

Four ways to use text tables and flowcharts in legal briefings: summarise complexity and help clients see your point *(and do it all in MS Word)*

1. Text tables that compare the current situation with a new (or proposed) one

Summarise a change, or proposed change, in a text table and you give readers a quick way to understand the key points.

a) Two columns: a then-and-now comparison

Current legislation:	New legislation
6 months' maternity leave for all women	<i>12 months' maternity leave for all women</i>
6 months' maternity pay	<i>9 months' maternity pay (to extend to 12 months' pay by the end of the current legislative term)</i>
2 weeks' paternity leave	<i>6 months' additional paternity leave (some of which may be paid)</i>
Parents of young children have right to make flexible-working request	<i>Carers of adults to have right to make flexible-working request</i>

b) Three columns: using sub-sections and a 'comment' or 'impact' column

Proposed changes to Joint Venture Arrangements (JVA) rules		
Uncapped exit considerations will not automatically indicate a Class 1 transaction		
Current rules Entry into a JVA is a class 1 transaction if exit arrangements include an option with an uncapped consideration.	Proposed changes If there's an uncapped exit consideration, entry into a JVA will be: <ul style="list-style-type: none"> - a class 1 transaction if other tests indicate a class 2 transaction. - a class 3 transaction if other tests indicate a class 2 transaction. 	Comment <i>Joint ventures can be treated as class 2 transactions provided they do not have uncapped exit considerations.</i> <i>Class 2 transactions require an announcement containing specified details – less onerous than class 1 requirements for prior shareholder approval.</i>
Joint ventures in "ordinary course of business" may be exempt from LR10		
Current rule All joint ventures are currently assessed under the class tests contained in LR10.	Proposed changes The FSA will be more receptive to arguments that a joint venture is "in the ordinary course of business" and will not be come under LR10. However, the "ordinary course" argument will not necessarily apply to any exit arrangements.	Comment <i>Establishing a joint venture in certain industries (although the FSA has not specified which ones) may fall outside the provisions of LR10 – depending on the facts and circumstances.</i>

2. Text tables that show commentary on a statement or a process

A text-table can also show a process (see below) or a statement (see next page) alongside commentary on that process or statement.

a) Commenting on process (a test in this case) – how the Court of Appeal applied a test

The *Corner House* principles and the Court’s judgment on *Compton v Wiltshire*

The Corner House principles

Can PCO be awarded?



PCO should be awarded only “in the most exceptional circumstances”.



PCO can be awarded if the court is satisfied that:

1. The issues raised are of general public importance;
2. It is in the public interest to resolve those issues;
3. The applicant has no private interest in the outcome of the case;
4. It is fair and just to make the order, if you consider the financial resources of the applicant and the respondent(s) and the likely costs;
5. The applicant will probably discontinue the proceedings if the order is not made, and this would be a reasonable decision.



Award PCO

Court of Appeal judgment in Compton v Wiltshire

“Exceptional” is not a sixth principle

The majority view was that cases that met the *Corner House* conditions were “exceptional”.

These conditions should not be read in an overly restrictive way

The Court found that the PCO applications:

- Met the “general public importance” test as the hospital-closure affected 30,000 to 50,000 people in the catchment area.
- Passed the “public interest” test even though: it did not raise issues that were important to the nation as a whole; it was not a test case.

We note that PCOs are under review by the Civil Rules Procedure Committee.

b) *Commenting on text – this example sums-up key messages in right-hand column*

The Regulator’s statement... and the message to trustees and employers

The statement from the Pensions Regulator

Notes and comments

Messages for trustees

“The position of trustees of a pension scheme in deficit is akin to unsecured creditors of the sponsor organisation. They normally have a shared interest in maintaining the health of the company...”

“There is no reason why a pension scheme deficit should push an otherwise viable employer into insolvency...”

“The regulator has already issued a statement to pension scheme trustees drawing their attention to our existing guidance and the circumstances under which they should consider reviewing and, if necessary, re-opening recovery plans...”

The Regulator seems to have two messages for trustees:

- *Be vigilant and well informed*
- *Be flexible; push your sponsor too hard and you’ll hurt the scheme*

Messages for employers

“Employers need to be reassured that the current scheme funding regime is flexible enough to cope with the impact of an economic downturn and that the regulator’s operational processes on scheme funding aim to reflect the prevailing conditions...”

“If any employer believes that an existing recovery plan is at serious risk of jeopardising the company’s future health or solvency then they should discuss this with their pension scheme trustees...”

“Trustees and employers should be assured that the regulator will continue to apply the flexibilities in the system pragmatically, looking for outcomes in the best interests of the scheme and sponsor...”

The message to scheme sponsors seems to be that:

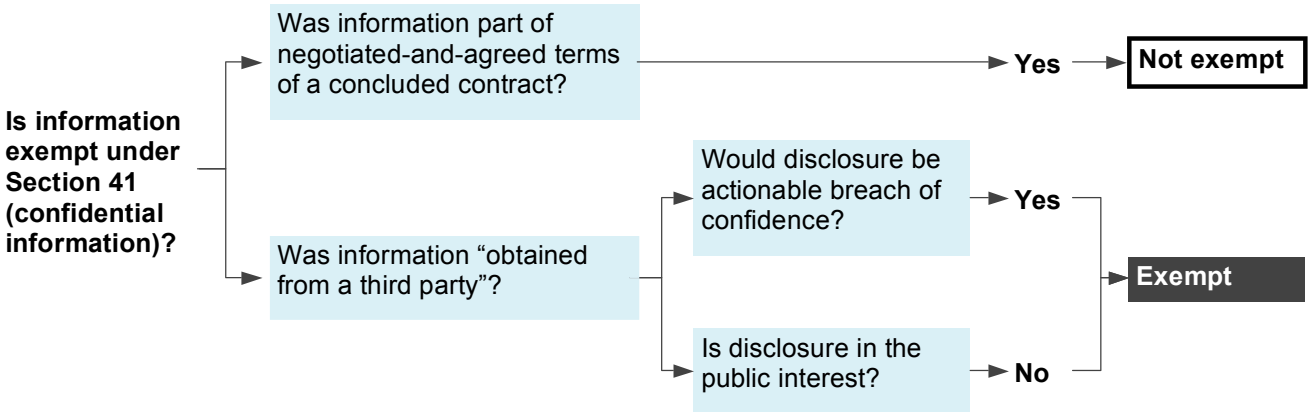
- *The Regulator is prepared to listen, and be pragmatic.*
- *Trustees need to listen to proposals from sponsors.*

3.1 Complex decision trees

Two examples of decision-trees with multiple steps.

a) An example that shows how rules are applied to a specific situation:

How the Information Commissioner assessed 'confidential information' exemptions

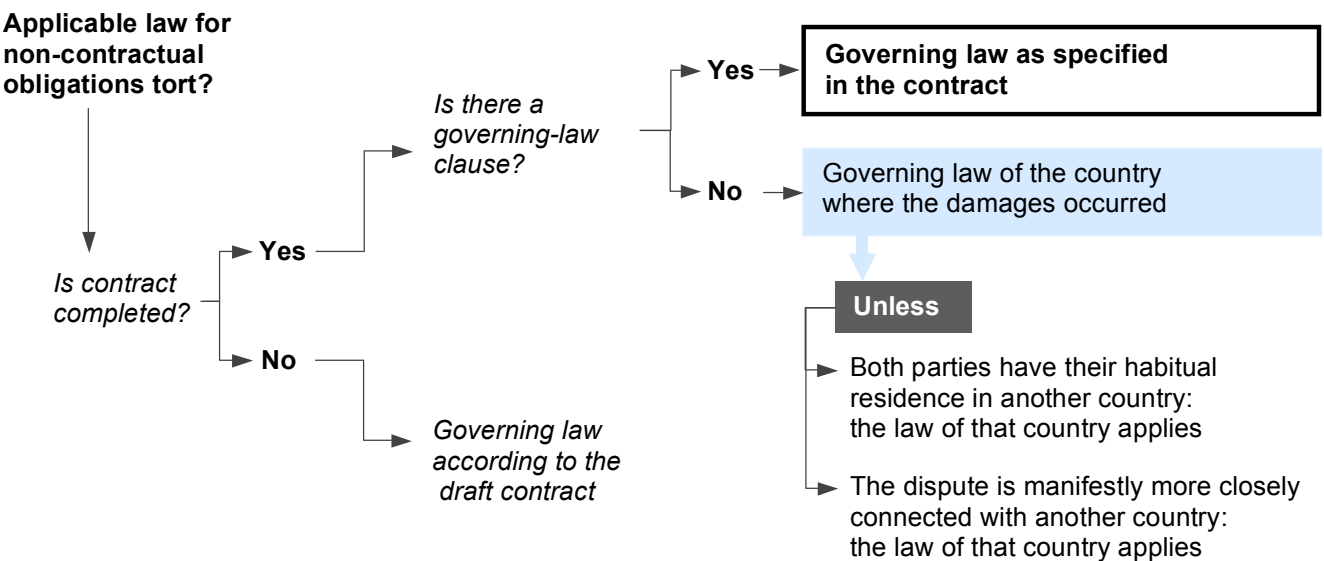


b) An example that compares current rules with rules that are about to be introduced:

Current rules under English law



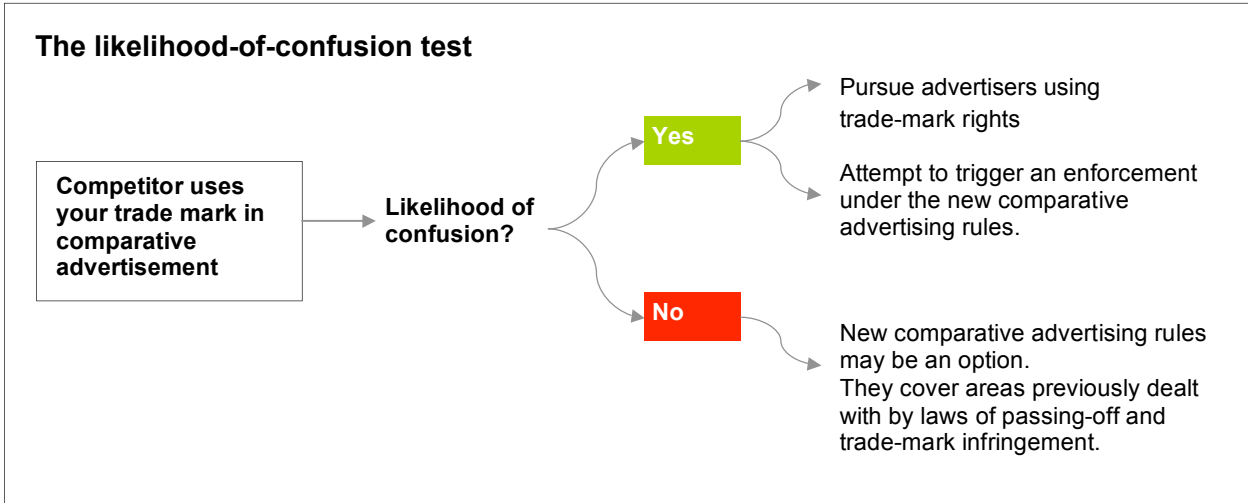
Rules under Rome II (in place from January 11 2009)



3.2 Simple bifurcation decision trees with “yes” and “no” forks

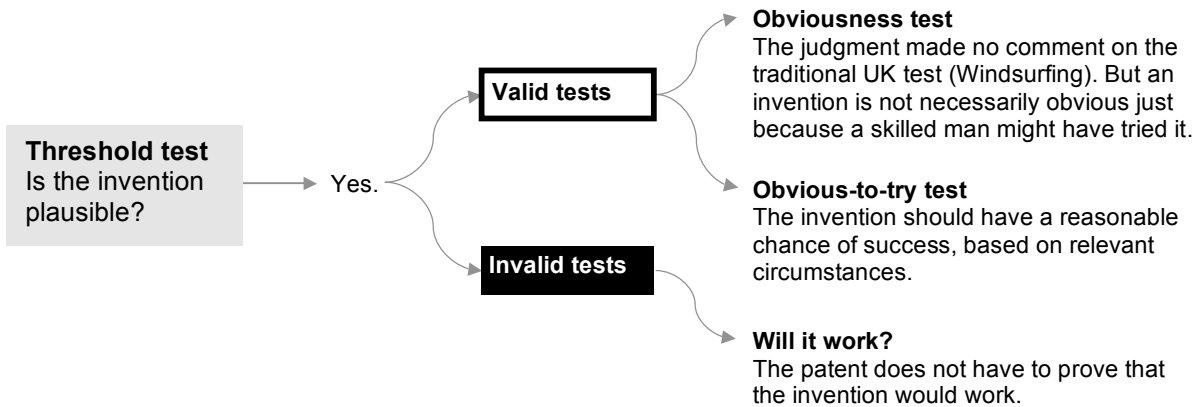
Two fairly straightforward decision trees (you could create them in Microsoft Word in no more than ten minutes). Remember that a flowchart can cover part of a process.

a) Example of simple bifurcation flowchart (note colour boxes)



b) A similar flowchart that will work in black and white

The threshold test: valid and invalid tests



4.1 An “event flag” timeline (the detail on each event would appear as shown on the next page)

Clients love timelines. This kind of timeline can be in a PDF or on a website. Whatever the format, it’s easy to link from an “event flag” to the detail on that event (see next page for an example of detailed notes on a particular event in a timeline).

Developments in UK corporate law

Key New regulations in effect Other developments, and developments where implementation dates aren't known

Companies Act 2006 commencements (see section YY)

6 April 2008, provisions include:

- Section 44 of Part 4 – Execution of Documents
- Part 12 – Company Secretaries
- Part 15 – Accounts and Reports
- Part 16 and Part 42 – Audit
- Parts 8, 19 and 22 – Registers of Share Interests and Debentures
- Part 20 – Private and Public Companies
- Part 21 – Certification and Transfer of Securities
- Part 23 – Distributions
- Part 26 and Part 27 – Arrangements, Reconstructions and Mergers

From 1 October 2008, provisions include:

- Part 10 – Directors' conflicts of interest
- Financial Assistance – Repeal for private companies
- Part 17 – Reductions of Capital
- Sections 69 to 74 – Objections to company names
- Sections 82 to 85 – Trading Disclosures

Corporate developments (details in section XX)



4.2 Timeline: the detail on a specific event that sits behind an “event flag” summary (see “event flag” timeline on previous page)

Key date	Details	Links
Directors’ conflicts of interest under the Companies Act 2006		
In force from: 1 October 1 2008	<p>The last element of the directors’ duties rules Section 175 of the Companies Act 2006 applies from 1 October 2008. It requires a director to avoid a situation in which he has, or can have, a direct or indirect interest which conflicts or may conflict with the interests of the company.</p> <p>The other directors’ duties in the 2006 Act (sections 171 to 174) came into force in October 2007. Once sections 175 to 177 are in force, the statutory codification of directors’ duties in the 2006 Act will be complete.</p> <p>Amending articles of association, and shareholders’ permission Section 175(5) allows a board to approve a conflict situation. Public companies can only do this if the articles of association permit it – many boards are changing their articles to allow board approval. Private companies do not need a provision in their articles, but if they were incorporated before 1 October 2008 have to obtain consent from shareholders via an ordinary resolution to use the board approval route.</p> <p>Client briefing on director’s conflicts of interest We have published a briefing (see right column) that sets out how companies should prepare for the statutory-conflicts duties, focusing in particular on the duty in section 175 to avoid conflicts of interest.</p> <p>GC100 guidance paper In January the GC100 (Association of General Counsel and Company Secretaries of the FTSE 100) published a guidance paper on directors’ conflicts of interest. It sets out:</p> <ul style="list-style-type: none"> – Examples of situations that could fall within the new rules. – Suggested wording for changes-to-articles circulars. – Guidance for boards on exercising their power to authorise conflicts. 	<p>Firm Name client briefing To request a copy, email: first.name@lawfirmname.com</p> <p>GC 100 guidance In GC100 section of Practical Law Company website: http://corporate.practicallaw.com/downloadFile.do?item=40396048</p>