



## GUIDANCE NOTES FOR LEGAL PRACTICES

# Client selection

Many claims could be avoided by selecting clients more carefully. The client who refuses to pay, does not like your advice and does not give instructions is not only difficult to deal with, but is more likely to be the source of a complaint or a claim.

### Can the firm act?

Before accepting instructions – and, ideally, before interviewing a new client – try to establish whether there may be a conflict of interest.

- Has your organisation acted for this client before, and were those instructions given jointly with another (partner, family member, business associate)? If so, ensure that no conflict is present or will arise
- Have you or has someone else in your organisation acted for the opponent in this matter?
- If you think there is a potential conflict it is usually better not to accept instructions at all

### Can I act for this client?

Beware of accepting work, no matter how attractive, if it is outside your usual field of practice. Do you have the skills to deal with this instruction? If it requires additional work because you are unfamiliar with it, will you have time to deal with it? Can anyone else in the firm help you?

Even if you are very familiar with this area of work, you will not be able to represent this client effectively if:

- You are already too busy to take on another client
- This matter is very urgent or complex and you have a full caseload
- You are about to go on holiday or be away from the office for some time

### Should you act?

Has the client already sought advice from another legal advisor? You can give advice but must not accept instructions until the first retainer has been terminated. Be very careful about giving advice based on the client's version of events without seeing existing correspondence or pleadings. Try to find out why they want to change advisors.

### Manage clients' expectations

Set out clearly the way in which you will correspond with them, in particular how frequently you will check emails and your timescale for responding to emails or other communication.

### Do you want to act?

- Is this a client who fits the profile of your organisation, and is it work that you want to do?
- What sort of client will they be – are they going to challenge your bills, or be slow in paying disbursements or in giving you instructions?
- If they have already consulted another legal advisor, find out their reasons for changing. They may have had good advice which they found unpalatable – if you give them the same advice, are they any more likely to accept it? Clients who have used more than one advisor are a higher risk for complaints, and possibly for claims also

If you have any misgivings, stop and think carefully – you are not bound to enter into a retainer, but once you have done so, you cannot terminate it without good reason. If you have underlying concerns about the client's truthfulness, bona fides or expectations, can you deal with these?

### **Non-retainer letters**

In some circumstances it is worth writing to the client to confirm that you will not be acting for them in a matter, particularly if they are an existing client or if there is any room for confusion over whether or not you have accepted instructions.

### **Existing clients**

Don't assume that because your organisation has already acted for this client, there is no need to apply any selection criteria. This may be different work to that which was done before, or the client's circumstances may have changed. Money-laundering regulations must always be applied, even if the client is someone well-known to the practice. If you consider that there is no need to obtain formal identification because you know the client personally, make a note on the file to that effect.

### **Risk assessment**

Consider having a rule about who can agree a retainer – for example, that all new clients must be approved by a partner before a retainer is entered into. You might wish to vary this depending on the work and the experience of your staff, for example you might limit the requirement to 'all property purchases above £750,000' or an appropriate figure for your firm, or have different limits for senior employees. Ideally, your matter risk assessment would include:

- The potential value of the matter
- The complexity of the matter
- Whether the client is vulnerable or in any way needs additional attention
- The experience of the fee-earner
- The fee-earner's existing workload
- Any planned absence or annual leave of the fee-earner or their supervisor/support staff