



Letters of Engagement



Please note that the purpose of this guide is to provide a summary of and our thoughts on common issues arising out of engagement letters and aspects that you should consider addressing in your engagement letters. It does not contain a full analysis of the law nor does it constitute a legal opinion or advice by Lockton Companies LLP on the law discussed. You must make your own assessment on the contents of this guide and should consider taking specific legal advice on any matter that relates to this. Lockton Companies LLP accepts no responsibility for loss occasioned to any person acting or refraining from acting as a result of the material contained in this guide.



Scope of work

GENERAL

What to Include

This part of the letter should include an outline of the work to be carried out on behalf of the client.

It should provide sufficient information so that the scope of the work and the significant elements covered can be clearly identified. However, it need not rehearse in detail every step to be taken.

Both the solicitor and the client should be clear about what work is being taken on.

Tips

Consider reviewing specific transactions which follow a set workflow and setting out those steps in the letter by use of a template. This can provide a re-usable framework for a particular transaction. The template will be a useful starting point but always consider the specific needs of the client and the piece of work so that the paragraph can be tailored accordingly.

Sample content

This matter will involve all work in connection with the sale of 33 Letsby Avenue, Edinburgh.

This includes the provision of legal services to you in accordance with the sale of the property.

In the event that you instruct us to provide other legal services, then the Terms of Engagement for such work will be for separate negotiation.

Mandatory

Rule B4 requires solicitors to provide the client with an outline of the work to be done (B4.2(a)).

EXCLUDED SERVICES

What to Include

This part of the letter should specify any areas of work that will not be carried out on behalf of the client, particularly where the client might otherwise expect that work to be carried out by the solicitor.

The solicitor and the client should be clear about what the solicitor will not be responsible for.

Tips

If responsibility for issuing reminders is to be a part of the work scope, state this specifically (and potentially consider a separate fee element or engagement for this as this will generate recurring diary entries in a centralised system that will require continual monitoring).

Sample content

1. We will not be responsible for advising on tax or accountancy matters. We recommend that you seek advice from tax advisers or accountants (as appropriate).
2. Unless otherwise expressly agreed with you, the work that we undertake will not include monitoring or reminding you of renewal dates or other notice periods.
3. We will not be responsible for advising on any area relating to overseas rights or assets. We recommend that you obtain specialist advice from the relevant jurisdiction.

Mandatory

Rule B4 requires solicitors to provide the client with an outline of the work to be done (B4.2(a)). By implication, outlining excluded work assists in defining the scope of services but is not a specific mandatory requirement. Guidance for B4 suggests that exclusions from scope be specified.

Scope of work (continued)

WHERE THE INSTRUCTIONS CHANGE

What to Include

This part of the letter should include provision on what will happen if the client's instructions change, altering the agreed scope of work to be carried out.

Tips

If the client's instructions change and this alters the scope of the work (and the solicitor accepts the new instructions) the letter should be reviewed. If necessary an amended letter should be issued, highlighting the changes to the scope. Alternatively, some written communication should draw the client's attention to the changes resulting from their amended instructions.

Sample content

In the event of you varying your instructions, this may increase the time required to be spent on your matter or increase costs. The estimate of fees provided in this letter is based on the scope of work outlined above. If we require to issue a revised estimate in light of revised instructions, we will advise you of this in writing.

Mandatory

Rule B4 requires solicitors to provide the client with an outline of the work to be done (B4.2(a)).



Responsibility for your work

GENERAL

What to Include

This part of the letter should provide details of the person who will have primary responsibility for the work. If work is to be delegated this should be explained. If a substitute is to be involved, then his or her name should be provided.

Tips

If there is a person who has overall supervision of the work, then his or her details should be included along with the person responsible for the day-to-day conduct of matters.

Sample content

X will have principal responsibility for your matter. In order to progress matters, Y will also work on your transaction.

OR

X will have principal responsibility for your matter. In order to deal with specialist aspects of your transaction, other members of staff may require to become involved at some stage. We will keep you advised as to who is dealing with your matter from time to time. X will be on hand to answer any questions you may have and X will remain your principal point of contact throughout.

Mandatory

Rule B4 requires solicitors to provide the client with a note of who will do the work (B4.2(d)).

OUTSOURCING

What to Include

This part of the letter should provide details of the firm or the organisation carrying out any work that has been outsourced or sub-contracted by the solicitor.

Tips

The obligation to meet regulatory requirements and professional rules continues to rest with the solicitor. The contractual arrangements with outsourced providers should ensure that they are required to comply with the Practice Rules.

Sample content

In order to deal with specialist aspects of your transaction, we may subcontract part of the work to another firm of solicitors.

The firm we propose to use is Z and the individual who will be dealing with the work there is Q. Like us, Z is a firm regulated by the Law Society of Scotland and adheres to the same standards as ourselves. Should you have any queries about our use of Z as a subcontractor, let us know. At all times, your contract is with us and should you have any questions or be dissatisfied with any aspect of how your matter is being progressed, you will always be able to contact our Client Relations Manager.

Mandatory

Rule B4 requires solicitors to provide the client with a note of who will do the work (B4.2(d)).

Our fees

FEE ESTIMATE

What to Include

This part of the letter should include an estimate of the total fee or the basis on which the fee will be calculated (e.g. an hourly rate), the VAT amount and details of any anticipated outlays.

Tips

Any interim fee or payment to account arrangement should be set out clearly in the terms of business letter. It is also recommended that the client's liability for a third party's costs be included, e.g. if the client is the tenant under a lease and has agreed to pay the landlord's solicitors' fees and outlays.

Sample content

We propose to charge an hourly rate in relation to your matter. My hourly rate is £X. We record time in 6 minute intervals (units) with a 1 unit minimum. The hourly rate is applied proportionately to these units and the total time spent on your matter is calculated accordingly.

In relation to your matter, we estimate the total fees will be £X. Please note that this is an estimate only and we may have to alter this depending on how the matter progresses.

OR

In relation to your matter we propose to charge a fixed fee of £X. This is the amount which you will pay, even though we may spend more time on the matter and incur higher costs than the fixed fee. However, this fixed fee is based on the scope of work set out above. If the scope of work is varied, for instance by new instructions or us being asked to do something which is not set out above, we reserve the right to vary our fixed fee and will notify you of this.

Our fees are exclusive of VAT and outlays (costs which we incur and pay on your behalf).

We will incur outlays from time to time on your matter. These will be added to your fee.

We anticipate outlays of approximately £X.

OR

We cannot give an accurate estimate of outlays at this time but do not anticipate these will exceed £X.

OR

We cannot give an accurate estimate of outlays at this time but these may include counsel's fees, court fees, property searches, property reports, Companies House fees.

Mandatory

Rule B4 requires solicitors to provide the client with an estimate of the total fee or the basis upon which the fee will be charged including VAT and outlays (B4.2(b)).
Rule B1.11 (professional fees).

Our fees (continued)

Our fees

HOURLY RATES

What to Include

If the fees are charged on an hourly rate, where the individuals involved are on different rates, all of the rates should be set out in this part of the letter.

Tips

If any of the rates change during the course of the transaction, an update should be provided. If any fee earners not previously notified conduct material chargeable work in the transaction, their charge out rate should also be advised.

Sample content

As different individuals with different levels of experience will be involved in progressing your matter, we set out their charging rates below. It is more cost effective for you that we utilise individuals with different experience levels depending on the work involved.

Mandatory

Rule B4 requires solicitors to provide the client with an estimate of the total fee or the basis upon which the fee will be charged including VAT and outlays (B4.2(b)). Rule B1.11 (professional fees).

COMMISSION

What to Include

This part of the letter should provide details of any commission that is to be charged.

Tips

If commission is to be charged in addition to an hourly rate, this needs to be specifically referred to in the terms of business letter otherwise it cannot be charged for.

Mandatory

Rule B1.9.1 and B4.2(b).

RIGHT TO ALTER

What to Include

This part of the letter should state that the firm reserves the right to increase an estimated fee, if the matter becomes protracted or complicated due to unforeseen events.

Tips

Such a provision takes account of a matter which becomes complicated or delayed.

Sample content

In relation to your matter, we estimate the total fees will be £X. Please note that this is an estimate only and we may have to alter this depending on how the matter progresses.

This fee is based on the scope of work set out above.

The estimate may require to be changed if the matter becomes complicated or delayed in a manner that was unexpected at the time we entered this agreement with you. Matters can become complicated due to a number of reasons such as [insert relevant reasons for the work type – protracted court negotiations; unexpected title problems; etc.]

Our estimate may also have to be altered if the scope of work is varied – for instance by new instructions or us being asked to do something which is not set out above. In such cases, we reserve the right to vary our estimated fee and will notify you of this.

Mandatory

Rule B1.9.2 and B4.2(b).

Our fees (continued)

LEGAL AID

What to Include

This part of the letter should cover any contributions and clawback issues if the client is legally aided.

Tips

A legally aided client must be advised about (1) any contribution to be paid either to the solicitor for advice and assistance or (2) to SLAB towards legal aid and (3) the potential operation of the statutory charge or “claw back” which covers the cost of the client’s legal expenses if the client wins his/her case and recovers money or property, and of their potential liability (and right to seek modification of that liability) to pay the opponent’s expenses if they lose their case.

Sample content

You are eligible for civil legal aid and therefore our fees will be paid by the Scottish Legal Aid Board. However:

- a. If your financial circumstances change you should tell us about this immediately
- b. Because of your financial circumstances, you have to pay [£X] as a contribution towards the cost of your case. This is to be paid in [Y] monthly instalments of [£Z] per month payable directly to the Scottish Legal Aid Board. These figures have been calculated based on your financial circumstances in accordance with the Scottish Legal Aid Board eligibility assessments
- c. If you win or keep any money or property because of your action, you may have to use this to meet the costs of the case. This would happen where the contributions from you and expenses awarded by the court are insufficient to cover the costs of the court action. Where an ongoing liability remains, the Scottish Legal Aid Board will look to property or finance awarded as a result of the court action to recover or ‘clawback’ its costs.

Mandatory

Rule B4 requires solicitors to provide the client with details of any contribution towards Legal Advice & Assistance or Legal Aid and details of the effect of preservation or recovery of any property if relevant (B4.2(c)).

Complaints/quality assurance

INITIAL COMPLAINT HANDLING

What to Include

This part of the letter should explain who the client contacts if he or she is unhappy with some aspect of the matter.

Tips

Advise that the firm has a Client Relations Manager and, provide their identity.

Sample content

In the unlikely event that you are dissatisfied with our service, you should in the first instance raise any concerns with the solicitor handling your matter. If that is not possible or you would prefer not to do so or if you feel your concern has not been adequately addressed, X is our Client Relations Manager with overall responsibility for quality assurance for clients. We would encourage you to raise any dissatisfaction with X who will then try to resolve matters to your satisfaction.

Mandatory

Rule B4 requires solicitors to provide a note of who the client should contact if they have any concerns or complaints (B4.2(e)).

COMPLAINTS HANDLING PROCESS

What to Include

This part of the letter should refer to the fact that the firm has a written complaints process in place and that the client has the right to request a copy of it or direct the client to where it can be found, for example on the firm's website if it has one.

Sample content

We want you to be completely satisfied with the service you receive from us. We operate a complaints procedure which is administered by our Client Relations Manager. If you wish, a copy will be provided on request.

Optional

Optional but Rule B5 requires firms to have written procedures for complaints handling, (which must be provided on request).

ESCALATION TO REGULATOR

What to Include

This part of the letter should signpost clients to the Scottish Legal Complaints Commission (SLCC), as the single gateway for receipt of all legal complaints, if they remain dissatisfied with how their complaint has been dealt with by the firm.

Tips

Set out contact details for the SLCC, including the telephone number, address, email address and link to the SLCC's website. Note the time limits for raising complaints [click here](#).

Sample content

If you are dissatisfied with our service, you may complain to The Scottish Legal Complaints Commission (SLCC)
The Stamp Office, 10-14 Waterloo Place, Edinburgh EH1 3EG
T: 0131 201 2130
enquiries@scottishlegalcomplaints.org.uk

Please note that there are specific time limits as to when the SLCC can accept complaints. Please check the SLCC website for details on how these time limits apply. [Click here](#)

Mandatory

Practice Rule B4.2 states that Solicitors must include in their terms of engagement a direction to clients to contact the SLCC if they are unable to resolve the issue directly with the firm. Rule B4 Guidance advises that the letter should set out contact details for the SLCC, including the telephone number, address and email address.

Instructions

HOW INSTRUCTIONS SHOULD BE GIVEN AND RECEIVED

What to Include

This part of the letter should set out the method by which instructions should be given and received.

Tips

Poor communication with clients is a contributory factor in many claims.

Every opportunity should be taken to reinforce to clients that good communication is a two-way street.

Sample content

Instructions may be given by you to us either verbally or in writing although, from time to time, we may ask you to provide written confirmation of instructions. We will communicate with you by e-mail. You should be aware that e-mail is not an entirely secure communication channel.

We may monitor and record email for business and other lawful purposes.

If there is an urgent instruction to us please try to talk to us by phone, rather than relying on e-mail as we cannot guarantee when your e-mail might be read.

Optional

WHO HAS AUTHORITY TO INSTRUCT

What to Include

This part of the letter should also confirm who has authority to give instructions.

Tips

There is the potential for confusion if there are joint clients or the client is a corporate entity, trust or other organisation. Clarity on instructions is essential to avoid misunderstandings and miscommunication of instructions.

Sample content

Given that we are acting for a number of individuals, we propose selecting one person to be the representative of all individuals and from whom we shall from time to time if required seek and receive instructions. For the avoidance of doubt, unless we are otherwise advised, we shall be entitled to assume that any instructions received by us from [X] as representative represent the instructions of all of the individuals.

Optional

Timescales

What to Include

This part of the letter should include an estimate of how long it will take to carry out the work.

Tips

An exact timescale may not be possible but it can be useful to highlight to clients the possibilities of delays and the reasons for potential changes in timescales.

Timescales

Sample content

Due to the nature of the work we are undertaking, you will appreciate that it is not possible for us to give you an exact timescale or definitive date by which time your matter shall have completed. We always aim to deal with everything as quickly and efficiently as possible. Please remember that quite often the speed at which work can be completed is affected by the speed of response from other people and from you.

Optional

Your responsibilities

What to Include

This part of the letter should outline the client's responsibilities in helping to progress and conclude their transaction.

It should confirm the following information:

- a. the need to give instructions and information timeously when requested
- b. the manner in which instructions should be given
- c. the need for clients to be available to sign documents
- d. the need to remain in contact, particularly if critical dates are to be met
- e. the need to keep the solicitor advised of any change of contact details, e.g. address, email address or telephone number

Tips

Clients are often unaware that delays can be caused or contributed to by their own inaction. Whilst this has to be managed on a practical level and may not be cured by wording in an engagement letter, it may serve as a reminder to clients that they have a role to play in progressing their own matter.

Sample content

You can help us to help you by:

- giving us clear instructions
- accurately advising us of all facts relevant to your transaction (we will rely upon information and facts you provide to us)
- keeping us informed of all developments relating to the matter
- letting us know if there are any important time limits of which we should be aware
- dealing promptly with our queries or requests for information
- making yourself available to attend meetings or proceedings
- advising if you will be unavailable at any time

Optional

Personal data

What to Include

This part of the letter should provide an assurance about confidentiality and information covering security and retention of personal data.

Tips

The firm should provide information for clients covering security and retention of personal data required for GDPR compliance.

The Privacy Notice should be separately drafted and should be capable of variation from time to time.

Does the firm carry out Lobbying work? If so, the firm should state in its terms of engagement that it will fully comply with the Lobbying (Scotland) Act 2016 and will provide client details and information to the public register where required by legislation.

Is the firm using cloud computing to store client data? Where the law firm is acting as a data processor, it will require the client's specific consent to the use of cloud providers. [Click here for further details.](#)

Sample content

All work undertaken by us on your behalf and all information which you impart to us in whichever medium will be treated in the strictest confidence at all times and will not be disclosed to third parties except where authorised by you or required by law.

We are registered with the Information Commissioner's Office under the current data protection regime.

We comply with the General Data Protection Regulation (GDPR).

The firm will fully comply with the Lobbying (Scotland) Act 2016 and will provide client details and information to the public register where required by legislation.

Our Privacy Notice contains information on how we collect and process personal data, what kind of personal data we collect, how long we retain personal data for, who we share your personal data with and your rights in relation to your personal data.

Our Privacy Notice is available on our website/ is attached

We use a document management system known as [Cloud Systems UK] which is a cloud-based provider and accordingly information about your matter will be held by that Company in their (UK-based) data centres. We hold an agreement with [Cloud Systems UK] which requires their observance of client confidentiality.

Mandatory

GDPR.

Alternative Dispute Resolution (ADR) – Consumers

What to Include

This part of the letter should include information about:

- Any ADR entities and processes which the firm is prepared to use (these should also be referred to on the firm’s website if it has one)

or

- The terms of the Regulations (even if the firm chooses not to adopt an ADR process)

Tips

Solicitors (as service providers) must give consumer clients details of a certified ADR provider and indicate whether or not they intend to use them to try and settle the dispute.

Sample content

We recognise that Alternative Dispute Resolution Regulations have implemented ADR/EDR Directive 2013/11/EU to promote alternative dispute resolution as a means of redress for consumers in relation to unsatisfactory services. We have however chosen not to adopt an ADR process and if you have any concerns about the services you receive from this firm you should contact the firm’s Client Relations Manager.

Mandatory

Regulation 19 of the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities & Information) Regulations 2015.

Right to cancel appointment of agency

What to Include

This part of the letter should include cancellation rights for “consumer” clients.

Tips

Give the client (individual consumer) the right to cancel its engagement with the firm within fourteen days without giving any reason. Reserve right to obtain payment for work instructed during the cancellation period.

See JLSS article on the Consumer Contract Regulations and how they apply to solicitors: [click here](#).

Right to cancel

Sample content

If we met with you away from our offices you have the right to cancel your engagement with the firm within 14 days without giving any reason. The cancellation period will expire 14 days after the date of our initial communication with you. To cancel, you must inform us by a clear statement (e.g. a letter or e-mail) using the contact details on our letter. To meet the cancellation deadline, it is sufficient for you to send your communication concerning your exercise of the right to cancel before the cancellation period has expired. If you requested work to be carried out during the cancellation period, you will be liable to pay for any services delivered until the point at which you cancel at the agreed rate (or if we have agreed a fixed fee then we will charge at our standard hourly rates up to the maximum value of the agreed fixed fee).

Mandatory

Consumer Contract (Information, Cancellation & Additional Charges) Regulations 2013
Consumer Rights Act 2015.

Interest/client funds

What to Include

This part of the letter should outline how the firm will deal with interest payable on funds held for clients.

Tips

Either set out that:

1. no interest will be earned because of current bank interest rates; or
2. some of the interest will be retained by the practice.

Otherwise, the default position will be that interest will be earned for the client with the proviso that practice units and clients can agree in writing what interest will be earned on clients' invested funds, provided that agreement is made in writing in advance of the funds being deposited.

Interest/client funds

Sample content

Where we receive money on your behalf, and this money is to be held by us for an extended period, we will place the money in a designated account in [Bank] unless you advise us otherwise. Interest on this money, subject to tax, will be paid at the [Bank Rate] applicable from time to time.

OR

Our policy is that we will not ordinarily place cash deposits in an interest bearing account. We do place large sums which we are to hold for long periods of time on deposit in an interest bearing account. If you wish us to deposit funds on your behalf or require any further information please contact us.

Mandatory

Rule B1
Rule B6.10
Rule B4 (Guidance - Interest on Invested Funds).



Client funds deposits

What to Include

This part of the letter should set out the identity of the bank or banks in which any funds held for the client will be deposited.

Tips

If clients wish funds deposited in a different bank they require to give specific instructions.

Sample content

Your funds will be deposited by us with [Bank]. If you wish your funds to be deposited elsewhere, you require to give us specific instructions to that effect. We will hold your funds in accordance with accounting rules set out by the Law Society of Scotland.

Client funds deposits

Recommended

About us

NAME, ADDRESS AND CORPORATE STATUS

What to Include

This part of the letter should include the name, address and corporate status of the firm.

Sample content

Will vary.

Mandatory

The Provision of Services Regulations 2009 (implementing EU Directive 2006/123).

About us

VAT REGISTRATION

What to Include

This part of the letter should include the VAT registration number of the firm.

Sample content

Our VAT registration number is GB123456789.

Mandatory

The Provision of Services Regulations 2009 (implementing EU Directive 2006/123).

Closing/archiving your files

NO INSTRUCTIONS TO PROGRESS

What to Include

This part of the letter should include details on what will happen to the client's files in the absence of instructions to progress matters.

Tips

Advise a client that the file will be closed in the absence of instructions within a specific period of time. This reinforces the client's obligation to keep the firm advised of contact details and the need for instructions.

See Law Society Guidance on Ownership and Destruction of Files: [Click here](#).

Sample content

In the absence of instructions from you following requests and us making reasonable enquiries to try to contact you, your file will be closed. We reserve the right to charge a fee for any work done to the point of closing your file and recover any costs incurred in attempting to trace you.

Recommended

Rule B4 Guidance.

FILE RETENTION

What to Include

This part of the letter should include information on the solicitor's policy on retention and destruction of the file and the papers including the length of time that the solicitor will retain files.

Tips

Documents that may be relevant to a claim may need to be kept for at least the period of long negative prescription.

Sample content

We are required to retain correspondence files for up to 10 years.

OR

We will retain your files and papers for the following periods:

{insert table of retention periods}

However, we may require to store files for longer periods if we have a legitimate reason to believe that matters within those files could be required for settling a dispute.

Recommended

Rules Section E, Division B (includes recommended retention period table).

RETENTION OF AML DOCUMENTATION

What to Include

This part of the letter should include information about the length of time that the firm will hold the client's financial information.

Tips

Remainder of the financial year of the practice plus a further six financial years.

Sample content

We will hold any information supplied by you in connection with verification of identity or source of wealth for the purposes of compliance with legislation and professional obligations, including the Money Laundering Regulations for a period of seven years. This is to comply with our regulatory requirements.

Mandatory

GDPR

Rule B6.1.1 and B.6.7.1(c) (accounting records definition includes reference to client due diligence documents and client financial information obtained for the purposes of compliance as well as the retention period).

Closing/archiving your files (continued)

STORING PAPERS FOR CLIENTS

What to Include

If there is any intention to charge the client for the storage of files, this part of the letter should include the charge for storage or the basis for charging.

Tips

In storing and insuring files and papers, solicitors are providing clients with a continuing service for which they can properly charge. However, such a charge should be outlined in the terms of engagement letter.

Be careful to advise clients you are not supplying a full document protection/back-up service (unless this is the intention).

Sample content

We are required to retain correspondence files for up to 10 years and as a result we charge a correspondence file storage fee of £X plus VAT to cover our costs.

If you instruct us to store original signed documents or other papers please note that these shall be stored in secure premises but not in fire-proof conditions.

We shall be entitled to charge you for storage and we shall notify you in advance of any charges to be made.

Optional

Rules Section E, Division B.

MANDATED FILES

What to Include

This part of the letter should outline any issues or considerations that might apply if the original file and papers are mandated.

Tips

If a file is transferred by mandate it is at the practice's discretion whether a file should be copied. It may be prudent to take a copy but at the practice's expense. The intention to copy should appear in engagement terms.

Where appropriate, the letter also needs to make clear that special considerations will apply to Crown Productions, police statements and any other document covered by Article 11 of the Code of Conduct for Criminal Work and that these materials will not be disclosed to either the client or any other third party.

Sample content

If you wish us to transfer your file in relation to your matter to another firm of solicitors, we will do this (subject to our fees being paid) at no cost to you. We will (for audit purposes) take a copy of the file which will be retained by us in accordance with the Law Society of Scotland's recommended retention period.

Special considerations will apply to Crown Productions, police statements and any other document covered by Article 11 of the Law Society of Scotland's Code of Conduct for Criminal Work and we will not disclose these materials to you or any other third party.

Recommended

Rules Section E, Division B.

Closing/archiving your files (continued)

DESTRUCTION/SCANNING OF FILES

What to Include

This part of the letter should include information about the firm's intention to destroy files and/or papers after conclusion of a transaction after a certain period.

Tips

This provision in the engagement letter is important in order to obtain client consent to destroy the file and, where appropriate, gain consent to retain a copy for audit purposes.

Documents that may be relevant to a claim should prima facie be kept for at least the period of long negative prescription if the claim has not previously been disposed of.

A solicitor's obligations to comply with GDPR needs to be considered when deciding the specific date beyond which the obligation to hold a client's own documents can be said to expire. Deeds or other documents constituting or evidencing rights may need to be preserved if it can be argued that they continue to be of value.

Set out the policy in relation to when original documents are destroyed. On receipt, after a specified period after scanning, on closure of the file, or after expiry of the recommended retention periods.

Electronic copies may not have the same evidential status as original documents.

Check if any documents should not be destroyed – give clients control.

Sample content

We intend to scan all paper copies of documents received by us and thereafter destroy the original paper documents in accordance with the Law Society of Scotland's guidelines. That scanning and destruction will take place at the time when the file is closed by us.

If you supply us with paper documents which are not to be destroyed at the conclusion of your matter, please advise us of this at the time of supply.

Please note that there is a risk that in any subsequent court dispute that the electronic copies taken may not have the same evidential weight as the original documents.

Recommended

Rules Section E, Division B.

Closing/archiving your files (continued)

DELETION OF ELECTRONIC DOCUMENTATION

What to Include

This part of the letter should include information on the firm's policy in relation to retention of electronic documentation.

Tips

Set out the policy in relation to retention of electronic documentation - will this be retained beyond the Society's recommended retention periods?

Electronic storage of files may be a practical way of dealing with storage, but reference should also be made to the Law Society's Cloud Computing - Advice for the profession, the relevant BSI standards, ISO standards and ICO guidance.

Sample content

We operate electronic filing for most of our files and by instructing us you agree to having your records and correspondence with us stored in such format.

The electronic file will be retained by us in accordance with the Law Society of Scotland's recommended retention period.

or

The electronic file will be retained by us in accordance with our retention policy above.

If you would like more information about this then please let us know.

Recommended

Rules Section E, Division B.



Quality assurance

INSURANCE

What to Include

This part of the letter should provide details of the firm's compulsory professional indemnity insurance.

Tips

This should include the contact details of the Master Policy Lead Insurer and the territorial coverage of the insurance (worldwide).

See also the specific requirements for detailing insurance provisions under the Incidental Financial Business regime.

Sample content

We are insured under the Law Society of Scotland's Master Policy for Professional Indemnity Insurance. The cover is provided by a panel of insurers with the Lead insurer being Royal & Sun Alliance Insurance Plc of 15 York Street, Glasgow, G2 8LA. Coverage is worldwide. The limit of indemnity is £2 million for any one claim or series of claims arising out of the same events.

Mandatory

The Provision of Services Regulations 2009 (implementing EU Directive 2006/123).

WHO TO SUE

What to Include

This part of the letter should explain that any action should be pursued against the firm rather than the individual solicitors.

Tips

Clarify that individual solicitors are not giving advice in an individual capacity and that the client's remedy is against the entity.

Sample content

In the unlikely event that you should have a claim for a loss arising out of the manner in which your transaction has been handled or the advice given, you agree that any claim can only be pursued by you against us and cannot be pursued against any individual solicitors or staff member acting on our behalf.

Recommended

THIRD PARTIES

What to Include

This part of the letter should outline that, in certain circumstances, the client should pursue a third party, rather than the solicitor.

Tips

Clarify that some engagements may be properly on behalf of the client and that the client's remedy should be against the provider.

Sample content

Where we have engaged the services of third parties on your behalf (this could be counsel, expert witnesses, accountants or surveyors), we are not liable for any advice provided and we will not be responsible for any errors or omissions of those third parties.

Optional

Client funds/receiving funds from you

What to Include

This part of the letter should provide details on payments received from clients and clearance of funds.

Tips

Clarify to client that fund transfers may not be instant.

NOTE: Also See Section on Security / Bank Details / Cyber Fraud.

Sample content

Before we can make any payments on your behalf, we need to have cleared funds.

Monies must be paid to us either by direct transfer or by cheque. If payment is made by cheque we must receive this from you no later than seven working days before it is to be paid out on your behalf

If payment is made by BACS transfer, it may take several days to clear.

If payment is made by CHAPS (same day transfer) cleared funds will be available to us on that day.

Optional



Fees, invoicing, interim fees, late payment charges, interest

What to Include

This part of the letter should include details on when fees can be raised, payment terms and any interim billing.

Tips

Credit control and cashflow issue.

Unexpected fees can be a trigger for complaints.

Sample content

Our invoices are payable on receipt.

In the event of non-payment within 30 days we may either (1) charge you a late payment fee of £X or (2) interest on the outstanding amount at the rate of Y% above [Bank] base rate applying at the time, calculated daily and compounded monthly.

We shall be under no obligation to carry out any further work for you until all outstanding payments have been paid in full.

We shall be entitled to set off any payments due to us against any credit balance or deposits held on your behalf before sending you the balance.

We will normally charge for our work on completion of the relevant matter but we reserve the right to issue fees on an interim basis. If an interim fee is rendered, we shall be under no obligation to carry out any further work for you until such interim fee is paid in full.

Any payment on account made by you (or any sum received by us on your behalf which is not received for a specified purpose) may be set off against any outstanding fee.

Recommended

Fees, invoicing, late payment..



Anti Money Laundering (AML)

ID

What to Include

This part of the letter should outline the information on identification that the client has to provide the solicitor, in order to help it comply with AML rules.

Tips

Client advisory issue – assists with helping client understand their obligations.

Consider separate information sheet – the Society has a guidance sheet for clients: [click here](#).

See the Society's information page: [click here](#) for information on ID.

Sample content

It is a criminal offence for us to fail to carry out client identity checks. Under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 and other legislation we have to ask you for certain information and carry out risk assessments.

We have to verify your identity and address.

As part of this process we utilise an identity verification agency to make certain checks. This often avoids the need for documentation to be produced.

We reserve the right to request that you provide us with identification documents to enable us to perform these mandatory checks.

We must perform these checks prior to providing any advice to you.

We are also required to carry out these checks on a regular basis to ensure that the information we hold about you is up to date.

Recommended

SOURCE OF WEALTH

What to Include

This part of the letter should outline the information on source of wealth that the client has to provide the solicitor, in order to help it comply with AML rules.

Tips

Client advisory issue – assists with helping client understand their obligations.

You do not require to prove that the money is clean. You have to be satisfied that the source of wealth is consistent with the risk profile of the client and that where there are warning signs, they do not give rise to a suspicion of money laundering.

Sample content

We require to verify the sources of wealth being used to fund a matter.

Do not be offended if we ask for your assistance to help us understand your financial profile. We are obliged to make these enquiries by law.

Recommended

Variations

What to Include

This part of the letter should include information on what will happen if there is a change in the information provided, varying the terms of engagement.

Sample content

This letter [or our terms of business] governs our relationship with you unless we agree otherwise with you in writing.

Where our standard terms are varied, we will advise you of this in writing and give you an opportunity to accept or reject those proposed changes.

Optional

Governing law

What to Include

This part of the letter should outline the governing law and the court jurisdiction to which the terms of engagement are subject.

Tips

Possibly obvious but a useful clarification.

Sample content

Our relationship with you (formed by this letter) will be governed by and construed in accordance with Scots law and the courts of Scotland shall have [non-]exclusive jurisdiction to settle any questions or disputes which may arise out of or in connection with the same.

Optional

Limitation of liability

What to Include

This type of provision is designed to limit the amount and types of compensation the client can recover from the solicitor.

Tips

See Lockton's article: [click here](#).

Do not cap below the minimum level of Master Policy cover.

Care should be taken when drafting limitation clauses and regard should be had to variable issues such as the reasonableness of the cap, whether there had been discussions with the client in advance of the limitation being imposed, the type of client, the type of work, and the commercial risk versus reward. Overall, any limitation needs to be fair and reasonable.

Sample content

None - see Tips.

Optional

Security/bank details/ cyber fraud

What to Include

This part of the letter should include a disclaimer warning, advising that the firm's bank account details will not change during a transaction; that the firm will not change bank details via email; and that clients should check the details in person if in any doubt.

This provision should also state that if the client subsequently changes payment instructions, the firm will not make any payment until such time as it has been able to confirm those instructions with the client by alternative means.

Tips

This clause is important in preventing "man-in-the-middle fraud" where substitute fraudulent bank details are supplied and funds are transferred to an account masquerading as the client's or solicitor's account.

Things that solicitors should react to might be odd email addresses, strange (i.e. forged) email exchanges with their client, late notification of a change to the payee bank account or possibly other documents that do not appear to be genuine. Any combination of these 'warning flags' should trigger suspicion in a prudent solicitor.

Depending on how the firm operates, it might want to extend such a disclaimer to communications through its website.

Sample content

Fraudulent activity is uncommon but a risk. Be aware that fraudsters may try to use techniques to discover personal information about you or your transaction. We will never ask you to send money to an account other than our client account (account number: XXXXXX Sort code:YYYYYY).

These bank account details will not change during a transaction and the firm will not change bank details via email. If you receive a call or e-mail (even if it appears genuine) asking you to commit funds to an account which is different to the above, contact us by telephone or in person and speak to your named contact at the firm.

If your own bank details or payment instructions change, the firm will not make any payment until such time as it has been able to confirm and verify those instructions with you.

Recommended

Acceptance

What to Include

This part of the letter should include details on how to accept the terms of engagement.

Tips

Even if no signed acceptance letter is received, the terms should still apply. Covers oversight in administration or client oversight. Rule only states that a letter needs to be issued.

Sample content

This letter is supplied in duplicate. Sign both copies and return one to us. The other should be retained by you for reference.

or

This letter has been sent by e-mail only. Print two copies, sign both and return one to us. The other should be retained by you for reference.

or

This letter has been sent by e-mail only. Print a copy, sign it and scan the signed version to us. The original should be retained by you for reference.

If you fail to return the signed engagement letter but continue to instruct us, you agree that the terms of the letter shall govern our continuing relationship.

Recommended

Rule B4.2.



Incidental financial business

What to Include

This part of the letter should include information on the Incidental Financial Business rules.

Tips

The IFB regime allows firms to conduct certain activities without direct FCA approval. The activities need to be integral to the underlying professional services provided to clients and not conducted on a stand-alone basis.

Sample content

[See link](#) to Law Society of Scotland website - Rule C2 Incidental Financial Business Guidance. Point 6 has style of information letter.

Mandatory

Rule C2.
Rule C2 - Guidance Schedule 3 (Sample IFB letter).

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To be the worldwide value and service leader in insurance brokerage, risk management, employee benefits and retirement services.

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To be the best place to do business and to work.

Please note that the purpose of this guide is to provide a summary of and our thoughts on common issues arising out of engagement letters and aspects that you should consider addressing in your engagement letters. It does not contain a full analysis of the law nor does it constitute a legal opinion or advice by Lockton Companies LLP on the law discussed. You must make your own assessment on the contents of this guide and should consider taking specific legal advice on any matter that relates to this. Lockton Companies LLP accepts no responsibility for loss occasioned to any person acting or refraining from acting as a result of the material contained in this guide.



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