.

6.18.9 Where, following an inspection of practice information in terms of rule 6.18.3 or an investigation in terms of paragraph 6.18.4, or following any further inspection or investigation in terms of this paragraph, it appears to the Council that the regulated person has not complied with rule 6 or that the practice of the regulated person has been or is being carried on in such a manner as may put at risk the interests of the public or the interests of the profession, the Council may by giving notice instruct a further inspection of the practice information of the regulated person or a further investigation.

6.18.10 If the Council instructs a further inspection of the practice information of the regulated person or a further investigation under rule 6.18.9, the Council may by giving notice, require the regulated person to pay, or may agree with the regulated person that he will pay, the reasonable costs of any such further inspection or investigation, provided always that such notice is given to the regulated person, or such agreement is reached with the regulated person, not more than twelve months after the date of the immediately preceding inspection or investigation.

6.18.11 The costs referred to in rule 6.18.10 shall be determined by reference to a daily rate which shall be prescribed by the Council from time to time. The amount of any such costs shall be intimated by the Secretary to the regulated person following such further inspection or investigation.

6.18.12 It shall be the duty of a regulated person upon whom a notice in terms of rule 6.18.10 has been served, or with whom an agreement in terms of rule 6.18.10 has been reached, to make payment of the amount of costs intimated in terms of rule 6.18.11. The regulated person shall make such payment in accordance with the payment terms stated in the invoice issued by the Society in respect of such costs.

6.18.13 Any sum paid by a regulated person in terms of rule 6.18.12 shall accrue to the Society.

## Part V - Professional Practice

### Bridging Loans

6.19.1 A regulated person shall not enter into or maintain any contract or arrangement with a bank or other lender in terms of which the regulated person may draw down loan or overdraft facilities in his name on behalf of clients unless:

(a) the regulated person shall, in every case before drawing down any sums in terms of such contract or arrangement have intimated in writing to the bank or other lender:

(i) the name and present address of the client for whom the loan or overdraft facilities are required; and

(ii) the arrangements for repayment of the loan or overdraft facilities; and

(b) the contract or arrangement does not impose personal liability for repayment of any such loan or overdraft facilities on the regulated person.

6.19.2 A regulated person who has entered into a contract or arrangement with a bank or other lender under rule 6.19.1 shall obtain a closing statement from the bank or other lender upon termination of such contract or arrangement.

### Borrowing from clients

6.20.1 A regulated person shall not borrow money from his client unless his client is in the business of lending money or his client has been independently advised in regard to the making of the loan.

Such advice must be given in advance of the transaction, and must not be given by another regulated person in the same practice unit.

6.20.2 In rule 6.20, "client" shall mean a person for whom a regulated person or another regulated person in the same practice unit is currently acting or for whom either of such persons have acted on at least one previous occasion.

Prohibition on regulated person acting for lender to the regulated person or connected persons

6.21.1 No regulated person shall act for or pursuant to the written requirements of a lender in the constitution, variation, assignment or discharge of a standard security securing a loan which has been advanced or is to be advanced to or has been guaranteed or is to be guaranteed by:

- (a) the regulated person, where he is a manager,
- (b) the regulated person's spouse or civil partner or cohabitee, where the regulated person is a manager,
- (c) another manager in the practice unit of which the regulated person is a manager,
- (d) the spouse or civil partner or cohabitee of any such other manager,
- (e) any manager of the practice unit which employs the regulated person, or the spouse or civil partner or cohabitee of any such manager,
- (f) any practice unit which employs the regulated person,
- (g) any practice unit of which the regulated person or his spouse or civil partner or cohabitee is a manager,
- (h) any practice unit of which any of the persons specified in sub-paragraphs (a) to (g) is a manager, or
- (i) any company in which any person specified in sub-paragraphs (a) to (h) holds shares, whether directly or indirectly, other than a holding amounting to not more than 5% of the issued shares in a public company quoted on a recognised stock exchange.

6.21.2 For the avoidance of doubt, rule 2.1.4(f) in Section B shall not apply to any such loan as is referred to in rule 6.21.1.

6.21.3 For the purposes of rule 6.21 "loan" shall include an obligation ad factum praestandum or any obligation to pay money and "lender" shall include any person to whom said obligation is owed.

6.21.4 Rule 6.21 shall not apply if:

- (a) the lender to any of the persons specified in rule 6.21.1 is the regulated person, or
- (b) in relation to the discharge of a standard security, the borrower's obligations under that standard security have been fully implemented before the regulated person or his practice unit is in possession of the executed discharge.

## Powers of Attorney

6.22.1 If a power of attorney is granted in favour of a regulated person then any money of the granter held or received by a practice unit with which the regulated person is associated shall be clients' money.

6.22.2 If a power of attorney is granted in favour of a regulated person

(a) in the course of the regulated person's practice; or

(b) where any fees are chargeable, or any remuneration received, in respect of the power of attorney,

then any monies intromitted with under the power of attorney shall be clients' money.

6.22.3 Every regulated person associated with a practice unit shall deliver to the Council a list of any powers of attorney in the regulated person's favour held or granted during an accounting period, the list to be as set out in the Certificate.

6.22.4 In this rule 6.22 reference to a power of attorney "in favour of a regulated person" and cognate expressions shall

(a) include reference to such a power in favour of a company, partnership, limited liability partnership, trust or other entity (whether or not having legal personality) in which the regulated person participates, whether as director, shareholder, member, partner, trustee or otherwise and which carries on activities in the course of the regulated person's practice;

(b) not include reference to such a power the sole purpose of which is to authorise the submission of a stamp duty land tax return or the authentication or registration of a document created as an electronic communication within the ARTL system (as defined in section 28(1) of the Land Registration (Scotland) Act 1979); and

(c) not include reference to such a power the sole purpose of which is (i) to authorise the submission of a return to the tax authority in terms of the Land and Buildings Transaction Tax (Scotland) Act 2013, or (ii) to authorise or facilitate any procedure or transaction under the Land Registration etc. (Scotland) Act 2012 or the Requirements of Writing (Scotland) Act 1995 in relation to electronic documents, electronic conveyancing, electronic registration, or non-electronic documentation.

## Money laundering

6.23.1 Every independent legal professional who is regulated by the Society shall comply with the provisions of the Money Laundering Regulations.

6.23.2 A regulated person shall demonstrate to the Society on request that the information held by him or by his practice unit is sufficient to evidence compliance with the provisions of Part 7 of the Proceeds of Crime Act 2002 and Part 3 of the Terrorism Act 2000.

## Part VI - Guarantee Fund

### Definitions and Interpretation for Part VI

6.24.1 In this Part of rule 6 unless the context otherwise requires, terms listed in the first column of rule 6.24.1 shall have the meanings respectively ascribed to them in the second column of that rule:

Term	Definition
authorised person	the solicitor to the Guarantee Fund or such other individual as may from time to time be specified by the Society;
loss	pecuniary loss by reason of dishonesty on the part of any regulated person in practice in the United Kingdom, or any employee of such regulated person in connection with the practice of the regulated person, and whether or not he had a practising certificate in force when the act of dishonesty was committed, and notwithstanding that subsequent to the commission of that act he may have died or had his name removed from or struck off the roll of solicitors (or register of registered European lawyers, register of registered foreign lawyers or register of incorporated practice, as appropriate) or may have otherwise ceased to practice or be entitled to practice.

### Payments into and out of the Guarantee Fund

6.25.1 There shall be carried to the credit of the Guarantee Fund:

- (a) all contributions paid by regulated person's under section 43 of, and Schedule 3 to, the 1980 Act;
- (b) all interest, dividends and other income, and accretions of capital arising from investments of the Guarantee Fund;
- (c) all moneys borrowed for the purposes of the Guarantee Fund;
- (d) all sums received by the Society in respect of contracts of insurance entered into under paragraph 3 of Schedule 3 to the 1980 Act;
- (e) all sums recovered by the Society in consequence of the provisions of sub-paragraph (2) of paragraph 4 of Schedule 3 to the 1980 Act; and
- (f) any other moneys which may belong or accrue to the Guarantee Fund or be received by the Society in respect of the Guarantee Fund.

6.25.2 There shall from time to time be paid out of the Guarantee Fund:

- (a) the expenses of constituting and administering the Guarantee Fund, including the remuneration of officers and employees of, and other expenses incurred by, the Society in relation to the Guarantee Fund under or in the exercise of powers conferred by the 1980 Act;

(b) all grants made by the Society under section 43 of the 1980 Act;

(c) all premiums payable by the Society under contracts of insurance entered into under paragraph 3 of Schedule 3 to the 1980 Act;

(d) all interest and other sums payable in respect of sums borrowed by the Society for the purposes of the Guarantee Fund; and

(e) any other moneys payable out of the Guarantee Fund in accordance with the 1980 Act or any rules relating to the Guarantee Fund made thereunder.

6.25.3 Any person who wishes to apply to the Society for a grant from the Guarantee Fund in respect of a loss shall, as soon as is reasonably practicable after the date on which the loss first came to his or her knowledge and in any event within 12 months of that date, make an application in such form as may from time to time be prescribed by the Council and shall deliver the same to the authorised person.

6.25.4 The Council shall be entitled to treat an application as having been abandoned if such documents and other evidence as the Council may demand in terms of paragraph 4(1) of Schedule 3 to the 1980 Act are not produced to it within three months (or such longer period as the Council may have agreed with the applicant) provided that on the expiry of such period, the Council shall issue a reminder letter to the applicant allowing a further period of not less than 14 days for the production of such documents and other evidence.

Council may require institution of proceedings

6.26.1 The Council may, before deciding whether or not to make a grant out of the Guarantee Fund in respect of any application, require the applicant to institute civil proceedings (including, where appropriate, insolvency proceedings) in respect of the loss or to take steps with a view to the institution of criminal proceedings in respect of the dishonesty leading to the loss or with a view to the making by the Council of a complaint to the Scottish Solicitors' Discipline Tribunal.