



The Law Society

Your clients – your business

January 2006

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Foreword

I know how difficult it can be for solicitors to attract clients in the face of competition from other solicitors or other service providers. How sensible it is then to make sure that we don't lose or alienate those clients because of misunderstandings over costs or what we are instructed to do. The Law Society, through its involvement with the profession, sees how easily a good relationship between a solicitor and a client can go wrong, despite the legal proficiency of the solicitor.

Issues such as failing to keep the client informed, delay or perceived delay, and failing to give costs information can place a considerable strain on the relationship between the solicitor and the client, and can ultimately lead to solicitors spending time and resources trying to deal with unhappy clients. The importance of good client care to the continuing growth and development of your practice cannot be underestimated.

Also, in the increasingly complex regulatory environment in which solicitors operate, we need to be aware of the issues we should consider to avoid breaches of regulations or legislation. Solicitors have to be mindful of money laundering legislation, data protection issues, distance selling regulations, and their requirements under the financial services regime, to mention just a few.

I therefore warmly welcome this publication, which gives practical guidance based on problems that Law Society staff see when they visit firms or deal with enquiries coming into the office.

How we deal with clients largely determines how successful our firms will be. I would urge you to spend some time looking through this guidance, and consider how well your firm addresses the issues highlighted in the following pages. Look at any complaints that you have received, and consider whether things could have been dealt with in a better way, and adapt your procedures accordingly.

As a profession we are faced with an ever changing and increasingly competitive market place. The commercial benefits of excellent client care are clear if we are to retain and attract clients. We have come a long way in addressing these issues, but there is still some way to go. Clients are your business. I hope this booklet helps you in the essential tasks of developing and sustaining good client relations.

Kevin Martin
President
The Law Society of England & Wales
January 2006

Introduction

This guide has been developed to help solicitors when dealing with a client. The information has been gathered from a number of different departments within the Law Society who have regular dealings with solicitors. Drawing on their experience, best practice procedures have been identified, as well as some of the pitfalls that can give rise to problems for solicitors.

The guidance raises issues which need to be considered by all firms and deals with:

- First interviews (fixed-fee or no-fee interviews).
- Client care letters and terms and conditions.
- Dealing with complaints.

Because of the diversity of the profession and the fact that most solicitors are now familiar with, and have developed their own terms and conditions, it was not considered appropriate to be prescriptive and produce terms and conditions that would, in any event, not suit the style or practice of every office. Where particular wording is prescribed by statute, or has been recommended by a Law Society committee, then it is set out in full, together with a reference to its source.

The document is designed to assist solicitors. There may be issues that have not been addressed or new issues that should feature when the guidance is updated. All comments from the profession are welcome as they will enable the guidance to be improved for subsequent versions. Please email any comments to bestpracticeprogramme@lawsociety.org.uk.

By following the guidance, you will be well placed to identify and meet client needs and expectations and deliver benefits both to your client and your business.

We hope that you find this publication useful. It will be updated regularly and available via the Law Society website at www.lawsociety.org.uk. To request a hard-copy, contact Information Services (telephone 0870 606 6575 or email info.services@lawsociety.org.uk).

1 First interview with a client

Solicitors are sometimes uncertain as to what is expected of them in regulatory terms when they see a prospective client for the first time. The preliminary interview can be on a no-fee or fixed-fee basis, and there may be no further involvement with the interviewee once the interview has concluded.

It is appreciated that these guidelines may not be able to be applied in all situations, but it is hoped that by following them where possible, solicitors will avoid some of the difficulties that have come to our attention.

Interviews on a no-fee or fixed-fee basis are considered to be helpful to the client and solicitor alike in identifying whether there are issues that need to be taken further by the solicitor.

The problems that have come to our attention and which this guidance is designed to address are:

How do solicitors comply with Solicitors' Practice Rule 15 in terms of these preliminary interviews? If solicitors are charging (even reduced fees) what information should be given to the interviewee?

How can solicitors guard against conflicts arising between interviewees and the existing client which might necessitate the solicitor having to cease acting for the existing client? In some instances we have been informed that a conflict has been deliberately engineered to preclude a firm from continuing to act on a matter. This is done by the interviewee revealing information to the solicitor which creates a conflict with the existing client. The firm may then have to cease acting for their existing client. It is, therefore, important that conflict checks are made.

Should solicitors be doing identification checks at or before the interview?

Is a solicitor required to write to the interviewee after the interview, even if the solicitor will have no further involvement with that person?

The following are suggested guidelines to deal with these issues, and minimise the difficulties that a solicitor may face. They are good practice guidelines and should be applied as a minimum standard. Solicitors should inform their staff as to these requirements, explaining why they are necessary, so that the staff can respond to any enquiries about why the information is needed before the interview takes place.

1.1 When an appointment is made in advance, even if it is a meeting out of the office, the following information should be obtained from the interviewee:

Their name, address and telephone number.

The field of law involved, for example, matrimonial, crime etc.

The name of the opponent or others involved in the matter if applicable.

This should enable the solicitor to do a conflict check. If there is a conflict the interviewee can be telephoned and the interview cancelled.

If it is a 'walk-in' surgery, then these checks should be done before the interview takes place, and if the check reveals a conflict, no interview should take place.

1.2 When the interviewee attends the office they are given the following information in writing:

The name and status of the solicitor or other person conducting the interview.

Confirmation that:

- the interview is free; or
- the cost of the whole interview is £x; or
- the cost of the interview is at a reduced cost of £x per hour pro rata; or

- the first y minutes are free, and thereafter they will be charged pro rata at the rate of £x per hour; and
- details of whom to contact if the interviewee has a complaint.

This information can be prepared in a pro-forma document in advance. Interviewees should sign and date the document thereby acknowledging receipt. The firm should keep a copy of the signed document.

There is no objection to solicitors, who on the reverse of that document, wish to set out the legal matters that the firm specialises in, and the contact details of the firm or individual solicitors. The client will take this document away with them.

- 1.3 It is not necessary for identification checks to be done where legal advice alone is being sought, which at this stage is presumably all that happens. However, if taxation advice is to be given, identification should be taken (see chapter three of the Law Society's money laundering guidance at www.lawsociety.org.uk). If the solicitor continues to act for the interviewee, then the usual identification checks will be required where appropriate.
- 1.4 Solicitors are reminded that the duty of confidentiality applies to information obtained in this interview, even if the matter goes no further.
- 1.5 After the interview has finished, the solicitor's notes of the interview should be kept with the copy information form that was signed by the interviewee, and filed away and kept for record purposes.
- 1.6 There is no need for the solicitor to write to the interviewee unless:

The solicitor agrees to do this during the course of the interview.

The solicitor will act further for the interviewee, in which case the solicitor's usual terms of engagement letter containing all the usual client care information should be sent to the client.

The solicitor wants to record the advice he or she has given, so that there can be no misunderstanding of what was said.

If the solicitor intends to charge for the letter then the solicitor should agree the cost of the letter with the interviewee and record that agreement in the interview notes.

- 1.7 If an 'agreed fee' is charged then it should be evidenced in writing (this could be by writing on the bill 'agreed fee'). The money must then be paid directly into office account. An agreed fee in this context is a fee that is fixed, so in the examples above only 2(ii)(b) is an agreed fee (see rule 19(5) and note (xiii) of the Solicitors' Accounts Rules 1998).

2 Content of client care letter

Since the client care rule came into force, solicitors have adopted a number of different approaches and styles in their client care letters. Some solicitors put their terms and conditions in their client care letter. The result is a letter that may extend to several pages. Other solicitors create a relatively brief letter and append a separate terms and conditions document that will run to several pages. In regulatory terms, neither approach is wrong. It is for the individual solicitor to decide what best suits them and their client.

However, as we seem to be moving to the position where more terms and conditions may be appropriate because of the complexity of practice, we believe that more solicitors will proceed on the basis of a separate terms and conditions document. The guidance is, therefore, based on that premise, although clearly solicitors who do not favour that approach can simply import the required terms and conditions into their letters.

We have tried to provide a comprehensive list of general terms and conditions to be considered. Not all of them may apply to each practice. Solicitors are encouraged to be selective in deciding which ones to include in their terms and conditions. Also, consider whether the capability of the client means that they will understand the terms and conditions, and if not try to express them in such a way that they are made clear to the client. Consideration should also be given to whether additional terms and conditions are appropriate given the nature of the work being dealt with.

A good client care letter should:

- Clearly identify the client.

- State what the solicitor is instructed to do (and what is not included in the retainer if appropriate) and, if possible, give timescales.

- Give an overall estimate of costs, broken down between fees, VAT and disbursements. Make it clear how costs have been calculated and refer the client to any additional information on costs in the terms and conditions document, if there are any.

- Give the name and status of the person who will be dealing with the matter in the firm and the name of the principal responsible for its overall supervision.

- Give the name and status of the person whom the client should approach if there is a problem.

Some solicitors ask the client to sign, date and return either the client care letter or their terms and conditions document. This is not a regulatory requirement, but could assist solicitors if they are subsequently faced with a client denying he or she has received this information ([see 3.17](#)).

The client care checklist that follows is intended as a useful source of guidance, in an easy-to-read format, covering the principal areas covered by Solicitors' Practice Rule 15 and the Solicitors' Costs Information and Client Care Code. The checklist is not a substitute for considering the rule in full when deciding how best to comply with its provisions.

Client care checklist

2.1 Client care

- Identify who will conduct the matter.

- Give the person's status.

- Name the partner with overall supervisory responsibility for the work (unless the fee-earner is a partner).

- Name a person the client should contact in the event of a problem.

2.2 The matter

Give a clear explanation of the issues and the extent of your retainer. Make it clear if you will not be advising on a particular issue.

Give an explanation of the likely timescale.

Confirm the instructions received and advice given (including key dates, where appropriate).

Outline the next steps to be taken by the firm and the client, as appropriate.

2.3 Costs

How you address costs information will vary depending on the matter and how costs are being funded. However, our suggested approach is for the costs information which appears in your client care letter to be tailored to the circumstances of that particular client. It may be appropriate to include in your general terms and conditions document other standard information about costs.

2.4 General costs information

Give the best information possible about the likely overall costs, broken down between fees, VAT and disbursements.

Explain the time likely to be spent, if time is a factor in calculating the fees.

The best information possible can include:

- agreeing a fixed-fee; or
- giving a realistic estimate; or
- giving a forecast within a possible range of costs; or
- explaining why it is not possible to give the above; and instead give the best possible information about the costs of the next stage of the matter.

Explain the client's ability to set upper limits on fees to a privately paying client.

Make clear at the outset if it is an estimate or a quotation and ensure that the client understands the difference.

Explain how fees are calculated (for example, by giving hourly rates) – this is unnecessary where the fees are fixed or clear.

State if charging rates may be increased.

State how the firm will charge if the matter is not completed.

Outline what reasonably foreseeable payments the client may have to make (to any party) and when.

Agree times or stages in the transaction when the client will be updated in relation to costs information (including not only costs incurred, but also addressing when a costs estimate or agreed upper limit may be exceeded) and any changed circumstances affecting the client's potential liability for costs, risk or cost-benefit position. Costs information should be updated at least every six months, or sooner, if it appears that a costs estimate or agreed upper limit may or will be exceeded.

Explain the firm's billing arrangements.

Explore the availability of alternative funding arrangements, even if the firm does not take on work on that basis.

Advise the client of the cost-benefit risk analysis of pursuing their matter.

Disclose any relevant arrangement with a third party such as a funder, fee-sharer, or introducer that may affect the client or the solicitor's conduct of the matter – including the amount of any referral fee where appropriate.

Advise the client if money is needed on account.

2.5 A publicly funded client

Explain to a publicly funded client their potential liability for their own costs and those of any other party, including:

The effect of the statutory charge and its likely amount.

The obligation to pay any contribution and the consequences of failure to do so.

The fact that the client may still be ordered by the court to contribute to the opponent's costs if the case is lost, even though the client's own costs are publicly funded.

The risk of an opponent not being ordered or able to pay costs, even if the client wins.

2.6 A privately paying client in a contentious matter (and potentially contentious matter)

Explain to the client their potential liability for their own costs and for those of any other party, including:

The fact that the client will be responsible for paying the firm's bill in full regardless of any order for costs made against an opponent.

Potential liability for opponent's costs as well as own costs, if the case is lost.

The risk of an opponent not being ordered or able to pay costs.

The implications of an opponent being legally aided.

The possible cost implications of the client rejecting Alternative Dispute Resolution (ADR).

The costs and risk of enforcing judgments.

The costs implications if the client withdraws, or rejects a reasonable offer of settlement.

2.7 Liability for third party costs in non-contentious matters

The solicitor should explain to the client any liability they may have for the payment of third party costs, for example, landlords' fees.

2.8 A client represented under a Conditional Fee Agreement (CFA) – including Collective Conditional Fee Agreement (CCFAs)

Where the client is represented under a CFA, the solicitor should explain:

The circumstances in which the client may be liable for their own costs and for the other party's costs.

The client's right to assessment of costs, whenever the solicitor intends to seek payment of any or all of their costs from the client.

Any interest the solicitor may have in recommending a particular policy or other funding.

The new regime for Conditional Fee Agreements and Collective Conditional Fee Agreements began on 1st November 2005. On that date, the Conditional Fee Agreements Regulations 2000 and the Collective Conditional Fee Agreements Regulations 2000 were revoked. The Law Society's new model CFA for personal injury work and client leaflet appears in [Annex A](#).

More information

Conditional fee agreements – new guidance (The Law Society, 28th October 2005) viewable at www.lawsociety.org.uk.

2.9 Where an action is being funded by a third party (for example, a trade union or legal expenses insurer)

Explain to the client (for example, the member or insured) that the third party has indicated that they will be paying the fee and, therefore, full details of how charges will be worked out have not been provided.

Explain that if, for some reason, the third party refuse to pay the charges, then the firm will look to the client for payment direct (in the case of a trade union, the member may be required to reimburse the trade union). With that in mind, explain that the firm will, if requested by the client, provide details of charges at any stage in the transaction, and now if required.

Ensure that the third party are aware of how the charges will be calculated and that the firm expects them to settle the charges.

Non-contentious business

No right to render interim bills to receive payment on account, unless that right was reserved at the outset. In which case, specify the time by which those monies must be paid, and confirm that you have the right to terminate if payments aren't made.

Contentious business

No right to charge interest on unpaid bills, unless right reserved at the outset. If you are seeking costs on account or will be rendering interim bills then specify the times or stages by which those monies should be paid, and reserve your right to terminate for non-payment.

More information about costs

Contact the Law Society Practice Advice Service on telephone 0870 606 2522 or email lib-pas@lawsociety.org.uk. The Practice Advice Service publishes booklets on non-contentious costs, contentious costs and payments by results. These publications are regularly revised and updated and are viewable at www.lawsociety.org.uk.

3 General terms and conditions

Listed below are matters you need to consider for inclusion in your terms and conditions document or, in certain circumstances, in your client care letter. Where a particular wording is prescribed by statute, or has been recommended by a Law Society committee, it is set out in full with a reference to its source. It is, of course, a matter for you to determine what should be covered in your terms of business.

3.1 Service commitment

3.1.1 Service standards

Advise the client of the service standards that you will endeavour to adhere to during the retainer, for example:

- That you will keep the client regularly informed of progress.
- That you will communicate in plain language.
- That you will explain the legal work that may be required.
- That you will advise the client regularly of the costs/risk benefit of pursuing a matter.
- That you will advise the client of the likely timescale involved.

3.1.2 Hours of business

- Advise the client of the firm's normal opening hours.
- Advise the client if the firm operates an out-of-hours/emergency service.

3.1.3 Complaints

- Advise the client of the name of the person to contact with concerns about service.
- Assure the client that the firm will endeavour to resolve complaints internally.

More information

Solicitors' Practice Rule 15; Solicitors' Costs Information and Client Care Code; *The Law Society's clients' charter*, all viewable at www.lawsociety.org.uk.

3.2. Equality and diversity

Consider advising the client as to the firm's policy on equality and diversity. For example: 'This firm is committed to promoting equality and diversity in all of its dealing with clients, third parties and employees [please contact us for a copy of our equality and diversity policy]'.

Solicitors and their staff must avoid discrimination in all of their professional dealings with clients, staff, partners and third parties and, in doing so, should ensure that:

- Notwithstanding freedom to accept or reject instructions from any particular client, ensure the decision is not based on the client's sex, race, religion, sexual orientation or disability.
- Terms and conditions are not in any way directly or indirectly discriminatory against the client and potential client on the basis of sex, race, religion, sexual orientation or disability.
- Language or terminology is not offensive to the client.
- Terms and conditions make it clear that when instructing third parties, such as barristers, the sex, race, religion, sexual orientation or disability of the third party will not be taken into account and, if the client insists that the solicitors do so, they will cease acting for the client forthwith.
- Reasonable steps will be taken to ascertain how to best communicate with the client rather than making assumptions based on matters such as the client's ethnic origin or disability.

Terms and conditions are available in alternative formats – for example on audio tape, in large text, in Braille – for a client unable to read or read easily a standard terms and conditions letter.

Ascertain, when taking instructions, whether the client has any needs in relation to their ability to receive instructions, advice and services from a solicitor, and make such reasonable adjustments at the appropriate time to facilitate this and advise the client of the availability of those adjustments.

Make it clear to the client for whom a reasonable adjustment has been, or needs to be made, that the costs of that reasonable adjustment will be borne by the practice and not passed on to the client as a disbursement.

More information

Solicitors Anti-discrimination Rule 2004, viewable at www.lawsociety.org.uk.

3.3 Communication by email

Confirm with the client whether they are agreeable to being contacted by email.

Advise the client that email may not be as secure as other means of communication.

More information

Email guidelines for solicitors (The Law Society, November 2005), viewable at www.lawsociety.org.uk.

3.4 Money laundering

The following paragraphs have been approved by the Law Society Money Laundering Task Force for solicitors to use. In addition, you may consider adding information about the firm's limit on acceptance of cash, and/or policy on sending funds to third parties.

3.4.1 Option one

1. Proof of identity

'In order to comply with the law on money laundering, we need to obtain evidence of your identity as soon as practicable. We should be grateful, therefore, if you would provide us with documents to verify your identity and address, as set out on the attached sheet.'

2. Confidentiality

'Solicitors are under a professional and legal obligation to keep the affairs of the client confidential. This obligation, however, is subject to a statutory exception: recent legislation on money laundering and terrorist financing has placed solicitors under a legal duty in certain circumstances to disclose information to the National Criminal Intelligence Service. Where a solicitor knows or suspects that a transaction on behalf of a client involves money laundering, the solicitor may be required to make a money laundering disclosure. If this happens, we may not be able to inform you that a disclosure has been made or of the reasons for it because the law prohibits 'tipping-off'.'

3.4.2 Option two

1. Proof of identity

'The law now requires solicitors, as well as banks, building societies and others, to obtain satisfactory evidence of the identity of their client. This is because solicitors who deal with money and property on behalf of their client can be used by criminals wishing to launder money. In order to comply with the law on money laundering, we need to

obtain evidence of your identity as soon as practicable. We should be grateful, therefore, if you would provide us with documents to verify your identity and address, as set out on the attached sheet.'

2. Confidentiality

'Solicitors are under a professional and legal obligation to keep the affairs of the client confidential. This obligation, however, is subject to a statutory exception: recent legislation on money laundering and terrorist financing has placed solicitors under a legal duty in certain circumstances to disclose information to the National Criminal Intelligence Service. Where a solicitor knows or suspects that a transaction on behalf of a client involves money laundering, the solicitor may be required to make a money laundering disclosure.

If, while we are acting for you, it becomes necessary to make a money laundering disclosure, we may not be able to inform you that a disclosure has been made or of the reasons for it because the law prohibits 'tipping-off'.'

3.4.3 Option three

1. Proof of identity

'The law now requires solicitors, as well as banks, building societies and others, to obtain satisfactory evidence of the identity of their client. This is because solicitors who deal with money and property on behalf of their client can be used by criminals wishing to launder money. In order to comply with the law on money laundering, we need to obtain evidence of your identity as soon as practicable. We should be grateful, therefore, if you would provide us with documents to verify your identity and address as set out on the attached sheet.'

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If, while we are acting for you, it becomes necessary to make a money laundering disclosure, we may not be able to inform you that a disclosure has been made or of the reasons for it because the law prohibits 'tipping-off'. Where the law permits us to do, we will tell you about any potential money laundering problem and explain what action we may need to take.'

More information

Up-to-date guidance from the Law Society Money Laundering Task Force viewable at www.lawsociety.org.uk.

3.5 Data protection/quality standards

Solicitors need to assure the client that they will deal with their information in accordance with their legal obligations under the Data Protection Act 1998.

More information

Principle 1 of the Data Protection Act 1998, viewable at www.informationcommissioner.gov.uk.

3.6 Distance selling regulations

If there is no routine face-to-face contact with the client, consider if the Consumer Protection (Distance Selling) Regulations 2000 apply.

More information

www.dti.gov.uk; www.ofst.gov.uk; *Gazette* (The Law Society, 16th June 2005, page 38), viewable at www.lawgazette.co.uk.

3.7 Outsourcing of work

Advise the client if the firm outsources work, such as typing or photocopying documents.

Alert the client to the potential risks in relation to preserving client confidentiality.

Ask the client to advise you if they object to this practice.

A term that solicitors can outsource may help if there is a breach of confidentiality, but it will not generally be an absolute defence. Solicitors should ensure they have a confidentiality agreement with their suppliers.

More information

Guide to the professional conduct of solicitors, principal 6.01 (The Law Society, 1999), viewable at www.lawsociety.org.uk; *Gazette*, notices (The Law Society, 1st July 2004), viewable at www.lawgazette.co.uk.

3.8 Introductions and referrals

Advise the client about any relationship you may have with a third party (for example, a funder, fee-sharer or introducer) which affects steps you can take on the client's behalf.

The disclosure requirements arise out of your fiduciary duties. They apply generally; not just when you make a payment to the third party.

Solicitors may wish to work through the 'self-checklist' which appears at [Annex B](#) to assist compliance with the Solicitors' Introduction and Referral Code 1990.

More information

Solicitors' Introduction and Referral Code 1990; *Disclosure of funding, fee sharing and referral arrangements* (The Law Society, 9th March 2003), both viewable at www.lawsociety.org.uk.

3.9 Financial services and insurance mediation

The following provisions apply to the vast majority of solicitors and should be considered carefully.

3.9.1 Financial services to a client

If you are not authorised by the Financial Services Authority (FSA) to conduct mainstream investment business you are part of the Designated Professional Body regime and able to carry out exempt regulated activities under the supervision of the Law Society. You will have to comply with the Solicitors' Financial Services (Scope) Rules 2001 and the Solicitors' Financial Services (Conduct of Business) Rules 2001.

You must state one of the following in your terms and conditions and/or client care letters, which makes your regulatory status clear. You will need to determine which statement is suitable, depending on the type of exempt regulated activities you carry out, whether you are making a financial promotion, and whether you wish to refer to other financial services providers.

3.9.1.1 Option one

'Sometimes conveyancing/family/probate/company work involves investments. We are not authorised by the Financial Services Authority and so may refer you to someone who is authorised to provide any necessary advice. However, we can provide certain limited services in relation to investments, provided they are closely linked with the legal services we are providing to you, as we are regulated by the Law Society.

If you have any problem with the service we have provided for you then please let us know. We will try to resolve any problem quickly and operate an internal complaints handling system to help us to resolve the problem between ourselves. If for any reason we are unable to resolve the problem between us, then we are regulated by the Law Society, which also provides a complaints and redress scheme.'

3.9.1.2 Option two

'If during this transaction you need advice on investments, we may have to refer you to someone who is authorised by the Financial Services Authority, as we are not. However, as we are regulated by the Law Society, we may be able to provide certain limited investment services where these are closely linked to the legal work we are doing for you.

If you have any problem with the service we have provided for you then please let us know. We will try to resolve any problem quickly and operate an internal complaints handling system to help us to resolve the problem between ourselves. If for any reason we are unable to resolve the problem between us, then we are regulated by the Law Society, which also provides a complaints and redress scheme.'

3.9.1.3 Option three

'Sometimes family [etc] work involves investments. We are able to provide a limited range of advice and arrangements for which we are regulated by the Law Society. For more complicated matters we may refer you to someone who is authorised by the Financial Services Authority, as we are not so authorised.

If you have any problem with the service we have provided for you then please let us know. We will try to resolve any problem quickly and operate an internal complaints handling system to help us to resolve the problem between ourselves. If for any reason we are unable to resolve the problem between us, then we are regulated by the Law Society, which also provides a complaints and redress scheme.'

3.9.1.4 Option four

'We are not authorised under the Financial Services and Markets Act 2000 but we are able, in certain circumstances, to offer a limited range of investment services to the client because we are members of the Law Society. We can provide these investment services if they are an incidental part of the professional services we have been engaged to provide.

If you have any problem with the service we have provided for you then please let us know. We will try to resolve any problem quickly and operate an internal complaints handling system to help us to resolve the problem between ourselves. If for any reason we are unable to resolve the problem between us, then we are regulated by the Law Society, which also provides a complaints and redress scheme.'

3.9.2 Insurance mediation

Insurance mediation work includes advising upon and/or arranging an insurance policy. Common examples include advising upon/and or arranging defective title indemnity insurance in conveyancing matters, or after-the-event insurance in litigation.

In order to engage in insurance mediation work, you need to register on the Financial Services Authority's Exempt Professional Firms (EPF) register, even if you are not authorised to conduct mainstream investment business work. To register, email customerapplications@lawsociety.org.uk and have details of your compliance officer.

If you carry out any insurance mediation activities, the FSA requires you to include a prescribed status disclosure statement in your terms and conditions or client care letter, as follows:

'[This firm is/we are] not authorised by the Financial Services Authority. However, we are included on the register maintained by the Financial Services Authority so that we can carry on insurance mediation activity, which is broadly the advising on, selling and administration of insurance contracts. This part of our business, including arrangements for complaints or redress if something goes wrong, is regulated by the Law Society. The register can be accessed via the Financial Services Authority website at www.fsa.gov.uk/register.'

This statement can be used on its own where your only exempt regulated activities are insurance mediation activities, but you must add it to one of the statements suggested in [3.9.1](#) if you carry out a range of exempt regulated activities.

If you are authorised by the FSA, you must ensure you comply with the requirements of your regulator as to status disclosure statements.

More information

Financial services and solicitors' information pack (The Law Society Professional Ethics, September 2004); Solicitors' Financial Services (Scope) Rules 2001; Solicitors' Financial Services (Conduct of Business) Rules 2001. Solicitors should ensure that further steps are taken to ensure compliance with appendix one of Solicitors' Financial Services (Conduct of Business) Rules 2001.

The extension of the regulatory regime to mortgages and insurance mediation activities, frequently asked questions and guidance on the role of a compliance officer are all viewable at www.lawsociety.org.uk.

3.10 Payment of commissions

Advise the client how you will deal with any commissions received.

Any commission received has to be dealt with in accordance with rule 10 of the Solicitors' Practice Rules 1990. However, firms should bear in mind that in the case of commissions attributed to activities regulated by the FSA (including insurance mediation activities), the exception for commissions received of £20 or less does not apply, because it is overridden by the condition in section 327(3) of the Financial Services and Markets Act 2000.

More information

Solicitors' Practice Rule 10; Financial Services and Markets Act 2000; Solicitors' Financial Services (Scope) Rules 2001; Solicitors' Financial Services (Conduct of Business) Rules 2001, all viewable at www.lawsociety.org.uk

3.11 Payment of interest

Advise the client of the circumstances when interest will be payable and when you will account to the client for it.

More information

Part C (rules 24-28) Solicitors' Accounts Rules 1998, viewable at www.lawsociety.org.uk.

3.12 Tax advice

Advise the client of any limitation on the extent of the retainer in relation to the firm's ability to give tax advice.

Advise the client to raise any specific need for tax advice with the firm and indicate that the firm may refer the client to an appropriate expert.

3.13 Vetting of files and confidentiality

Consider informing the client that you may be required to produce all or part of the file to assessors or similar, as part of an audit or quality check.

3.14 Termination of instructions

Advise the client of circumstances where a retainer may be terminated by them and how this should be done.

Advise the client of circumstances where a retainer may be terminated by the firm, such as, if appropriate, non-payment of bills or payments on account.

Advise the client that if the firm terminates instructions, it will notify the client and give reasons where it can.

Advise the client that the firm may exercise a lien in respect of unpaid fees.

Solicitors can terminate their instructions on giving reasonable notice if they have good cause (*Guide to the professional conduct of solicitors*, principal 12.12 (The Law Society, 1999), viewable at www.lawsociety.org.uk). The client can terminate their instructions at any time.

3.15 Storage of documents

Advise the client as to how long you will retain the file.

Outline what will happen to the file after that period.

Advise the client of costs in respect of storage or retrieval of client papers.

Advise the client of the cost involved if additional copies of documents are required.

If you intend to store documents in an electronic format that is a matter for you to discuss and agree with your client. Consider whether the absence of paper documents will be detrimental to the client's interests.

Although solicitors should set this information out in their terms and conditions, it is also suggested that at the end of the retainer they specifically agree with the client what is to happen to the file after a given period of time. A client's written authority should be placed on the file. This should assist solicitors when disposing of old files.

3.16 Financial arrangements with clients

Consider advising the client as to the amount of cash (if any) that your firm will accept. Consider advising the client that on the conclusion of the retainer, monies due to the client will be paid by cheque (or the equivalent), but not in cash, and will not be made payable to a third party.

3.17 Acceptance of these terms

Consider stating the client's continuing instructions will amount to acceptance of your terms and conditions of business.

Invite the client to sign and return a copy of your terms and conditions to demonstrate that they have understood the contents.

Practitioners in contentious matters will need to be able to demonstrate compliance with rule 48.8(2) of the Civil Procedure Rules and may wish to consider insisting that the terms and conditions of business and/or client care letter is signed before commencement of work.

4 Dealing with complaints

Complaints from a client can have an adverse impact on your business. They often take up valuable fee-earner time and can be expensive and difficult to resolve. Negative comments and poor publicity can also be extremely costly to your firm's reputation.

You have a professional obligation to deal with complaints effectively. By doing so, you should be able to minimise the cost and negative effects of complaints to your practice. The following guidance seeks to outline the most common issues which give rise to client dissatisfaction and assist you in dealing with complaints when they arise.

4.1 Why does a client complain?

They complain because you have not met their expectations of what they think is a good level of service or your charges have exceeded what they expected to pay.

4.2 What is poor service?

Poor service (sometimes referred to as Inadequate Professional Service or IPS) is any aspect of service which falls short of that which could reasonably be expected. Various common situations are regarded by the Law Society as being either presumptive or strongly indicative of poor service.

Situations regarded as presumptive of poor service (and which frequently give rise to awards of compensation) include:

- Lack of client care information.

- Unreasonable delay in billing or making mistakes on bills or accounts which cause serious inconvenience to the client.

- Failure to give written costs or ongoing costs information.

- Failure to explain the risks of litigation and failure to carry out a 'cost-benefit and risk' analysis at the outset and appropriately during the conduct of the case.

- Failure to respond to communications – failure to reply to letters is a clear instance of poor service; failure to return phone calls or reply to faxes and emails may depend upon the facts of the case.

- Not doing something the solicitor agreed to do.

- Failing to comply with Solicitors' Practice Rule 15 complaints handling procedure.

- Not treating the client with fairness and respect.

- Failing to give information about trials and hearings.

- Failure to pay interest.

Issues which are more subjective, but which are nevertheless strongly indicative of poor service include:

- Delay

- Failure to provide written evidence of advice given.

- Failure to inform of progress – even where there has not been any.

- Failure to update the client on a reasonable basis.

- Failure to follow instructions or to explain why instructions have not been followed.

- Not abiding by a quote.

- Varying substantially from an estimate without prior notification.

- Terminating a retainer unsatisfactorily. This can include an inappropriate reason for terminating a retainer as well as the means of termination.

- Deceiving or misleading the client – not only clearly a service issue but usually a conduct one as well.

4.3 What are you required to do when complaints arise?

Solicitors' Practice Rule 15 and the Solicitors' Costs Information and Client Care Code 1999 (as amended) requires every principal in private practice (or, in the case of a recognised body, the body itself) to do the following:

Ensure the client is told the name of the person in the firm to contact about any problem with the service provided at the outset of the retainer.

Have a written complaints procedure and ensure that complaints are handled in accordance with it.

Ensure the client is given a copy of the complaints procedure on request.

You do not need to give the client a copy of your written complaints procedure before they complain, but you must let them know from the outset of the retainer whom they should contact if they have a problem with the service you have provided. When a client complains, you should send a copy of your complaints procedure and a letter acknowledging the complaint.

Your complaints procedure should be written in clear terms and should avoid complicated language. It should tell the client at least:

What you will do in response to the complaint.

When you will do it.

Who will do it.

It should describe each stage of a complaint and the timescale involved. Your letter acknowledging a complaint should also be specific about the next step and when this will happen. Speed is of the essence when handling complaints and, therefore, you should treat complaints handling as a priority and ensure that the deadlines for responding to the client are adhered to and treated as key dates.

Although complaints handling in a firm is often delegated initially to fee-earners or heads of department, there are advantages in having one person dealing with all complaints (other than those made against that person). These include:

Consistency in dealing with complaints.

Minimising the risk of fee-earners compounding the problem. Most fee-earners, understandably, tend to take complaints personally and instinctively adopt a defensive and/or adversarial approach that is unlikely to reassure the client that their concerns are being taken seriously.

The acquisition of enhanced complaints handling skills through experience.

Awareness of trends across the firm, thus providing more complete and accurate data to enable issues to be identified and appropriate remedial action taken.

It is good practice for the firm to have internal policy guidance for staff as to how to handle complaints. This should give guidance on what constitutes a complaint and the manner in which it should be dealt with. Staff should be familiar with the complaints procedure. They must be committed to what the procedure is trying to achieve and why.

Your complaints procedure should be part of your firm's overall management procedures. In this way you can analyse complaints regularly and change your firm's practice and procedures where necessary.

4.4 Techniques for handling complaints

Be positive, open-minded and honest.

Be friendly and show the client that you understand their position.

Make contact with the client as soon as possible.

Tell the client in detail what steps you will take.

Urgently review the complaint to assess what may have gone wrong.

If possible, involve someone who has not been connected with the matter.

Consider each complaint, whatever its merits – it can tell you a great deal about how people view your performance.

If you think the complaint may not be justified, ask yourself why the client thought they had cause for complaint.

Consider whether your communication was clear, complete, and all it should have been to meet the client's needs and expectations.

Once your review is complete, see the client immediately – a client values face-to-face discussions and they are more 'honest'.

Apologise if this seems to be all that is called for, and give any relevant or reasonable assurances.

If the complaint is justified, be prepared to offer a reduction in the bill or provide some other professional service.

If your services have been seriously below standard, be prepared to write-off the whole bill or most of it.

If the complaint is not justified or has been caused by a clash of personalities, consider whether it makes commercial sense to offer a remedy to avoid damaging your reputation.

Try and keep the client (unless there is a good reason for not doing so) and meet their needs.

Learn from the complaint – understand how it came about, introduce changes to prevent it happening again, and tell the client what you are doing.

Involve all staff who have any contact with the client – make them aware of things to avoid.

Always remember that a happy client can recommend up to five new clients, but a dissatisfied client can lose you up to 23 new clients.

Do not:

Be aggressive or defensive, or suffer wounded pride.

Reject the complaint immediately without a good reason.

Forget that the client is your livelihood and have needs and expectations you should care about.

Give the impression that you know all the answers.

Be critical because your client expects money as a remedy – a client is a consumer and often demands a direct approach.

4.5 Further information

If you are unable to resolve the matter in-house and it proceeds to the Consumer Complaints Service (CCS), solicitors should note that they have an ongoing professional obligation to deal with correspondence from the Compliance Directorate in a timely manner.

The following are available on the Law Society's website at www.lawsociety.org.uk:

Handling complaints effectively (model complaints procedure and further guidance).

The Law Society's clients' charter (also available free by telephoning 020 7316 5605 or emailing customerguides@lawsociety.org.uk).

Law Society practice excellence training programme order form (interactive CD-ROM/video).

The Law Society Law Management Section provides practical guidance, information and support on the full range of practice management disciplines, including client care. For details, visit www.lms.lawsociety.org.uk, email lawmanagementsection@lawsociety.org.uk or telephone 020 7316 5707.

The Law Society Lexcel practice management standard can assist firms improve their management procedures and client care. For details, visit www.lawsociety.org.uk, email lexcel@lawsociety.org.uk or telephone 020 7320 5749.

The Law Society Practice Advice Service is a dedicated support line for solicitors, trainees and employees of law firms. It produces a number of booklets, including ones on contentious costs, non-contentious costs and payment by results. They are available at www.lawsociety.org.uk. The advice service is available from 9am-5pm Monday to Friday (telephone 0870 606 2522 or email lib-pas@lawsociety.org.uk).

The Law Society Professional Ethics department provides confidential guidance to help solicitors comply with their professional obligations. Its helpline is available from 11am-1pm and 2-4pm Monday to Friday (telephone 0270 606 2577).

The Law Society Library is freely available to Society members; trainees, employees and agents of law firms; and Legal Practice Course (LPC) students. The catalogue is available at www.catalyst.lawsociety.org.uk. Situated in London, it offers a document delivery service and self-service photocopiers. It is open from 9am-6pm Monday to Thursday and 9am-5pm on Fridays. For further information, telephone 0870 606 2511 or email lib-eng@lawsociety.org.uk.

Annex A: New model Conditional Fee Agreements and client leaflet

Definitions of words used in this annex and accompanying Conditional Fee Agreement (CFA) are explained at the end of this document.

Model CFA for use in personal injury and clinical negligence cases only

This agreement is a binding legal contract between you and your solicitor/s. Before you sign, please read everything carefully. This agreement must be read in conjunction with the Law Society document, *Conditional Fee Agreements – what you need to know*.

Agreement date [_____]
I/we, the solicitor/s [_____]
You, the client [_____]

What is covered by this agreement:

Your claim against [____] for damages for personal injury suffered on [____]. [If either the name of the opponent or the date of the incident are unclear then set out here in as much detail as possible to give sufficient information for the client and solicitor to understand the basis of the claim being pursued.]

Any appeal by your opponent.

Any appeal you make against an interim order.

Any proceedings you take to enforce a judgment, order or agreement.

Negotiations about and/or a court assessment of the costs of this claim.

What is not covered by this agreement:

Any counterclaim against you.

Any appeal you make against the final judgment order.

Paying us

If you win your claim, you pay our basic charges, our disbursements and a success fee. You are entitled to seek recovery from your opponent of part or all of our basic charges, our disbursements, a success fee and insurance premium as set out in Law Society document, *Conditional Fee Agreements – what you need to know*. It may be that your opponent makes a part 36 offer or payment which you reject on our advice, and your claim for damages goes ahead to trial where you recover damages that are less than that offer or payment. If this happens, we will [not add our success fee to the basic charges/not claim any costs] for the work done after we received notice of the offer or payment. If you receive interim damages, we may require you to pay our disbursements at that point and a reasonable amount for our future disbursements. If you receive provisional damages, we are entitled to payment of our basic charges our disbursements and success fee at that point. If you lose you remain liable for the other side's costs.

The success fee

The success fee is set at [____ per cent] of basic charges, where the claim concludes at trial; or [____ per cent] where the claim concludes before a trial has commenced. In addition [____ per cent] relates to the postponement of payment of our fees and expenses and can not be recovered from your opponent. The success fee inclusive of any additional percentage relating to postponement cannot be more than 100 per cent of the basic charges in total.

Other points

The parties acknowledge and agree that this agreement is not a contentious business agreement within the terms of the Solicitors Act 1974.

Signed by the solicitor(s): _____ Signed by the client: _____

Client leaflet

1 What do I pay if I win?

If you win your claim, you pay our basic charges, our disbursements and a success fee. The amount of these is not based on or limited by the damages. You can claim from your opponent part or all of our basic charges, our disbursements, a success fee and insurance premium.

It may be that your opponent makes a part 36 offer or payment which you reject on our advice, and your claim for damages goes ahead to trial where you recover damages that are less than that offer or payment. Refer to the 'paying us' section in the CFA document to establish costs we will be seeking for the work done after we received notice of the offer or payment.

If you receive interim damages, we may require you to pay our disbursements at that point as well as a reasonable amount for our future disbursements.

If you receive provisional damages, we are entitled to payment of our basic charges, our disbursements and success fee at that point.

If you win overall, but on the way lose an interim hearing, you may be required to pay your opponent's charges of that hearing.

If on the way to winning or losing you are awarded any costs, by agreement or court order, then we are entitled to payment of those costs, together with a success fee on those charges if you win overall.

2 What do I pay if I lose?

If you lose, you pay your opponent's charges and disbursements. You may be able to take out an insurance policy against this risk. If you lose, you do not pay our charges but we may require you to pay our disbursements.

3 Ending this agreement

If you end this agreement before you win or lose, you pay our basic charges and disbursements. If you go on to win, you also pay a success fee.

We may end this agreement before you win or lose.

4 Basic charges

These are for work done from now until this agreement ends. These are subject to review.

5 How we calculate our basic charges

These are calculated for each hour engaged on your matter. Routine letters and telephone calls will be charged as units of one tenth of an hour. Other letters and telephone calls will be charged on a time basis. The hourly rates are as follows. We review the hourly rate on [review date] and we will notify you of any change in the rate in writing.

Grade of fee-earner	Hourly rate
1. Solicitors with more than eight years post-qualification experience including at least eight years litigation experience.	£x

2. Solicitors and legal executives with more than four years post-qualification experience including at least four years litigation experience.	£x
3. Other solicitors and legal executives and fee-earners of equivalent experience.	£x
4. Trainee solicitors, paralegals and other fee-earners.	£x

6 Road traffic accidents

[If your claim is settled before proceedings are issued, for less than £10,000, our basic costs will be £800; plus 20 per cent of the damages agreed up to £5,000; and 15 per cent of the damages agreed between £5,000 and £10,000.] [If you live in London, these costs will be increased by 12.5 per cent]. These costs are fixed by the Civil Procedure Rules.

7 Success fee

The success fee percentage set out in the agreement reflects the following:

- The fact that if you lose, we will not earn anything.
- Our assessment of the risks of your case.
- Any other appropriate matters.
- The fact that if you win we will not be paid our basic charges until the end of the claim.
- Our arrangements with you about paying disbursements.

8 Value Added Tax (VAT)

We add VAT, at the rate (now [____] per cent) that applies when the work is done, to the total of the basic charges and success fee.

9 The insurance policy

In all the circumstances and on the information currently available to us, we believe, that a contract of insurance with [____] is appropriate to cover your opponent's charges and disbursements in case you lose.

This is because:

You do not have an existing or satisfactory insurance that would cover the costs of making this claim. The policy we recommend will pay:

- The costs of the other party in the event that the claim fails, to a maximum of £x.
- All your disbursements if your claim fails.
- [add other key features where necessary such as, our costs and the other side's costs (without deduction from your damages) if you fail to beat an (part 36) offer to settle your claim, which you rejected following our advice].

or:

We cannot identify a policy which meets your needs but our recommended policy is the closest that we can discover within the products that we have searched. It does not meet your needs in the following respects:

It has an excess of £z.
The maximum cover is £zz.

or:

We cannot obtain an insurance policy at this stage but we shall continue to look for one and if we are successful in our search then we shall advise you at that stage of the benefits of the policy and purchasing it.

[NB: The above reasons are examples only. Solicitors must consider the client's individual circumstances and set out the reasons that apply].

10 Law Society conditions

The Law Society conditions below are part of this agreement. Any amendments or additions to them will apply to you. You should read the conditions carefully and ask us about anything you find unclear.

10.1 Our responsibilities

We must:

- Always act in your best interests, subject to our duty to the court.
- Explain to you the risks and benefits of taking legal action.
- Give you our best advice about whether to accept any offer of settlement.
- Give you the best information possible about the likely costs of your claim for damages.

10.2 Your responsibilities

You must:

- Give us instructions that allow us to do our work properly.
- Not ask us to work in an improper or unreasonable way.
- Not deliberately mislead us.
- Co-operate with us.
- Go to any medical or expert examination or court hearing.

11 Dealing with costs if you win

You are liable to pay all our basic charges, our disbursements and success fee.

Normally, you can claim part or all of our basic charges, our disbursements success fee and insurance premium from your opponent.

If we and your opponent cannot agree the amount, the court will decide how much you can recover. If the amount agreed or allowed by the court does not cover all our basic charges and our disbursements, then you pay the difference.

You will not be entitled to recover from your opponent the part of the success fee that relates to the cost to us of postponing receipt of our charges and our disbursements – this remains payable by you.

You agree that after winning, the reasons for setting the success fee at the amount stated may be disclosed:

- to the court and any other person required by the court; and
- to your opponent in order to gain his or her agreement to pay the success fee.

If the court carries out an assessment and reduces the success fee because the percentage agreed was unreasonable in view of what we knew or should have known when it was agreed, then the amount reduced ceases to be payable unless the court is satisfied that it should continue to be payable.

If we agree with your opponent that the success fee is to be paid at a lower percentage than is set out in this agreement, then the success fee percentage will be reduced accordingly unless the court is satisfied that the full amount is payable.

It may happen that your opponent makes an offer of one amount that includes payment of our basic charges and a success fee. If so, unless we consent, you agree not to tell us to accept the offer if it includes payment of the success fee at a lower rate than is set out in this agreement.

If your opponent is receiving Community Legal Service funding we are unlikely to get any money from him or her. If this happens, you have to pay us our basic charges, disbursements and success fee.

As with the costs in general, you remain ultimately responsible for paying our success fee. You agree to pay into a designated account any cheque received by you or by us from your opponent and made payable to you. Out of the money, you agree to let us take the balance of the basic charges, success fee, insurance premium, our remaining disbursements, and VAT. You take the rest. We are allowed to keep any interest your opponent pays on the charges.

If your opponent does not pay any damages or charges owed to you, we have the right to take recovery action in your name to enforce a judgment, order or agreement. The charges of this action become part of the basic charges.

12 Payment for advocacy

The cost of advocacy and any other work by us, or by any solicitor agent on our behalf, forms part of our basic charges. We shall discuss with you the identity of any barrister instructed, and the arrangements made for payment.

12.1 Barristers who have a Conditional Fee Agreement (CFA) with us

If you win, you are normally entitled to recover their fee and success fee from your opponent. The barrister's success fee is shown in the separate CFA we make with the barrister. We will discuss the barrister's success fee with you before we instruct him or her. If you lose, you pay the barrister nothing.

12.2 Barristers who do not have a Conditional Fee Agreement (CFA) with us

If you win, then you will normally be entitled to recover all or part of their fee from your opponent. If you lose, then you must pay their fee.

13 What happens when this agreement ends before your claim for damages ends?

13.1 Paying us if you end this agreement

You can end the agreement at any time. We then have the right to decide whether you must:

Pay our basic charges and our disbursements including barristers' fees but not the success fee when we ask for them; or

Pay our basic charges, and our disbursements including barristers' fees and success fees if you go on to win your claim for damages.

13.2 Paying us if we end this agreement

We can end this agreement if you do not keep to your responsibilities. We then have the right to decide whether you must:

- pay our basic charges and our disbursements including barristers' fees but not the success fee when we ask for them; or
- pay our basic charges and our disbursements including barristers' fees and success fees if you go on to win your claim for damages.

We can end this agreement if we believe you are unlikely to win. If this happens, you will only have to pay our disbursements. These will include barristers' fees if the barrister does not have a conditional fee agreement with us.

We can end this agreement if you reject our opinion about making a settlement with your opponent. You must then:

- pay the basic charges and our disbursements, including barristers' fees;
- pay the success fee if you go on to win your claim for damages.

If you ask us to get a second opinion from a specialist solicitor outside our firm, we will do so. You pay the cost of a second opinion.

We can end this agreement if you do not pay your insurance premium when asked to do so.

13.3 Death

This agreement automatically ends if you die before your claim for damages is concluded. We will be entitled to recover our basic charges up to the date of your death from your estate.

If your personal representatives wish to continue your claim for damages, we may offer them a new Conditional Fee Agreement, as long as they agree to pay the success fee on our basic charges from the beginning of the agreement with you.

14 What happens after this agreement ends?

After this agreement ends, we may apply to have our name removed from the record of any court proceedings in which we are acting unless you have another form of funding and ask us to work for you.

We have the right to preserve our lien unless another solicitor working for you undertakes to pay us what we are owed including a success fee if you win.

15 Explanation of words used

Advocacy: Appearing for you at court hearings.

Basic charges: Our charges for the legal work we do on your claim for damages.

Claim: Your demand for damages for personal injury whether or not court proceedings are issued.

Counterclaim: A claim that your opponent makes against you in response to your claim.

Damages: Money that you win whether by a court decision or settlement.

Our disbursements: Payment we make on your behalf such as court fees, experts' fees, accident report fees and travelling expenses.

Interim damages: Money that a court says your opponent must pay or your opponent agrees to pay while waiting for a settlement or the court's final decision.

Interim hearing: A court hearing that is not final.

Lien: Our right to keep all papers, documents, money or other property held on your behalf until all money due to us is paid. A lien may be applied after this agreement ends.

Lose: The court has dismissed your claim or you have stopped it on our advice.

Part 36 offers or payments: An offer to settle your claim made in accordance with part 36 of the Civil Procedure Rules.

Provisional damages: Money that a court says your opponent must pay or your opponent agrees to pay, on the basis that you will be able to go back to court at a future date for further damages if you develop a serious disease or your condition deteriorates, in a way that has been proved or admitted to be linked to your personal injury claim.

Success fee: The percentage of basic charges that we add to your bill if you win your claim for damages and that we will seek to recover from your opponent.

Trial: The final contested hearing or the contested hearing of any issue to be tried separately and a reference to a claim concluding at trial includes a claim settled after the trial has commenced or a judgment.

Win: Your claim for damages is finally decided in your favour, whether by a court decision or an agreement to pay you damages or in any way that you derive benefit from pursuing the claim. 'Finally' means that your opponent is not allowed to appeal against the court decision, or has not appealed in time, or has lost any appeal.

Annex B: Solicitors' introduction and referral code self-checklist

This checklist can be used to help you comply with the Code and other rules relating to referrals. You are advised to ensure you have the documentation on the checklist to demonstrate compliance. Note that the Law Society can ask to see any of the evidence set out here. The checklist should be used against each referral arrangement you have with an introducer.

Please note that this checklist is intended as a guide to assist compliance. It does not set out the conduct requirements, but sets out the practical steps you must take in order to ensure compliance with those requirements. It is not intended to be exhaustive. Neither is it a substitute for reading and complying with the Code and other relevant professional conduct requirements.

Abbreviations

SIRC: Solicitors' Introduction and Referral Code 1990

SPC: Solicitors' Publicity Code 2001

SPR: Solicitors' Practice Rules 1990

1 Requirements applying to all referral arrangements, whether paid for or not

Requirement	Question	Answer	Documents/notes
SIRC 2(10), (11), (12)	What proportion of your work (whether paid referral or not) is derived from each introducer you use?	Should be less than 20 per cent for any individual introducer – more raises concerns about independence.	This does not need to be referrals for which a payment is made.
SIRC 2(10), (11), (12)	[If proportion more than 20 per cent] What steps have you taken to evaluate whether that proportion is acceptable, given your need to be independent from the introducer?	Must review under SIRC 2(10). If you have not reviewed/ considered reduction, breach of SIRC 2(10) and (11). You must do 6-monthly reviews under SIRC 2(10) and consider reduction under SIRC 2(11) in light of factors set out in SIRC 2(12)	It is advisable to keep records of reviews to show compliance.
SIRC 2(9)	Is the agreement with the introducer in writing? If so, is a copy available?	Under SIRC 2(9) you should 'keep a record of agreements...'	Record of agreement, copy of contract
SIRC 1(1), (2) SPR 2	Is there anything in the agreement which could compromise your independence/ compliance with SPR 1?	Nothing in the contract that will compromise independence. Examples: Requirement that you cannot obtain instructions from other sources. Requirement that if same client approaches you on another matter, you must refer client to introducer. Requirement that you use a particular expert, counsel etc.	Does contract make reference to other documents? If so, you should have copies of them available. Independence can be compromised in two ways (a) through the overall terms or nature of the agreement (b) in relation to individual matters and your professional judgment in relation to advice given to the client.

Requirement	Question	Answer	Documents/notes
SIRC 1(3) SPR 9, 18	Does the agreement involve an arrangement with a claims assessor?	If yes, there is a breach of SPR 9/SIRC 1(3).	
SIRC 1(4), SPR 12	Does the agreement make you an appointed representative as defined by the Financial Services and Markets Act 2000?	If yes, there is a breach of SPR 12/SIRC 1(3).	
PR7	Does the agreement involve fee sharing?	If yes, you must comply with PR7.	

2 Requirements applying where you make a payment to the introducer

Requirement	Question	Answer	Documents/notes
SIRC 2A	Do you make any payments for referrals to the introducer under the arrangement?	If yes, SIRC 2A (and rest of SIRC) will apply. If no, rest of SIRC will still apply.	
SIRC 2A(6)	Do you make any payments for referrals in respect of criminal or legal aid work?	If yes, breach of SIRC 2A(6)	
SIRC 2(2), 2A(2), (3) (4), SPC	Have you obtained an undertaking from the introducer to comply with the SIRC?	If no, there is a breach of SIRC 2A	'Undertaking' should be understood broadly. It is not equivalent to a solicitor's undertaking. There is no requirement for it to be in writing (but obvious evidential problem if it is not).
SIRC 2A(3), SPR 15	[If payments made] do you disclose the referral arrangements (including the amount of the referral fee) to the client in writing?	There must be disclosure in writing.	
SIRC 2A(4)	[If payments made] how do you satisfy yourself that the introducers are providing the client with all relevant information about the referral?	You need to satisfy yourself as to this, and it is strongly advisable to have evidence to show that you have done so.	Evidence could be: Contract with introducer. Undertaking from introducer. Details of introducers' marketing materials/ publicity. Letters or other evidence of communication by introducer to the client. Note that contract/ undertaking will not assist if there is evidence of non-compliance in the handling of client matters.

Requirement	Question	Answer	Documents/notes
SIRC 2A(4)(c), 3A(6)(c)	Is there anything in the contract which could compromise your independence?	Must be nothing in the contract ['improper constraints', SIRC 2A(4)(c)] which will compromise independence. Examples: Requirement that you cannot obtain instructions from other sources. Requirement that if the same client approaches you on another matter, you must refer the client to introducer. Requirement that you use a particular expert, counsel etc.	Does contract make reference to other documents? If so, you should have copies of them available. Independence can be compromised in two ways (a) through the overall terms or nature of the agreement (b) in relation to individual matters and your professional judgment in relation to advice given to the client.
SIRC 2A(4)(b), SPC	Do you have details of introducers' marketing schemes and/or sample marketing material?	The materials should show that the introducer is complying with 2A(4)(b). It is recommended (but not required) that material contains notice as set out in SIRC introduction (4) if advertising solicitor's services.	It is advisable to ensure that the materials are up-to-date and are actually being used.
SIRC 2A(5)	Do you retain records of any concerns you have about introducer?	It is advisable to retain records to show compliance with SIRC 2A(5).	
SIRC 2A(4)(a)	Do you have a copy of initial communications from the introducer to the client?	The communication should set out the information required under 2A(4)(a).	This need not be on the matter file, it could be a general copy/templates of letters sent by introducer, or other details (eg, a telephone script) which will confirm introducer is complying with SIRC 2A(4)(a). Introducer disclosure need not be in writing.
SIRC 2A(3), SPR 15	Do you have a file copy of initial letter from you to the client?	Letter must set out all info required by SIRC 2A(3). Date of letter should show that letter was sent: Immediately on receipt of referral, and Before accepting instructions, unless You can show that information was given	Disclosure must be in writing – note effect of SPR 15. 'Amount' of the payment to the introducer must be disclosed – but see SIRC guidance notes.

Requirement	Question	Answer	Documents/notes
		orally at necessary date and confirmed by letter.	
SIRC 2A(3)	Do you have a file copy of the invoice sent to the client?	Amount on invoice must match payments detailed in the client letter under SIRC 2A(3). Description must be accurate – payments to introducers must not be shown as disbursements or any other misleading description.	

3 Requirements applying where you are paid by a third party for doing work (except conveyancing) for their customers

Requirement	Question	Answer	Documents/notes
SIRC 3	Does the contract with the introducer fall under SIRC 3?	If yes, the contract/ agreement must include provisions specified in SIRC 3(4)	

4 Requirements applying where you have contractual referrals for conveyancing

Requirement	Question	Answer	Documents/notes
SIRC 2(9) or 3A(4)	Is the agreement in writing? If so, is a copy available?	Under SIRC 2(9) you should 'keep a record of agreements...'. If 3A(4) applies agreement must be in writing. You are strongly advised in any case to have a written agreement.	Record of agreement, copy of contract
SIRC 1(1), 3A(6)(c)	Is there anything in the contract which could compromise your independence?	Must be nothing in the contract which will compromise independence. Examples: Requirement that you cannot obtain instructions from other sources. Requirement that if same client approaches you on another matter, you must refer client to introducer. Requirement that the you use a particular expert, counsel etc.	Does contract make reference to other documents? If so, you should have copies of them available. Independence can be compromised in two ways (a) through the overall terms or nature of the agreement (b) in relation to individual matters and your professional judgment in relation to advice given to the client.

Requirement	Question	Answer	Documents/notes
SIRC 3A(7), SPC	Do you have details of introducers' marketing schemes and/or sample marketing material?	The materials should show that the introducer is complying with 2A(4)(b) It is recommended (but not required) that material contains notice as set out in SIRC introduction (4) if advertising solicitor's services. Where there is a contractual agreement for conveyancing referrals, there must be compliance with SIRC 3A(7).	It is advisable to ensure that the materials are up-to-date and are actually being used.
SIRC 3A(5)	Do you retain records of any concerns you have about introducer?	It is advisable to retain records to show compliance with SIRC 2A(5) or 3A(5).	
SIRC 2(10), 3A(4)	Do you do six-monthly reviews and retain records of them?	Reviews must be done and records retained.	
SIRC 3A(8)	Do you have a copy of the initial letter from the introducer to the client?	The letters should set out the information required under 3A(8).	This need not be on the matter file, it could be a general copy/templates of letters sent by introducer, or other details (eg, a telephone script) which will confirm introducer is complying with SIRC 3A(8).
SIRC 3A(9)	Do you have a file copy of initial letter from you to the client?	Must set out: All information required by SIRC 3A(9); and where referral falls under SIRC 2A, all info required by SIRC 2A(3).	

5 Requirements applying when you refer a client to a third party

Requirement	Question	Answer	Documents/notes
SIRC 4(2) and (3)	Do you keep a record of referring the client to others?	Record should show compliance with 4(2) and (3) Eg, attendance note of discussion with client to establish client's best interests.	Attendance note, letter