



GUIDANCE NOTES FOR LEGAL PRACTICES

Client relations

Identifying your client, their objectives and their authority is essential if you are to give a good service.

Risk areas

- Identifying the client and their interests
- Accepting instructions
- Poorly defined retainers
- Mismanaging the relationship with your client
- Keeping the client informed
- Managing clients expectations as to timescale, costs and outcome
- Record keeping

Identifying clients and their interests

- Make sure the client is who they say they are – get original evidence of identity
- Don't rely on having acted for the client previously – circumstances may have changed
- Identify their interest in the matter so that you can establish whether there is any conflict with another client (current or former) of your firm or with any other party instructing you
- Ensure that the client has authority to instruct you, especially in partnership or corporate matters or when dealing with family members

Accepting instructions

- Identify and reduce your potential exposure by vetting clients
- Ask yourself: who is the client? Why have they come to me?
- Can I act for them? Can I do an effective job at a price the client is prepared to pay?
- Establish whether there are others who are not your clients to whom you may owe a duty of care. See, for example, *Roy Dean v Allin & Watts (A Firm)* [2001] EWCA Civ 758
- Satisfy yourself that you have the time and expertise to act for them. Consider whether it would make better sense to refer the client elsewhere, either internally or externally
- Where a matter is particularly complicated, unusual or difficult, ensure it is handled at the appropriate level of seniority
- Be cautious if the matter is stale or close to limitation. Consider whether you really want to take on such a matter
- When taking over a file from other solicitors find out why the client wants to move
- Have a positive reason for taking on every client

Multiple clients

- Be especially wary if instructed by one party of a couple, by family members or by a third party
- Insist on meeting or making independent contact with all persons said to be giving instructions
- Take clear written instructions from all clients on where to send client funds, especially when sending funds overseas. It is essential to identify intended recipients accurately before making payment

Commercial clients

- You may be asked to act for the company, its directors, the shareholders or a combination of them. Consider carefully whether you can properly advise more than one. Establish whether any financial backers will seek to rely on your advice and be clear to whom you owe a duty of care
- Establish that the person giving you instructions has authority to do so. Check the memorandum and articles, if necessary, to see that the proposed action is within the company's powers
- Check that you have identified the registered office correctly
- Make a company search to check that the company has been correctly identified and that it is still on the register. Do a further search immediately before issuing proceedings

The initial interview

- Establish your client's objectives: what do they want to achieve, in what timeframe and at what cost? Explain the issues involved and the options available
- Beware the hidden agenda. Are you confident that your client has been candid with you?
- Ensure that your interview technique helps you to find out all relevant information as quickly as possible, including your client's objective. Consider whether training in this area would make you more effective
- Mistakes made at this stage may not come to light for some time. Ask detailed questions and do not make assumptions
- At the end of the interview, summarise the instructions you have received, your advice, and the next steps to be taken by you and your client. Give the client time to ask questions
- Record the details of the interview in writing and consider whether to send a copy of your note to the client

The retainer

- Distinguish the 'retainer' or engagement letter from a letter giving terms of business or client information
- Confirm the instructions received and the client's objectives in writing
- Confirm next steps and the likely overall timescale
- Give the best information possible about costs and funding options. Confirm any discussions in writing
- Discuss the cost versus benefit of every case with the client
- If proceedings are contemplated, warn the clients of the risk of costs being ordered against them
- Review this information regularly – keep the client informed of any changes
- Explain any documents, plans or court orders that you send them

Client management

- Your duty is to give clients advice and to act on their instructions, but you must not act in a way that compromises your integrity
- Agree an appropriate level of service and the scope of your responsibilities
- Never let anxious, demanding or bullying clients push you into acting against your better judgment, unprofessionally or unethically. Always remain objective
- Document your advice and the instructions you receive, especially if your client rejects your advice.
- Keep your client informed throughout

Manage your clients' expectations

- Be honest about the prospects of success, and be open about any changes to these, even if this differs from your initial advice
- Don't allow your desire to please the client to override your judgement
- If new evidence emerges which changes the apparent merits of the matter, tell them immediately and review the possible outcomes

Write in plain english

- Avoid jargon or Latin phrases. Occasionally they will help but all too often they will confuse or lead to misunderstandings
- Never assume that something is obvious and that you don't need to explain it
- Do not assume that your clients understand lengthy documents or legal processes

Client obligations

- Ensure your clients understand the terms of the arrangements between you: that for you to operate effectively, they must put you in funds, give clear instructions and respond promptly to requests for information
- Explain the likely consequences if they do not

File management

- Good record keeping can defeat a negligence claim; bad record keeping can create one
- Confirm important meetings, discussions and telephone calls in writing – preferably by way of a letter to the client
- Ensure your file tells the whole story. You may not be the next person to pick up the file
- Print out e-mails for your file or save them to a dedicated electronic client matter folder

Attendance notes

- Notes should be clear and concise – they need not be a verbatim record of the interview but they should record the date of the interview, identify those present, restate important facts and set out advice given to the client
- Have notes typed wherever possible – avoid shorthand terms
- Your note may make the difference between settlement or repudiation of a negligence claim
- Claims can be pursued for up to 15 years after the matter has been completed. Where the content is critical, prepare a note that will stand the test of time
- If the purpose of a meeting was to amend documents or statements, make reference to this in the note and identify the document or draft

Ending the retainer

- Ensure clients know when things have come to an end and what has happened
- Don't keep files open if there is no activity – write to the client and terminate the retainer
- Return original documents to clients or put them in safe storage and mark the file accordingly
- Warn them in writing of important dates and any future liabilities
- Tell clients for how long you will retain the file
- Mark your file with a date for destruction and archive it promptly

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