

Letters of Engagement

Common issues arising out of engagement letters and aspects to consider:



Scope of work

Completed To Do

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

It should provide sufficient information to clearly identify the scope of work

Consider using a template which follows the set workflow of a specific transaction (this can then be tailored accordingly)

Specify any areas of work that will not be carried out on behalf of the client

Include a provision for what will happen in the event that the client's instructions change (it may be necessary to issue an amended letter in this instance)

Responsibility for your work

This should provide details of the person with primary responsibility for the work

It should include an explanation of whether the work is to be delegated

If a substitute is to be involved, their name should be provided

It may help to provide details of the person with overall supervision, as well as the person with day-to-day responsibility

If outsourcing any of the work, details of the outsourced firm should be provided

Our fees

This should include an estimate of the total fee or the basis on which the fee will be calculated, the VAT amount and details of any anticipated disbursements

If fees are charged on an hourly rate, the rates of all individuals involved should be included

If any of these rates change during the course of the transaction, an update should be provided

If commission is to be charged this should be specifically referred to

It should include a 'right to alter' section in the event that a matter becomes complicated or delayed and warrants an increased fee

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Complaints

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This should include an initial complaint handling section which details who the client should contact if they are unhappy with an aspect of your work

If applicable, explain that the firm has a Client Relations Manager and provide their details

Include a section advising that the firm has a written complaints procedure – this should be clearly signposted and the client should be advised that they have a right to request a copy of this

Instructions

This should set out the method by which instructions are to be given/received (poor communication with clients is a key contributory factor in many claims)

It should also clarify who has authority to give instructions (confusion can arise if there are joint clients or the client is an organisation)

Timescales

This should include an estimate of how long the work will take

It may be useful to highlight any possible delays and/or the reasons for potential changes in timescales

Your Responsibilities

This should include an outline of the client's responsibilities in helping to progress and conclude their transaction

It should also confirm the following:

The need to give instructions/information timeously when requested

The manner in which instructions should be given

The need for clients to be available to sign documents

The need to remain in contact, particularly if critical dates are to be met

The need to keep the firm advised of any change of contact details

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Personal data

This should provide assurances about confidentiality as well as information covering security and retention of personal data

Right to cancel

This should include cancellation rights for “consumer” clients

Interest/client funds

This should detail how the firm deals with interest payable on funds held for clients, if applicable

Client funds deposits

This should provide details of the bank or banks in which any client funds will be deposited

If a client wishes funds to be deposited elsewhere they are required to give specific instructions

About us

This should include the firm’s name, address, corporate status and VAT registration number, if applicable

Closing/archiving your files

This should include a section on ‘no instructions to progress’ which details what will happen to the client’s files in the absence of instructions to proceed

File retention: this should specify the firm’s file retention/destruction policy, including how long files will be retained for

A separate section should specify how long the firm will hold the client’s financial information

If any charge is to be made to the client for storing their files, this should be stated here (be sure to advise clients you are not supplying a full document protection/back-up service unless this is your intention)

Include any considerations that might apply if the original file and papers are mandated. If it is your intention to take a copy of these before transferring them, this should be stated here

You should include information about the firm’s intention to destroy files after the conclusion of a transaction after a certain period

You should also include details of the firm’s electronic documentation retention policy

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Quality assurance

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This should provide details of the firm's Professional Indemnity insurance

Client funds/receiving funds from you

This should provide details in respect of payments received from clients and clearance of funds – point out that fund transfers may not be instant

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

This should include details of when fees can be raised, payment terms and any interim billing (unexpected fees can be a trigger for complaints)

Anti-money laundering

This should include information on identification that the client must provide in order to help the firm comply with AML rules

It should also outline information on source of wealth that the client must provide to help the firm comply with AML rules

Variations

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

Governing law

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

Limitation of liability

This is intended to limit the amount and types of compensation the client can recover from the firm

Security/bank details/cyber fraud

This should include a disclaimer advising that the firm's bank details will not change during a transaction, that the firm will not change bank details via email and that the client should check the details in person if in any doubt

It should also include a provision which states that if the client changes payment instructions, the firm will not make any payment until such time as it has been able to verify those instructions with the client by alternative means

Acceptance

This should set out how to accept the terms of engagement