

Chapter 7: Regulatory matters

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Aims of this Chapter

The most common professional qualifications which allow people to set up in practice and offer legal services to the public are those of CILEX practitioner, solicitor and licensed conveyancer. One of the distinguishing features of a profession is the duties owed to the public and the fact that those professions are regulated.

Individuals who qualify are regulated as are the firms/organisations which setup to offer legal services.

In broad terms, the point of regulation is to ensure that the public is protected and that the professionals offering legal services have professional standards with which they have to comply. It is usually a condition of regulation that the regulated body has professional indemnity insurance in place. The purpose of this is to ensure that no member of the public is left out-of-pocket in the event that they suffer loss at the hands of the regulated professional, for example, due to the receipt of negligent advice.

The regulators which you are most likely to come across in a conveyancing and private client context are CILEX Regulation, the Solicitors Regulation Authority (SRA), and the Council for Licensed Conveyancers (CLC).

In this course book, we will focus on those aspects of regulation, conduct and client care which are most relevant to conveyancing and private client work.

This chapter will cover:

- Codes of Conduct

- SRA Standards and Regulations
- confidentiality and conflicts of conveyancing
- avoiding conflicts when drafting wills
- the client care letter
- legal fees, VAT and disbursements
- client identification
- undertakings
- money-laundering
- accounts rules, and
- Capital gains tax (CGT), stamp duty land tax (SDLT) and inheritance tax (IHT) in outline.



Activity

Follow the link below to the **CILEX Code of Conduct**. Save the link. Read and understand the core principles.

CILEX



Code of Conduct | CILEX

The Code of Conduct Governance CILEX Professional Board Approved Regulator Our Strategy General Meetings The Code of Conduct Consultations Consultation Responses Consultation Archive Practitioners Directory Privacy Statement Code of Conduct This is the Code of Conduct (the Code) of CILEX and its regulatory body, CILEX Regulation.

READ MORE CILEX

CONTINUE

7.1 The Codes of Conduct

Principles of professional conduct apply to conveyancing transactions, as well as to a lawyer's conduct generally. Some rules of conduct are specific to conveyancing, and some are more generally related to issues of professional and responsible practice.

(1) CILEX Code of Conduct

Chartered legal executives are regulated by CILEX Regulation. CILEX Regulation sets standards for the profession governing qualification standards, accounts, the running of legal businesses which are subject to its regulation ("authorised entities") and professional behaviour. It will investigate complaints against CILEX members (including trainees) and authorised entities and has wide enforcement powers which include referral to its Disciplinary Tribunal. The Disciplinary Tribunal may impose fines of up to £100,000 on members.

The **CILEX Code of Conduct** is based around nine core principles which are:
You must:

1. Uphold the rule of law and the impartial administration of justice.
2. Maintain high standards of professional and personal conduct and justify public trust in you, your profession and the provision of legal services.
3. Behave with honesty and integrity.
4. Comply with your legal and regulatory obligations and deal with your regulators and ombudsmen openly, promptly and co-operatively.
5. Act competently in the best interests of your client and respect client confidentiality.
6. Treat everyone fairly and without prejudice.
7. Ensure your independence is not compromised.

8. Act effectively and in accordance with proper governance and sound financial and risk management principles.
9. Protect client money and assets.

Each core principle is supported by a number of outcomes. For core **principle 8**, for example, the following outcomes apply:
You must:

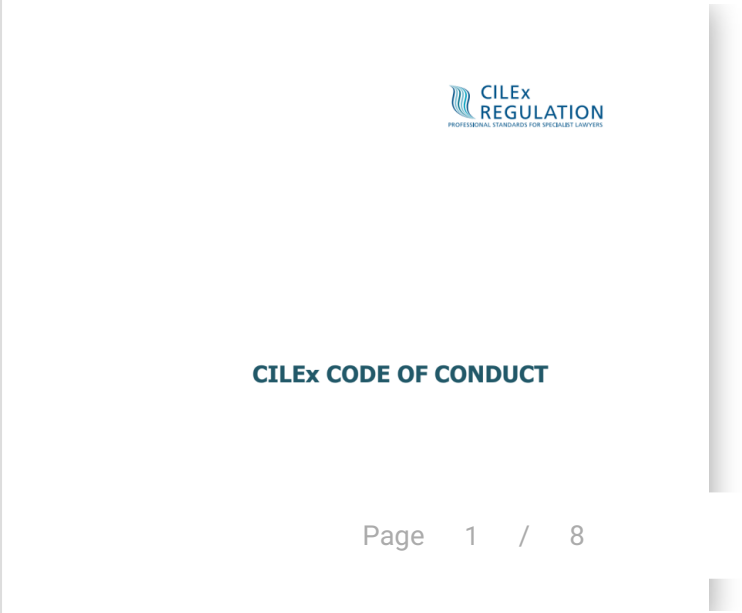
- 8.1 Maintain proper standards of work and keep accurate records. In matters such as communications with clients, professional colleagues and others, your records should be contemporaneous and in any event must be made as soon as practicable thereafter.
- 8.2 Ensure that you properly supervise tasks that you have asked others to perform on your behalf, recognising that you remain accountable for any such work.
- 8.3 Ensure that anyone you ask to perform work on your behalf is appropriately qualified and authorised to perform it.
- 8.4 Ensure that clients' matters are supervised and regularly checked by those with sufficient competence and experience to assess the quality of the work and to ensure issues identified are addressed.
- 8.5 Adhere to effective management, oversight and reporting structures.
- 8.6 Comply with effective procedures to ensure compliance with your legal and regulatory obligations.



Activity

Find the CILEX Code of Conduct below, review the outcomes in the light of your current knowledge of conveyancing and private client work. Which outcomes do you think will be the most important in these areas of legal work?

CILEXREGULATION



VIEW ON CILEXREGULATION

(2) SRA Standards and Regulations

The Solicitors Regulation Authority has similar functions for solicitors to those of CILEX Regulation. **Note** that it regulates not only solicitors but also other legal professionals (including chartered legal executives) and support staff who work in SRA-regulated law firms.

Solicitors and all staff working in law firms regulated by the Solicitors Regulation Authority are subject to the **SRA Standards and Regulations**.
These include:

- Seven principles.
- The **SRA Code of Conduct for Solicitors**.

- The **SRA Code of Conduct for Firms**.
- The **Accounts Rules**.
- Regulatory and disciplinary rules.

The Codes of Conduct include detailed guidance on many areas of practice, including conveyancing and private client work.

Further information about the **Standards and Regulations** is available below.

SRA



SRA Standards and Regulations

Check our rules and regulations, find guidance to help you

UNDEFINED SRA

(3) Council for Licensed Conveyancers Code of Conduct

The Council for Licensed Conveyancers is responsible for regulating individual licensed conveyancers as well as law firms which are subject to its regulation. It will not consider complaints about poor service (which are referred to the Legal Ombudsman) but will consider complaints about dishonesty.

The CLC Code of Conduct includes six overriding principles which are supported by outcomes, principles of behaviour and specific requirements.

The CLC Code of Conduct is available below.

CLC-UK

UNDEFINED CLC-UK



Activity

Draw up a table comparing the CILEX and SRA principles and the CLC overriding principles. Can you identify any common elements?

The provisions of the codes which directly affect conveyancing practice are considered later as part of the topics to which they relate.

In essence, there are four main affected areas for the purposes of this unit:

- confidentiality;
- acting for more than one party in a single transaction;
- costs and client care; and
- contract races.

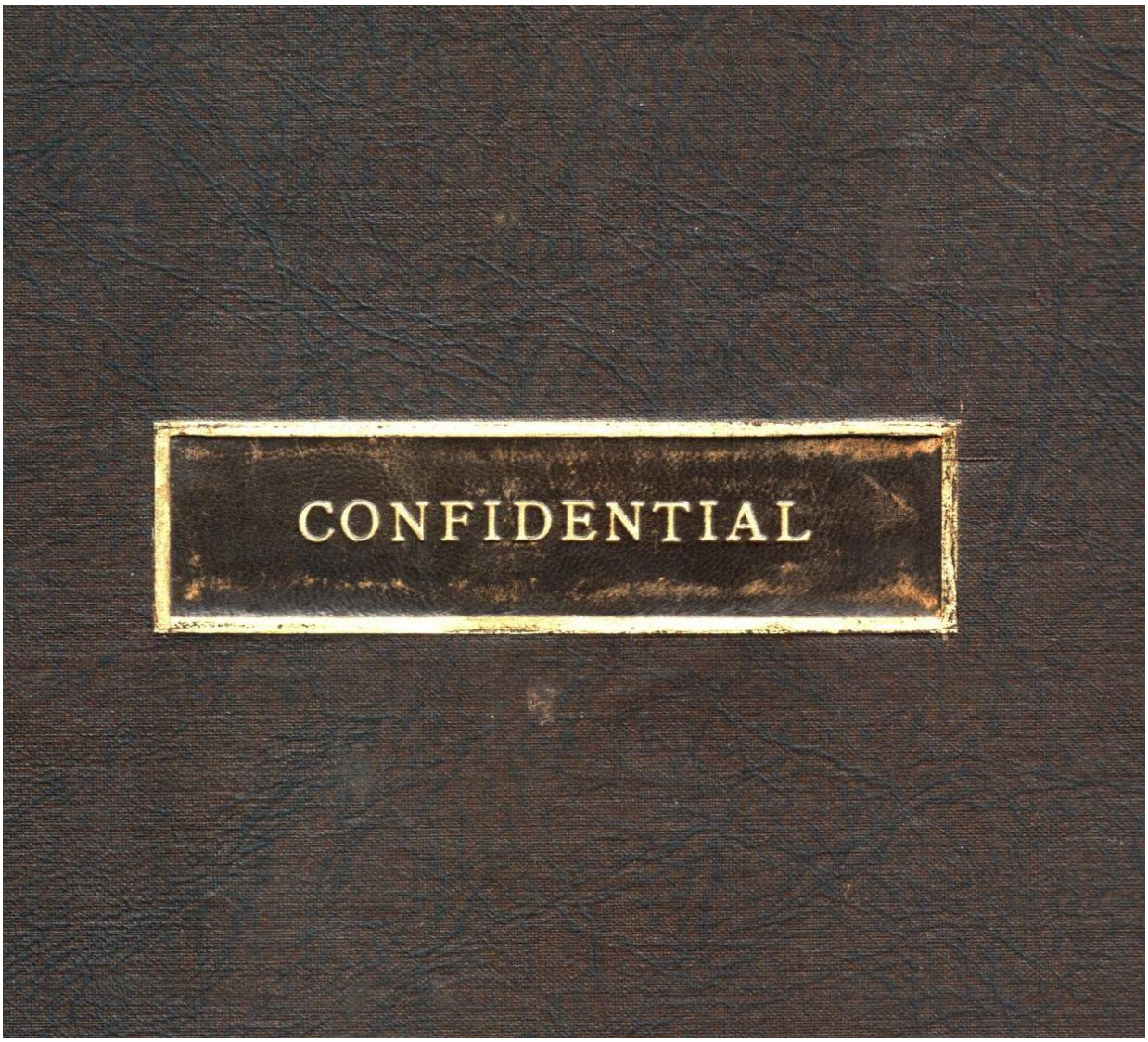
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7.2 Conduct issues in conveyancing

7.2.1 Confidentiality

You will remember the duty of confidentiality. This is the duty imposed on lawyers and their staff to keep confidential all the details of their clients.

In essence, the duty of confidentiality is simple – you should **not** discuss any clients' affairs with anyone without the client's consent. Breach of the duty is a matter of professional misconduct.



Link to Practice 🔗

Most of a conveyancing matter is transacted by email and on the telephone. We actually meet our clients very infrequently, and we would hardly ever meet anyone else involved in the conveyancing transaction. Think for a moment who else might be involved: at least two estate agents, a mortgage broker, a surveyor, other conveyancing firms – and this is just a few of the parties in an average conveyancing transaction.

By its nature, the conveyancing process is very stressful, and people in a conveyancing chain are often keen to know how

matters are progressing. This often means that people will telephone or email you for progress as to your client's transaction.

If you receive any such requests, you must stop and think:

1. Do I know who is contacting me?
2. Do I have my client's authority to give information to them?

If you cannot answer "yes" to the above two questions, then you should decline to take the call if possible and not respond to an email. You should then contact your client to ask if you are authorised to give the information to the person requesting it.

This might seem like "overkill", remember once the duty of confidentiality has been breached, you cannot take that information back! So, you must be cautious at all times.

Remember, if you just confirm to someone that your firm acts for a particular client, you could have breached your duty of confidentiality to them if your client has not authorised you to confirm that information to the person making the enquiry.

7.2.2 Conflicts

You will also remember the importance of avoiding a conflict of interest. It is necessary for a lawyer to avoid conflicts between their own interests and those of their clients and avoiding conflict between the interests of two or more clients in the same matter. Remember that we do not have to have an actual conflict of interest arising for this rule of conduct to apply. A significant risk of a conflict is sufficient for the lawyer to decide not to act.

Practitioners can choose which regulator they would like to apply to for the overarching regulation of their practice. This can lead to different requirements being imposed on practitioners and a good example of this is in relation to acting for the seller and the buyer in the same conveyancing transaction.

7.2.2.1 Acting for more than one party



As a general principle of professional conduct, a lawyer or their firm should **not** act for two or more clients in the same transaction where there is either a conflict of interest between those clients, or where there is a significant risk of a conflict of interest occurring. Neither should the lawyer or firm act if a conflict of interest develops between existing clients.

1

Seller and buyer

It is not normally permissible for the same lawyer to act for both the seller and the buyer in the same conveyancing transaction.

The reason for this is that there is a risk of a conflict of interest occurring. In conveyancing transactions, a conflict would normally arise if a lawyer were to act for both the buyer and the seller. The lawyer could be placed in a difficult position, making it difficult for them to give advice in both clients' best interests.



Link to Practice 🔗

Let's think about this example.

A chartered legal executive working in a SRA-regulated firm acts for Claude, who is selling his house, and for Emma, who is buying it. The chartered legal executive discovers that a field, adjacent to the property, is about to be sold to a developer. There is a conflict of interest. Claude will not wish Emma to find out about this and may instruct the chartered legal executive not to reveal the information. Emma will wish to know of all matters discovered by the chartered legal executive which may affect her purchase.

Principle 7 of the **CILEX Code of Conduct** is relevant here. It states that you must ensure that your independence is not compromised. **Outcome 7.1** expands on this to say that you must not act or continue to act where there is a conflict of interest or a significant risk that a conflict may arise.

Similarly, **Principle 7** of the **SRA Standards and Regulations** states that solicitors and their staff must act in the best interests of each client.

If a chartered legal executive or solicitor is unable to act in the best interests of each client due to a conflict of interest, then they must not act.

SRA guidance

The SRA has published guidance on conflicts of interest which is relevant to the issue of acting for both parties. It gives examples of circumstances that can give rise to a conflict and one of these examples is *one client selling or leasing an asset to another client*.

As a general observation, the SRA stresses that it is better to avoid a conflict arising in the first place by declining to take on a client or clients where necessary rather than have a conflict arise during the life of the transaction.

It is clear from the SRA guidance that it does not expect firms to routinely act for sellers and buyers in the same transaction. However, the SRA also stresses that this does not mean a solicitor or law firms can never act for both parties, if on the facts of the case there is no significant risk of a conflict occurring. It gives the example of where clients are already agreed on all the terms of a transaction and all information can be shared openly between them but it warns that law firms should not act where there is a need for substantive negotiations between the clients or if it likely that all information cannot be openly shared. The SRA states ***you must always be sure that it is in both clients' interests for you to act. Bear in mind that if you were just acting for one client, you would normally be negotiating their position and putting forward solutions that favour their interests over the other client. So by acting for both, you may be limiting the service you would provide***.

The Law Society's guidance

The Law Society's Practice Note on Conflicts of Interest stresses that a solicitor is not permitted to act for the buyer and seller in the same transaction, where there is a conflict of interest or a significant risk of one. The note states that the decision rests with the solicitor or the firm as to whether there is a conflict or a high risk of one in the circumstances but that, where the solicitor does decide to act for the seller and the buyer, the solicitor must be prepared to justify this to the SRA if so required. The note also stresses the importance of monitoring the situation as a conflict could arise, and warns that, ***there could be considerable implications for each of the clients and for others involved in a series of linked transactions such as a conveyancing chain should you need to withdraw because of a conflict situation***.

Link to Practice 🔗

The upshot of the various regulations and guidance is that a law firm will not routinely act for a seller and a buyer in the same transaction. The overriding question is still "is there a conflict of interest or a significant risk of one?". Some firms take the view that it is best never to act for the seller and the buyer even where the SRA codes would technically allow it.

As a practical point, the size and type of firm may have an impact on the decision. It may be more difficult for a sole practitioner or small firm to act for both parties, whereas the work systems of larger firms and those with several separate offices might make it easier to avoid potential conflicts of interest.

It is assumed in this course book that there are **separate firms** acting for the buyer and the seller.

The CLC's approach to acting for the seller and the buyer in the same conveyancing transaction

The CLC takes a different approach to the issue of the same firm acting for the seller and the buyer in the same conveyancing transaction. It permits the same firm to act for the seller and the buyer in the same transaction although each party must be represented by different conveyancers within the firm who conduct themselves in the matter as though they were members of different firms. This will generally mean ensuring that the files are set up in such a way that one fee-earner cannot view or become involved with the file of the other fee-earner. In addition, both the seller and the buyer should have the conflict risks explained to them and should give their "informed consent" in writing to the same CLC-regulated firm acting for both of them.

2

Joint buyers

It is acceptable for the same conveyancer to act for joint buyers, as long as there is no conflict of interest. Remember that the most likely source of a conflict of interest between two or more buyers is when giving the co-ownership advice.

3

Buyer and mortgage lender

It is usually acceptable for the same conveyancer to act for the buyer (borrower) and the mortgage lender (e.g. the building society or bank), as long as there is no conflict of interest.

4

Other conflict situations

It is important, however, to bear in mind that conflicts of interest may arise in relation to other conveyancing situations, and the conveyancer must remain alert to these at all times, ensuring that they can comply with their professional duties.

Examples of instances where conflicts could arise could be in relation to:

- a non-owning occupier having to sign the contract on a sale to confirm they will vacate; or
- a non-owning occupier having to sign an occupier's consent clause in a mortgage deed on a purchase.

Both relate to situations where a person is being asked to sign documentation which may adversely affect their property rights. It may be necessary for the person signing the document to take independent legal advice before signing.

CONTINUE

7.2.3 Contract races

A contract race arises when a seller client instructs their conveyancer that they have more than one person interested in buying a property, and that they wish the conveyancer to send out contracts to each of them. The idea is usually that the seller wishes to keep their options open and sell to whichever buyer is ready and willing to proceed first.

Principle 3 of the **CILEX Code of Conduct** states that you must behave with honesty and integrity. Outcome 3.2 expands on this to say you must not intentionally mislead anyone you deal with.

In addition, **Paragraph 1.4** of the **SRA Code of Conduct for Solicitors** states that you must not mislead others, either by your own acts or omissions or by being complicit in the acts or omissions of the seller. As a result, this is likely to mean that the seller's conveyancer should inform all buyers immediately of the seller's intention to deal with more than one buyer.

Further, **Paragraph 1.2** of the **SRA Code of Conduct for Solicitors** requires a solicitor to refrain from abusing their position by taking unfair advantage of clients or others with whom

they deal, which again supports the above position about disclosing contract races.



The Law Society recommends that the conveyancer obtains the client's consent to disclose the existence of the contract race and that it is disclosed, as to do so would be a breach of **Principle 5** (acting with integrity). It would not be possible for the conveyancer to act for both the seller and any of the buyers in a contract race as there will be a clear conflict of interest. There will also be a conflict in residential conveyancing cases if the conveyancer acts for more than one of the buyers in a contract race.

In practice, buyer clients may be wary of contract races as they will lose out on buying the property if the other buyer succeeds (wins the race), thus wasting time and costs. There is

therefore a risk that a buyer may withdraw if a contract race is initiated.

CONTINUE

7.2.4 Avoiding conflicts of interest when drafting wills and gifts to legal advisers

Private client practitioners also have to be very aware of the possibility of a conflict of interest arising. An obvious example would be a situation where a firm is acting for a client who asks the firm to also act for their elderly parent. If the client gives instructions to the firm to prepare a will on behalf of an elderly parent which leaves their parents entire estate to the client, this would be a clear conflict of interest and the firm should decline to act.

A less obvious example of a conflict of interest in a private client context is where a firm is acting for personal representatives in the administration of the estate and, for some reason, the personal representatives cannot agree on a course of action to be taken. If the disagreement between the personal representatives continues, this will give rise to a conflict of interest between those clients. As a result, the firm will no longer be able to act for either personal representative.



A more subtle conflict of interest to look out for in a private client context is where a testator wishes to instruct their lawyer to draft a will for them, and they want to leave a gift to their lawyer in their will. This might be a perfectly acceptable thing to do and indeed, the testator may wish to acknowledge the kindness and support which a trusted legal adviser has given them over many years by leaving them gift in their will. However, the lawyer preparing the will should be very cautious.

> In this circumstance, some practitioners would decline to draft the will for the client and would advise the client to have their will prepared at another law firm. In many ways, this would be best practice and would ensure that the testator had completely independent advice in this regard. The risk for the private client practitioner is that the gift in the testator's will might be challenged after the death of the testator.

> In the event of a challenge, the conduct of the practitioner preparing the will would be looked at. If they advised their client to go elsewhere but the client was insistent and remaining with their known and trusted firm, this may suggest that the gift should stand. However, what will also be looked at is the size of the gift to the practitioner in the context

of the size of the estate of the testator. So, for example, a gift of £2,000 to a practitioner might be acceptable if the total value of their estate is £750,000. However, a gift of £2,000 if the entire value of the estate is only £10,000 would be looked at very differently as in this example, the gift would be a very significant proportion of the overall value of the estate of the testator.

It is important for you to keep this issue in mind when taking will instructions from a client.

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7.3 Client care and client identification

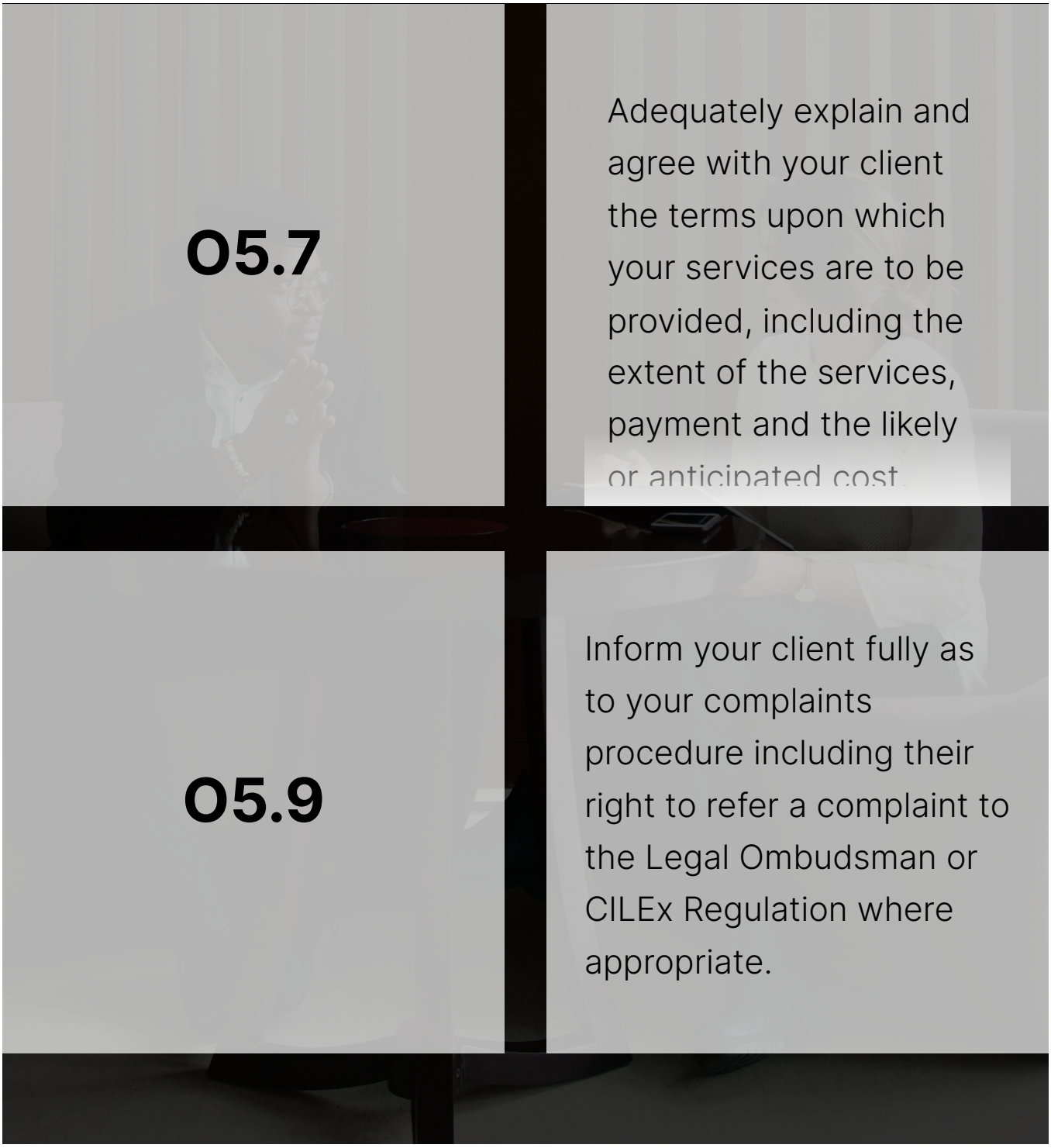
7.3.1 Purpose and professional requirements of a client care letter

Whilst there are a number of practical benefits in writing a letter to your client at the beginning of a transaction, including confirming exactly what you have agreed to do for them and minimising future misunderstandings, the key **purpose** of a client care letter is to demonstrate compliance with the professional regulatory requirements.

Principle 5 of the **CILEX Code of Conduct** is relevant here. Outcomes **5.7**, and **5.9** are important:

You must:





Similarly, the **SRA Code of Conduct for Solicitors** states the following.

Paragraph 8.6

Paragraph 8.6 sets out a key requirement which should apply to all communications with clients:

> You give clients information in a way they can understand. You ensure they are in a position to make informed decisions about the services they need, how their matter will be handled and the options available to them.

Paragraph 8.3 SRA Code of Conduct for Solicitors

Paragraph 8.3 SRA Code of Conduct for Solicitors states that the following information must be communicated in writing to the client at the beginning of the transaction:

> Information on the right to complain and how complaints can be made, including who to complain to in the first instance and who deals with complaints in the firm and the client's right to complain to the Legal Ombudsman.

Paragraph 8.7

Paragraph 8.7 requires the following:

> You ensure that clients receive the best possible information about how their matter will be priced and, both at the time of engagement and when appropriate as their matter progresses, about the likely overall cost of the matter and any costs incurred. This should include hourly rates for fee-earners, details of any fixed quote, the possibility of insurance, potential liabilities for other parties' costs, whether public funding might be available, etc.

The client care letter should also always include:

- the name and status of the person dealing with the matter; and
- the name of the person supervising the matter.

In addition, you should ensure that your letter summarises very clearly:

- the key facts of the client's story as relayed in the interview;
- the legal advice given during the interview and any additional advice now available;
- what the next steps will be for the fee-earner; and
- what the client has agreed to do next.

A copy of the firm's standard terms and conditions in duplicate should be enclosed with a request to sign one copy and return it to the fee-earner.

CONTINUE

7.3.2 Legal fees, VAT and disbursements

This is a topic dear to the hearts of partners in a law firm – ultimately, of course, their personal finances depend on the firm's profits. As an ambitious employee, it should therefore also be important to you. Your clients will have very strong views about your charges as well.

7.3.2.1 Fixed fees

Typically, fixed fees are used where the work required is fairly standard, and clients are likely to want to "shop around" for the best quote. Fixed fees are used most often in domestic conveyancing. Legal fees will always be subject to VAT, and if a firm fails to make it clear that VAT will be added onto the legal fees, the firm is not entitled to charge the VAT.

Link to Practice 🔗

You will see that in relation to any practice area, not just conveyancing, a firm must give their client a clear idea of the likely level of costs at the outset of the matter. Conveyancing is an area of work where the conveyancer is likely to deal with a number of additional fees and costs over and above the legal fees (plus VAT) for carrying out the legal work.

These additional costs are known as "**disbursements**". This is any cost or fee which goes through a law firm in relation to a client transaction which relates to something other than the firm's legal fees.

There will be different disbursements for different practice areas but in conveyancing these additional elements which must appear in the client care letter and which can be easily identified once the price of the property in question is known, include search fees and SDLT.

"**Disbursements**" is not a very client friendly word. You might like to think of them and explain them as being outgoings in relation to a client matter other than the firm's legal fees and VAT.

In general, a fixed quote gives less scope for disputes. The main negotiation on fees has been done at the beginning, and the client has budgeted for your costs. Many quotes reserve the right to increase the fees if the nature of the work turns out to be significantly different and more time-consuming than originally envisaged. Clients are likely to be very unhappy if the firm changes the fixed quote without a very careful justification. Again, clients should be very clear about the cost of the disbursements and the fact that the quote excludes VAT.

If a fixed quote has to be changed because of changed circumstances, you **must** discuss it with the client as soon as the problem arises. By the time the transaction has been completed, the client will have assumed that the original quote stands and may well have forgotten how much work was carried out beyond the scope of the original quote. Your original client care letter should have spelled out very clearly the circumstances in which the quote may be revised. Discussing the problem straightaway also means that, in some cases at least, you can present the client with a choice – either proceed on the original basis or

change the instructions recognising that the costs will increase. Many private clients are poor at arithmetic, particularly calculating VAT at 20 per cent. It is good practice to do the calculation for them in your written quote.

Link to Practice 🔗

The client care letter on a sale file will indicate your firm's likely legal fees and VAT. Your firm will also charge the seller for the cost of downloading the title documents from HMLR if the title is registered and may charge a further fee plus VAT for sending the money required to redeem the seller's mortgage on the day of completion (this is often referred to as a telegraphic transfer fee).

The client care letter on a purchase file will also indicate your firm's likely legal fees and VAT together with the telegraphic transfer fee. There are more outgoings and a purchase that will be shown on your firm's client care letter including the search fees, SDLT and HMLR fees.

As you will see, the buyer's conveyancer will carry out a number of searches before exchange of contracts. As a result, most conveyancing firms will require the buyer client to pay for the searches upfront; this is known as obtaining money on account of searches.

CONTINUE

7.3.3 Client care

The key provisions of the **SRA Code of Conduct for Solicitors**, relating to client care are as follows. The numbers in brackets refer to the paragraphs of the code.

1. You only act for clients on instructions from the client or from someone they have properly authorised to give instructions on their behalf **(3.1)**.

2. You ensure that the services provided to clients are delivered in a competent and timely manner **(3.2)**.

3. You do not act where there is a conflict of interest **(6.1** and **6.2)**.

4. You keep client's information confidential **(6.3)**.

5. You ensure that you establish and maintain, or participate in, a procedure for handling complaints in relation to the legal services provided **(8.2)**.

6. You ensure clients are informed, in writing, at the time of engagement about their right to complain about the service or the charges, how a complaint can be made and to whom, the right to complain to the Legal Ombudsman and when such a complaint can be made **(8.3)**.

7. You ensure that, when clients have made a complaint, if this has not been resolved to the client's satisfaction within **eight** weeks, the client is told in writing of the right to complain to the Legal Ombudsman, the time frame for doing so and full details of how to contact the Ombudsman **(8.4)**.

8. You ensure that complaints are dealt with promptly, fairly and free of charge **(8.5)**.

9. You give clients information in a way they can understand so that they are in a position to make informed decisions about the services they need, how their matter will be handled and the options available to them **(8.6)**.

10 You ensure clients will be given the best possible information about how their matter will be priced and, both at the time of engagement and when appropriate as the matter progresses, about the likely overall cost of the matter and any costs incurred **(8.7)**.

11 You ensure that any publicity in relation to your practice is accurate and not misleading, including information about charges **(8.8)**.

12 You ensure clients understand whether and how their legal services are regulated **(8.10)**.

13 You ensure clients understand the regulatory protections available to them **(8.11)**.

There are also relevant provisions in the **SRA Code of Conduct for Firms**, many of which are similar to the ones set out above.

The idea behind these client care provisions is that clients should be aware of how much their legal work will cost (with no nasty surprises at the end!), who is dealing with the work, how the work will be regulated and how they can complain if things go wrong.

It is usual for costs and client care information to be given to clients at the start of the conveyancing transaction in a client care letter.

The Law Society suggests to solicitors that client care information should:

- be presented in a clear and straightforward manner so clients can make informed decisions (e.g. the language should be clear and unambiguous, and perhaps key terms and conditions could be highlighted);
- be alert to communication challenges that clients face (e.g. learning difficulties or language barriers); and

- take account of the client demographic (e.g. a solicitor may present information in a language other than English if the firm has a large client base from a particular section of the community for whom English is not the first language).

CONTINUE

7.4 Dealing with elderly and vulnerable clients in relation to property

When taking instructions from any client in relation to any matter, the legal adviser must ensure that the client is giving instructions freely and is not vulnerable or subject to any undue influence. The legal practitioner must also be satisfied that the client has sufficient mental capacity give instructions.

Conveyancers must be careful to ensure that any elderly or vulnerable client is freely instructing the firm when dealing with a property, typically, this scenario will arise when someone has gone into a care home and their house is being sold to meet the care home fees.





Often, a property owner may have entered into a power of attorney to give someone else the legal authority to act in relation to their affairs. In this case, the conveyancer can take instructions from the attorney provided that the form of power of attorney has been produced, has been properly registered if required and, of course, identification documents for both the donor and the attorney have been taken.

> The situation can be less clear when a conveyancer is instructed directly by someone who may seem frail or infirm. Please review the content in **Chapter 5** regarding the mental capacity issues relating to making a will. Many of the issues which a private client practitioner will need to take into account in that situation will be relevant in relation to a conveyancing matter.

CONTINUE

7.5 Client Identification

You have seen in your ethics course book the importance of and reason for obtaining identification documents for your clients. We will not repeat that information here. Please review it if you need to.

Conveyancing is an area of work which presents a significant risk for law firms because there is a high risk of fraud, cybercrime and money-laundering. As we have seen, conveyancers do not regularly meet their clients and transact by email for much of the time. Conveyancers also have many millions of pounds going through client accounts every day. This is very tempting for fraudsters.

One of the key responsibilities that law firms have therefore is to ensure that their client is who they say they are.

Every law firm will have slightly different policies, procedures and requirements relating to due diligence and client identification. If you work in a law firm, you must make sure that you understand your firm's requirements in this regard.


WHO
ARE
YOU


DRIVING LICE
UK

However, what most firms are likely to require is that a prospective client produces identification documents for the firm to photocopy, certify and retain on file. Usually, the most acceptable documents in this regard are a current passport or driving licence to provide photographic identification coupled with a copy of a utility bill which is less than three months old or council tax bill which is less than 12 months old.

In addition to meeting the client if possible, and taking copies from original identification documents, many conveyancing firms will also carry out electronic identification processes as an additional level of checking and due diligence.



All of the above processes are carried out as part of a firm's anti-money laundering (AML) responsibilities. This process of "**know your client**" is important for conveyancers due to the risk of fraud. There have been a number of cases where a fraudster has duped a conveyancing firm into thinking that they were the owner of a property and on completion the conveyancing firm acting for the purported seller paid the purchase money to the

fraudster which led to the buyer (and in some cases the buyers mortgage lender) losing a significant amount of money.

The most significant case in this line of cases was the Court of Appeal decision in ***Dreamvar (UK) Ltd v Mishcon de Reya and P & P Property Ltd v Owen White and Catlin LLP [2018]*** (usually referred to as "Dreamvar"). In this case, the court decided that, in essence, the seller's conveyancer was liable for the loss caused by their fraudulent client. The rationale for this is that the seller's law firm is best placed to carry out appropriate due diligence and identification procedures to be satisfied that the person/s presenting themselves as the seller of a property is the true owner.

CONTINUE

7.5.1 Other reasons for checking client identity

In addition to the primary reason to comply with AML procedures, there are other reasons why client identity must be checked.

(1) Mortgage lender requirements

One reason is to ensure compliance with the requirements of any mortgage lender. The UK Finance Mortgage Lenders' Handbook contains instructions for conveyancers when they are also acting for buyers/borrowers.

These include requirements to:

- comply with the law and rules relating to money laundering;
- follow professional guidance relating to money laundering;
- obtain evidence of identity to the signatory of any document where the person signing it is not personally known to the solicitor (the handbook provides a list of acceptable identity documents

such as a full valid passport or a valid UK photocard driving licence).

(2) HMLR requirements

Another reason is to ensure compliance with the confirmation of identity requirements imposed by the Land Registry.

(3) SRA code requirements

The **SRA Standards and Regulations** are also relevant in this context as both SRA codes of conduct require solicitors and firms to identify clients.

(4) Protocol requirements

The Law Society Conveyancing Protocol also requires client identity to be checked. One of the general Protocol obligations is to ensure you comply with the Money Laundering Regulations 2017 and client identification requirements. The Protocol also contains provisions about client identity when setting out the steps to be taken during the transaction.

CONTINUE

7.5.2 The challenges of client identification when dealing with an elderly or vulnerable client

There is a risk of sounding ageist when considering the challenges that an elderly client can present. We know doubt all know older people who are busy, sprightly and perfectly capable

of managing their own affairs. However, we have to recognise that acting for older clients whether in a conveyancing or private client context can bring different challenges and we must be aware of them in our dealings with those clients.

A particular challenge when dealing with an elderly client can be the absence of appropriate documentation for identification purposes. This may be even more problematic if the client is no longer living in their own home and is perhaps in a care home.



If a client does not hold a valid passport or driving licence the issue of acceptable photographic documentation for identification purposes arises. If you are presented with this situation, you should immediately refer to a qualified colleague and to your firm's identification policies and procedures. If you are still in difficulty, you should consider talking to your firm's money laundering reporting officer (MLRO).

A firm may decide that they will act for a client who has little in the way of identification documentation if the firm has acted for that client or their family for a number of years. Remember “know your client” is the key phrase. Even if someone in the firm does not have personal knowledge of the client, it is often the case that this type of client will have other documentation available such as their birth certificate, marriage certificate, disabled parking badge (which will contain a photograph), utility bills and correspondence from HMRC and the Department for Work and Pensions regarding pension payments and pension credit. Your firm might take the view that all of this documentation in the round gives a sufficient picture of the client to be satisfied that the client is who they say they are.

Your firm may consider that it is necessary to visit the client whether at home, or in a care home or similar setting. This is not a decision which you will take without referring to someone else. There may be time or cost implications, for example, to visiting a client in their home.

The bottom line is that if any client (not just an elderly client) cannot produce enough documentation to satisfy a law firm that they are who they say they are, then that law firm should decline to act for that individual.

CONTINUE

7.6 Undertakings

Another very important part of professional conduct in relation to the conveyancing process is the undertaking which, in essence, is a professionally binding promise. You must be able to recognise an undertaking and be careful to ensure that you do not give an undertaking when you are not authorised to do so.

7.6.1 How to recognise an undertaking

The SRA defines an undertaking as:

> ***'...a statement, given orally or in writing, whether or not it includes the word "undertake" or "undertaking", to someone who reasonably places reliance on it, that you or a third party will do something or cause something to be done, or refrain from doing something'***

So, an undertaking is a professionally binding promise which is binding on the firm or person giving it. Failure to comply with an undertaking amounts to professional misconduct.

Sometimes recognising an undertaking is easy because the giver of the professional promise will make it clear that they are giving an undertaking by saying: "*I [We] undertake to...*"

However, the problem with an undertaking is that it is **not** necessary to use the phrase *"I undertake"* for a statement to be construed as such. If a person in a law firm makes a statement upon which someone else reasonably places reliance, then the giver of the undertaking will be construed as having done so even if that was not their intention.



Link to Practice 🔗

Be careful that you do not say something to someone in another firm which could be construed as giving an undertaking.

For example, a solicitor in a conveyancing transaction might telephone you and ask you to send a document signed by your client to them. You might think that you are being helpful and reply: "*Yes, I will send that document to you*".

On the basis of your statement, the solicitor may then send your firm some money, perhaps completion funds for example. However, you subsequently find out that you are not permitted to send the promised document to the other side. This is likely to lead to difficulties because you made a statement upon which the solicitor placed reliance (they sent the money), if you do not send the promised document, your firm is likely to be in breach of undertaking.

So, the moral of the story is to be very careful when you are making statements to another firm that you will or will not do something. If in doubt say nothing or make it clear that you are not giving an undertaking. Always follow-up any telephone conversation with written confirmation such as a letter or email.

CONTINUE

7.6.2 The limitations on who should give an undertaking

One of the problems with undertakings is that anyone in a firm can give them. So, an undertaking can be given by a secretary, member of support staff or paralegal, for example. There is no requirement that the person giving the undertaking should be professionally qualified.

Most law firms will, however, try to limit who has the authority to give an undertaking.

> Following the Supreme Court decision in ***Harcus Sinclair v Your Lawyers [2021]*** you may now see this enquiry:
>
> *"In light of the decision of the Supreme Court in **Harcus Sinclair LLP v Your Lawyers [2021]** please arrange for your undertaking to be issued personally by a partner/member/director in your firm and not from the LLP itself".*

Over the last 20 years, legal entities like LLP's and limited companies have dominated the legal market. Whilst these entities are recognised by the SRA, they are not officers of the court. This means it is not possible to bring summary court proceedings against an

incorporated company under the court's inherent (underlying) jurisdiction. An action for breach of contract may be brought (assuming there is a contract) together with reporting them to the SRA. Traditional unincorporated partnerships are unaffected by this decision.

Undertakings should always be given with caution, and it remains to be seen how the Supreme Court's ruling will be carried out in practice. Licensed conveyancers are not subject to the court's inherent jurisdiction and that has not had a significant impact.

The Supreme Court urged the government to legislate to extend its inherent jurisdiction to legal entities.

CILEX's guidance on giving undertakings is available at:

CILEX

undertakings_on_behalf_of_firm | CILEX

Undertakings on behalf of firm Career Progression CILEX Advocates CILEX Coroners CILEX Judges CILEX Judicial Development Programme Pre-Application Judicial Education Programme Meet our CILEX Judges Mentoring Scheme Work shadowing Judicial Work Shadowing Case Studies CILEX Foundation CPD Recording your CPD Membership grades and fees Membership benefits Oxford University Press Member Insights Survey Practice Advice Anti [...]

READ MORE CILEX



Activity

If you work in a law firm, find out whether your firm has a policy in relation to the giving and receiving of undertakings, find it and read it.

CONTINUE

7.6.3 Best practice in relation to undertakings

We have seen that anyone in a law firm can give an undertaking and that it does not have to be in writing. This clearly presents a risk for law firms. Thus, the way to manage that risk is to adopt a best practice approach in relation to undertakings.

Where possible, a firm should avoid giving an undertaking at all. However, as we will see, this is often not possible in a conveyancing transaction.

If an undertaking has to be given then it should only be given in writing and not orally, such as on the telephone. If it is necessary to give an undertaking, the wording of the undertaking should be agreed with the firm on the other side before the undertaking is given.

The ability to perform the undertaking should be in the control of the firm giving the undertaking at the time that it is given. For example, if a solicitor undertakes to send a

transfer signed by their client to the firm on the other side of the transaction, the solicitor giving the undertaking can comply if, at the time they made the promise, they hold the signed transfer. However, if the client is not coming in to sign the transfer until later on, at the time the undertaking is given, the solicitor cannot comply with it. Thus, if the client never comes in to sign the transfer, the solicitor will be in breach of undertaking because they will not be able to send the transfer signed by their client.

Accordingly, an undertaking should be limited to what is in the control of the giver at the time it is made. In the above example, the solicitor should have said: "*I will send you the transfer when my client has signed it"*.

The above undertaking would be much better if it was more specific. So, you can see that the undertaking would be more effective if it mentioned the property address and the name of the client who is signing the document. You can see that there is less room for confusion and argument.



Link to Practice 🔗

Hopefully you can also see that the above undertaking would be even more effective if a timescale was added to it.

So the solicitor might say: *"I will send you the transfer relating to 4 High St, Reading within five working days of my client, James Green, signing it."*

Thus, the undertaking would be **SMART**:

Specific

Measurable

Achievable

Realistic

Timed

CONTINUE

7.6.4 How to record the giving and release of an undertaking

If an undertaking is given on a file the fact that it has been given should be noted on the file. Whether a note of the undertaking is made in manuscript on the front of the file or possibly by sticking a red star on the file, or whether it is an electronic note on a case management system, it should be clear to anyone picking up the file that the undertaking has been given.

Of equal importance to the firm giving the undertaking is the fact that when the undertaking has been performed, they should obtain a release from the firm/person to whom the undertaking was given.

As part of a firm's overall risk management procedures, some law firms have a central undertakings register upon which all undertakings are recorded.

CONTINUE

7.6.5 Examples of undertakings in the conveyancing transaction

We have already seen an example of the use of undertakings in the conveyancing transaction.

You will remember that on a sale, if a conveyancer has to obtain a set of unregistered title deeds from a lender, the conveyancer will give an undertaking to the lender to hold the deeds to the lenders order pending redemption of the mortgage.

An undertaking that is of central importance to the conveyancing transaction is that given by the seller's conveyancer if their client has a mortgage over the property being sold. The buyer's conveyancer will not be prepared to release the completion money to the seller's conveyancer with the seller's mortgage still registered over the property in question. However, the seller will not have the money to pay off their existing mortgage until they receive the purchase money. You can see that this is a classic "**Catch-22**". The way out of this Catch-22 is that the seller's conveyancer will give an undertaking to the buyer's conveyancer to redeem (that is pay off) the seller's mortgage on completion out of the sale proceeds. The buyer's conveyancer will place reliance on this undertaking and on that basis can safely send the purchase money to the seller's conveyancer on completion. You will see this process in action in **Chapters 17** and **18**.



Link to Practice 🔗

Find the Protocol form "**Completion Information and Undertakings**".

There is a copy in **Chapter 17**. Look at question five on the form. We will see that this is the form which the seller's conveyancer will complete and send to the buyer's conveyancer just before completion. The purpose of the form is to give the buyers conveyancer practical information about the completion arrangements (such as bank details and the whereabouts of the house keys) but in addition, you will see that in **question five**, the seller's conveyancer gives the undertaking to the buyer's conveyancer to redeem the listed mortgages.

You will also see the use of an implied undertaking when we look at the process of exchange of contracts in **Chapter 16**. The Law Society's formulae for exchange provide a framework for conveyancers to use when they exchange contracts using the telephone. Exchange of contracts is the point at which a conveyancing transaction becomes legally binding and is thus a very significant stage in the process. In using the formulae, the buyer's conveyancer is giving an implied undertaking to the seller's conveyancer that they will send their client's signed part of the contract and the deposit payable on exchange to the seller's conveyancer that day.

CONTINUE

7.7 Money

7.7.1 Money laundering risks in conveyancing

As we have seen, law firms have been used by criminals to convert the cash proceeds of crime into legitimate investments, such as property.

As a result, solicitors, together with other professionals such as accountants, are required by the **Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017** and the **Proceeds of Crime Act 2002** (as amended) to carry out certain identity checks before carrying out work for clients.



The money laundering legislation imposes a number of important requirements on law firms including a specific nomination of a MLRO. As part of the checks which must be carried out, each client must provide identification such as a passport and a recent utility bill.

There are several key concepts used in the **Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017**. Law firms and their staff are required to apply customer due diligence in checking the client's identity and are required to carry out **risk assessments** of business relationships and transactions.

CONTINUE

7.7.2 Money laundering

Law firms must also comply with strict AML rules. Money laundering is the practice of passing illegal money (proceeds of criminal activity) through legitimate business dealings to "clean" or "launder" the money, making it difficult for the law enforcement agencies to identify the source of the funds.

Chartered legal executives, solicitors and licensed conveyancers (amongst others) must comply with detailed rules and regulations governing money laundering, or they can be guilty of criminal offences.

The current legal requirements are found in:

- the **Proceeds of Crime Act 2002**; and
- the **Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017** (referred to in practice as the **Money Laundering Regulations 2017** (**MLR 2017**)).

Some of the key requirements under **MLR 2017** are that firms must:

- carry out a firm-wide written risk assessment to identify and assess the risk of money laundering and terrorist financing which the firm potentially faces;
- develop and maintain written policies and procedures to manage and mitigate money laundering risks identified in the firm's risk assessment. Such policies and procedures must be proportionate to the size and nature of the firm and should be risk-based;
- comply with various internal rules such as keeping records and appointing a person (known as a money laundering compliance officer (MLCO)) at senior level to be responsible for ensuring compliance with the regulations;
- train staff to recognise potential money laundering situations (e.g. suspicious circumstances such as where a client offers a large sum in cash as payment for a deposit or where a client is unusually secretive about the source of funds);

- report suspicious money laundering activities to the authorities (the National Crime Agency (NCA));
- appoint a MLRO within the firm to whom members of staff can report suspicious transactions and who can then report to the NCA if necessary (the MLRO can be the same person as the MLCO if wished).

One major obligation under **MLR 2017** is the duty to carry out customer due diligence (CDD) in relation to clients and an important aspect of this is that the identity of clients must be checked.

Identity checks will often be dealt with in the initial letter or the firm's terms of business. For example, solicitors will ask to see evidence of identity such as:

- a current signed passport;
- a photocard driving licence;
- a birth certificate; or
- a recent utility bill (in this context, "recent" normally means that the bill must not be more than three months old).

Two items of evidence are usually required (e.g. a passport for proof of identity and a recent utility bill for proof of address).

Some firms also make electronic identity checks with companies offering this service, in which case a small fee will usually be charged to the client.

The **MLR 2017** have been regularly amended since 2017, to cater for developments in the money laundering area.

The **Money Laundering and Terrorist Financing (Amendment) Regulations 2019** made a number of changes to the **MLR 2017**.

These include requirements on firms to:

- take into account additional high-risk factors when assessing whether enhanced checks are required, including transactions between parties based in high risk third countries;
- check and reporting discrepancies in information about company clients with the records at Companies House.

Further information is available at:

FCA



Money Laundering Regulations

Find out more about Money Laundering Regulations (MLRS) and how firms need to comply.

READ MORE FCA

CILEX Regulation is responsible for monitoring and enforcing compliance with AML obligations by chartered legal executives and law firms regulated by CILEX Regulation.

Further information, including the CILEX Regulation whistleblowing policy are available at:

CILEX REGULATION

Reporting suspicious activity - CILEx Regulation

If something doesn't feel right about a client or transaction, it's important to act. Your response will depend on the nature and severity of the concern. Immediate risk or criminal activity If there is an immediate risk to life or safety, call 999.

READ MORE CILEX REGULATION

The SRA is responsible for monitoring and enforcing solicitors' compliance with their AML obligations.

CILEX AML guidance

CILEX anti-money laundering guidance is available at:

CILEX



Anti-Money Laundering (AML) Guidance | CILEX

Anti-Money Laundering (AML) Guidance Career Progression CILEX Advocates CILEX Coroners CILEX Judges CILEX Judicial Development Programme Pre-Application Judicial Education Programme Meet our CILEX Judges Mentoring Scheme Work shadowing Judicial Work Shadowing Case Studies CILEX Foundation CPD Recording your CPD Membership grades and fees Membership benefits Oxford University Press Member Insights Survey Practice Advice Anti Money [...]

UNDEFINED CILEX

Law Society AML guidance

The Law Society guidance note on anti-money laundering (updated in March 2023) is available at:

LAWSOCIETY

Anti-money laundering guidance for the legal sector

This guidance is designed to help legal professionals and firms comply with the Money Laundering Regulations 2017 (as amended).

UNDEFINED LAWSOCIETY

Sanctions legislation

In the wake of the UK imposing sanctions on Russia, all SRA-regulated firms must ensure that they comply with the sanctions legislation including regular and appropriate checks on the sanctions list. If an individual is on a sanctions list and subject to an asset freeze then the firm may not deal with those funds or make resources available.

The firm must also make a report to the Office for Financial Sanctions Implementation (OFSI) if they suspect a client of their firm is a designated person under the financial sanctions regime. Further information can be found under the link below.

If your firm is using an electronic verification system for customer due diligence and sanctions checks, ensure they are refreshing sanctions lists frequently as this is fast moving situation.

SRA



Law firms reminded of importance of sanctions compliance

In the wake of the UK Government imposing sanctions on Russia, we are reminding law firms of the importance of their role in ensuring all measures and restrictions are complied with.

UNDEFINED SRA

Digital ID —

The government is proposing to create a digital identity and attributes framework for the future use of digital ID. The government will legislate to create a digital "trust framework" to oversee a robust certification and accreditation process by which organisations can prove their adherence to the rules of the trust framework. This will enable a legal gateway between public and private sector organisations for data processing and establish the validity of digital ID.

The idea is that users will only have to establish their identity once. The government has specifically stated that this is highly relevant to the conveyancing process where clients are currently required to prove their identity multiple times. Digital identities will aim to have just one digital ID for banks, estate agents, lawyers and HMLR.

In January 2023, the government published a policy paper discussing the UK digital identity and attributes trust framework – see:

GOV.UK



UK digital identity and attributes trust framework

The most recent standards for digital identity and attribute services, with a record of previous versions.

UNDEFINED GOV.UK

CONTINUE

7.7.3 Office and client account

Many areas of legal work require lawyers to look after significant sums on behalf of their clients. Examples include conveyancing where the proceeds of house sales may be hundreds of thousands of pounds and probate where valuable assets are cashed in pending distribution to the beneficiaries. Maintaining lawyers' reputations for financial honesty and integrity is vital.

CILEX Regulation, the SRA and CLC have accounts rules with which their regulated firms must comply. They lay down strict rules governing the separation of clients' money from the firm's own cash. Essentially, whenever money is received by the firm on behalf of the client, it must be paid into the "**client account**". The bureaucratic procedures for receiving and handling cheques and money transfers payable to clients will vary in different firms, but these requirements **must** be met. You must learn the procedures applicable in your firm as soon as possible. Law firms and their staff are able to monitor the sums in the client account using their firm's computer system and printouts. Interest is payable to clients in respect of money held on the client account.

When the firm submits a bill for its work (which may include expenses (disbursements)) **and** it has been approved, the conveyancer can transfer the sums concerned from the client account to the "**business account**". The business account (also commonly referred to as the "**office account**") represents cash owned by the firm and it must be kept strictly separate from the client account. If a cheque is received representing both client money and money to pay a bill, it must first be paid into the client account before the cash to pay the bill (assuming it has been approved) can be transferred.

CONTINUE

7.7.4 Accounts Rules

We have seen that the accounts rules have strict requirements regarding keeping money belonging to clients and to the firm separate. The purpose of the accounts rules is to protect client money. An important obligation on all law firms is to ensure that any money paid into the firm's client account on behalf of a client has cleared through the banking system before it is paid out. This is known as only using cleared funds.

Link to Practice 🔗

Let's imagine that a firm pays in a cheque for £100,000 from a client today. The client has paid the money to the firm so that the firm can complete the purchase of a piece of land on behalf of the client. Completion is tomorrow. Accordingly, the firm pays out the client's £100,000 tomorrow to complete the transaction. Most banks and building societies require at least five working days for cheques to clear. If the client's cheque was dishonoured ("bounced") the day after completion, the firm would be in breach of the accounts rules. This is because they have paid £100,000 out of the client account before it has cleared. Thus they have, effectively, used other client's money to meet that payment.

Link to Practice 🔗

Many firms now send and receive funds via "**telegraphic transfer**" which is a transfer of cash via the banking system from one bank account to another. There is no doubt that this system is quicker than relying on the payment in and out of cheques but it is still just as important to ensure that funds have cleared into your firm's client account before they are paid out. If you are in any doubt as to whether funds are cleared or not, it is essential that you check with your accounts department prior to any funds being sent out, however small the sum involved.

Link to Practice 🔗

We have seen that when acting on a purchase, many firms ask their buyer client for money on account of searches. Make sure that these funds are cleared through client account before submitting your search application.

Another requirement of the accounts rules is that a firm's client account is not used as a "**banking facility**". This means that money

which is paid into and out of the firm's client account should be directly related to a transaction upon which the firm is acting (referred to by the SRA as the provision of "**regulated services**"). If a client asks a firm to receive money into client account for no specific reason, this would be in breach of the accounts rules. One of the reasons for this rule is to try to minimise the risk of money-laundering – law firms must know where the money that they are holding has come from and there must be a specific transactional reason for them to hold it.

Link to Practice 🔗

Look out for this in a conveyancing transaction. When a sale completes, the funds that are left over once all of the outgoings regarding the sale are paid off is called the "**net sale proceeds**". If the clients have a related purchase, it is likely that the net sale proceeds will simply be transferred to the firms purchase file for use on the related purchase transaction.

However, sometimes a seller client does not have a related purchase. This means that the net sale proceeds are payable direct to the seller client. We will see below that it is very important for you to carefully check the bank account to which the proceeds are being sent but you must also look out for the circumstances where a client asks you to send their net sale proceeds to someone else. Many firms have a blanket policy and will decline to do this. If a client asks you to send their net sale proceeds to a garage for the purchase of a new car and to a friend to whom they owe money, your firm's client account is effectively being used as a banking facility. The client could make those payments themselves when they receive the net sale proceeds from your firm. Thus, many firms will insist on sending the net sale proceeds direct to an account in the name of their client.

CONTINUE

7.7.5 Cybercrime risks

Cybercrime creates significant risks for law firms. In broad terms, cybercrime is criminal activity that uses computers to commit crimes. If you work in a law firm, you will probably have fairly regular training on cybercrime risks.



THE NATIONAL CRIME AGENCY (NCA) STATES THAT:

Cyber criminals seek to exploit human or security vulnerabilities in order to steal passwords, data or money directly.

The most common cyber threats include:

- *Hacking – including of social media and email passwords.*
- *Phishing – bogus emails asking for security information and personal details.*
- *Malicious software – including ransomware through which criminals hijack files and hold them to ransom.*
- *Distributed denial of service (DDOS) attacks against websites – often accompanied by extortion*

Cybercrime - National Crime Agency

Law firms are at particular risk of cybercrime due to the number of people in an organisation that are using computers and the fact that they are attractive to criminals for many reasons, including the amount of money that will be held in a client account at any one time.

The NCA reminds us that:

Most cyberattacks could be prevented by taking these basic security steps:

- *Choose strong passwords and don't reuse them for multiple logins.*
- *Install security software such as anti-virus and two-factor authentication. This kind of software is often available for free.*
- *Keep all security software and operating systems updated (this can be set to update automatically).*

Link to Practice 🔗

If you work in a law firm, it is essential for you to find and read your firm's policies and cybercrime and to understand the

procedures that your firm expects you to follow to minimise the risk of falling victim to cybercrime.

One of the procedures that you are likely to adopt in your conveyancing department is not to give or receive bank account details by unencrypted email. The purpose of this procedure is to mitigate the risk of a form of cyber-crime fraud which involves criminals intercepting emails between law firms and their clients. The criminals then remove the real bank account details and replace it with their own. The email then continues to its destination and the recipient unwittingly sends funds via telegraphic transfer to the fraud-ster's bank account rather than the intended bank account.

Link to Practice 🔗

If you are working in a legal firm, look at the information on the footer of your firm's emails. It is likely that every email will include a note informing the recipient that the firm's bank account details will not change during the retainer and that no money should be sent to the firm without first checking the account details by telephone.

As an additional fraud prevention measure, a conveyancing department might telephone the recipient of a telegraphic transfer to verify their bank account details to which the money is going to be sent. Law firms will often ask their clients to provide bank account details at the beginning of a transaction. The firm will not send any money to an account until it has been verified on the telephone.

Link to Practice 🔗

In relation to all of these issues, remember that every law firm has a slightly different procedure or set of requirements. Please ensure that you fully understand your firm's procedures in relation to the giving and receiving of bank account details and how these details are verified prior to funds being sent from the client account.

CONTINUE

7.7.6 Third-Party Managed Accounts

CILEX Regulation, the SRA and the CLC have confirmed that the law firms that they regulate can use Third-Party Managed Accounts (TPMAs). This is an account which, as the name implies, is held by a third party rather than the law firm itself. A firm could use a TPMA either alongside its own client account or instead of a client account but might choose to use such an account instead of holding client money themselves. Money held in a TPMA does not fall under the definition of "**client money**" under the accounts rules and as such it does not have to be held in accordance with those rules. Firms which wish to use a TPMA still have responsibility to act in the best interests of its client and clients would need to know about the arrangements. As yet, TPMAs are not widely used by law firms.

CONTINUE

7.7.7 Transparency rules, in outline

CILEX Regulation has created Transparency Rules which apply to law firms regulated by it which provide legal services in conveyancing and probate.

Law firms are required to publish information on:

1. price;
2. service;
3. complaints procedure; and
4. regulatory status.

The information must be published on the firm's home page or through an easily accessible link from the home page (or be supplied on request if the firm does not have a website).

Further information is available below.

CILEX REGULATION



Price and service transparency - CILEx Regulation

Our Transparency Rules apply to all CILEX Authorised Firms providing legal services to consumers. This includes: we refer to small businesses as businesses meeting two of the following criteria: a) annual turnover must be not more than £10.2 million; b) the balance sheet total must be not more than £5.1 million; c) the average number of employees must be not more than 50.

READ MORE CILEX REGULATION

The **SRA Transparency Rules** are designed to ensure that members of the public and small businesses have all the information they need to make an informed choice about the firm they wish to use, what the costs may be and what regulatory protections apply. The Law Society has published a practice note called "**Price and service transparency**", and has also published guidance for law firms.

The key points are as follows:

- Law firms regulated by the SRA must publish a range of price and service information in relation to a number of areas of legal work, including residential conveyancing.
- Firms must publish the information on their websites in a prominent, clear and accessible place. If the firm does not have a website, the information must be provided to clients on request.
- Firms must publish specified costs information such as the total cost (or an average or range of costs) for their services, the basis of the firm's charges (e.g. fixed fees or hourly rates), what services are included in the costs shown, the key stages of the matter, the normal timeframes for each stage, likely disbursements and the experience and qualifications of the persons who will carry out the legal work.
- All firms, irrespective of their areas of practice, must publish regulatory and complaints related information on their websites (e.g. details of the firm's complaints handling procedures and the fact the firm is regulated by the SRA).



The **SRA Transparency Rules** are now part of the **SRA Standards and Regulations**.

The SRA has produced a digital badge which SRA regulated firms are required to display on their websites so that clients can see the firm is regulated by the SRA. Use of this digital badge has been mandatory since November 2019.

As a practical point, the SRA is not seeking to tell firms how much to charge, or the charging method they should use. The aim is simply to make the information transparent for clients. The SRA has recognised that not all information can be accurate for all clients in all situations and states that the idea is to give clients a "good upfront indication of the likely costs". The client can then approach the firm if wished and obtain a detailed quote based on their particular transaction.

Note that the transparency rules also require that CLC regulated firms advertise their prices in the required format on their website.

CONTINUE

7.8 Taxation

7.8.1 Capital gains tax (CGT)

CGT is a tax on the profit made when a taxpayer sells (or disposes of) an asset that has increased in value. It is the gain that is made which is subject to taxation, not the amount of money received.

Disposing of an asset includes:

- selling it;
- giving it away as a gift or transferring it to someone else;
- swapping it for something else; and
- getting compensation for it (e.g. an insurance payout if it has been lost or destroyed).



Each taxpayer has an annual tax free allowance for CGT purposes. This is referred to as the '**annual exempt amount (AEA)**.'

For the tax year 2024 to 2025 the AEA is set at £3,000 for individuals and personal representatives, and £1,500 for most trustees.

A taxpayer does not have to pay CGT if all the gains in a tax year are under their AEA. Not all disposals are subject to CGT.

Most residential conveyancing transactions do not involve the consideration of CGT. This is because if someone is selling their main home that they have lived in for their entire period of ownership, the "**private residence relief**" applies. The effect of this relief is that, however significant the gain made when the property is sold, there is no CGT to pay on the gain. A conveyancer will generally only be discussing CGT with their client in relation to a sale of land other than their main home, for example a buy-to-let flat.

There is a useful non-technical guide to this relief at:

GOV.UK



Tax when you sell your home

Relief from Capital Gains Tax (CGT) when you sell your home - Private Residence Relief, time away from your home, what to do if you have 2 homes, nominating a home, Letting Relief

UNDEFINED GOV.UK

CONTINUE

7.8.2 Stamp Duty Land Tax (SDLT) and Land Transaction Tax (LTT) in Wales



SDLT is a tax on land transactions with a legal obligation on the buyer to declare the transaction. There is therefore little opportunity to avoid paying the tax. SDLT must be paid when a buyer

purchases a property over a certain price in England or Northern Ireland. SDLT is not payable on properties purchased in Wales as Land Transaction Tax (LTT) is payable instead.

SDLT is payable in relation to various property transfers but relevant to this course book is the fact that it is payable when a freehold property is purchased. SDLT starts to apply at a threshold. If a property is purchased for less than the threshold, there is no SDLT to pay.

HMRC has an online calculator to assist with the calculation of the tax payable:

TAX



Stamp Duty Land Tax Calculator

READ MORE TAX

Details of the current SDLT tax bands and rates are set out in **Chapter 18**.

You will see in **Chapter 18** that the buyer's conveyancer will arrange for the submission of the appropriate SDLT form to HMRC after completion of the purchase. The SDLT tax return

and any tax due must be paid within 14 days of completion.

Land Transaction Tax (LTT) has replaced SDLT in relation to property purchased in Wales with effect from 1 April 2018. LTT is broadly consistent with the SDLT regime but there are some notable differences in relation to the rates and some of the available reliefs, as well as the administration and forms. Details of LTT tax bands and rates are set out in **Chapter 18**.

For further information on forms and available reliefs see:

GOV.WALES



Land Transaction Tax: introduction

Check if you need to pay Land transaction tax (LTT) when you buy or lease property or land in Wales.

READ MORE GOV.WALES

CONTINUE

7.8.3 Inheritance tax (IHT)

IHT is a tax on the estate (i.e. the property, money and possessions) of someone who has died.

There is normally no IHT to pay if either:

1. the value of the estate is below the £325,000 threshold; or
2. the deceased has left everything above the £325,000 threshold to their spouse, civil partner or a charity.

There may still be a need to report the value of the estate to HMRC even if the value is below the threshold. Please see **Chapter 9**.

The standard IHT rate is 40 per cent. It is only charged on the part of the estate that is above the threshold.







Link to Practice 🔗

Example

The estate is worth £500,000 and the tax-free threshold is £325,000.

The IHT charge will be 40 per cent of £175,000 (i.e. £500,000–£325,000).

However, the situation can often be much more complex if someone's home is involved or if the deceased has made lifetime gifts of assets or money within the seven years before they died. The personal representatives of the estate have the responsibility of working out the value of the estate and paying any IHT due before the estate is distributed to the beneficiaries. There are also various reliefs which are available that could reduce the amount of IHT payable.

CONTINUE

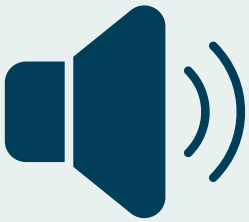
7.8.4 The importance of limiting any taxation advice given to clients

It is fair to say that if a law firm holds itself out as offering private client services, a client is entitled to assume that the firm is competent to deal with and advise on IHT and associated taxation issues.

The situation may be somewhat different in relation to conveyancing services and, specifically, CGT. A conveyancing firm will inform a client in general terms if CGT is likely to be payable when a property is sold, for example because the property in question is not the main home of the seller. However, most conveyancing firms will not hold themselves out as being competent to deal with the detailed CGT tax implications and calculation. The conveyancing firm will usually advise their seller client to obtain detailed accountancy advice prior to exchange of contracts.

Unfortunately for conveyancing firms, SDLT has become more complex in recent years. If a buyer client's circumstances are reasonably straightforward, a competent conveyancing firm would be expected to calculate the correct amount of SDLT and to ensure that it is paid within 14 days of completion. However, clients' personal and business affairs can be quite complex and it is not always obvious how the taxation rules might apply to their particular circumstances. In this case, the conveyancer may advise their buyer client to take accountancy advice prior to exchange of contracts.

It is important that clients do not assume that a law firm will give taxation advice when, in fact, it will not. The scope of the firm's advice should be clearly set out in the client care letter. Most lawyers are not qualified to give detailed or complex tax advice. All clients should understand the extent of the advice which the law firm is willing to offer.



Law Explained

In this recording we will focus on an important letter which is usually sent out by firms at the beginning of a transaction. The letter is called a client care letter. We'll be looking at this letter specifically in the context of a conveyancing transaction, to see what it contains and

why it is sent. **Note** that some firms may send an email rather than an actual letter, but the purpose is the same.



Audio Transcript

Imagine a situation where you were buying a house and you instructed a law firm to act for you on your purchase. Imagine that the firm then presented you with a bill for its fees at the end of the matter and that this bill was for twice as much as you had expected. Also imagine that you were very unhappy with both the bill and the firm's service. You had found it almost impossible to get information about what was going on and you had no idea whether you had the right to complain, let alone who to complain to!

This would clearly be a most unsatisfactory situation for both you and the firm. You would be unlikely to use them again and would probably tell everyone how hopeless they were. The firm would also suffer, in that it would lose repeat business and would find it hard to build up a loyal client base.

Nowadays, there are many provisions which would prevent this sort of situation from happening. Firms are required to provide clients with far more information, and to be far more transparent, than they were in the past. The term used to describe the process of looking after the interests of clients is called "**client care**".

Even before potential clients have instructed a firm to act in a conveyancing matter, they can look at the firm's potential costs on its website and can compare different firms when deciding who to instruct. Under the SRA Transparency Rules, which are part of the SRA Standards and Regulations, firms (including residential conveyancing firms) must publish information on their websites to give a good upfront indication of likely costs. They also have to publish other information, for example stating how the firm is regulated.

In this recording we'll be focusing on an important letter which is usually sent out by firms at the beginning of a transaction. The letter is called a client care letter. We'll be looking at this letter specifically in the context of a conveyancing transaction, to see what it contains and why it is sent. Note that some firms may send an email rather than an actual letter, but the purpose is the same.

Essentially, there are **two** main reasons for sending this letter. On a practical level, it acts as confirmation of the instructions given to the firm. On a more legal level, it is used to provide the information which must be given under regulatory requirements, such as those imposed by the Solicitors Regulation Authority (the SRA).

Let's think about what would be included in a typical client care letter if a client instructed a firm to act in the sale or purchase of a house. We will call the person handling the matter the conveyancer for the

purposes of this explanation.

The letter would confirm the initial instructions given to the conveyancer, any advice given to the client, as well as the next steps to be taken on the client's behalf. The main point of putting these matters in the client care letter is so that there is a written record of them. This would be useful in the event of any queries at a later stage, or if there were any disputes, since the terms of the letter would provide evidence of what had been agreed. For example, there could be an issue if the client had clearly told the conveyancer they were paying an extra £400 for the carpets at the property they were buying and the conveyancer forgot to deal with this, or stated in the conveyancing documentation, that the carpets were being purchased for £700. It also gives the client a chance to comment or disagree with something if it's not right or if it's unclear, for example if the property price is incorrectly stated or if the letter states that clients are having a new mortgage and they aren't!

The letter also gives the conveyancer a chance to enclose any standard forms or leaflets which are relevant to the transaction. For example, a conveyancer will often enclose the Property Information Form (TA6) and the Fittings and Contents Form (TA10) when a client is selling a property, asking the client to complete and return the forms. The conveyancer may also enclose relevant leaflets, for example a leaflet on the possible co-ownership options where the clients are joint buyers.

These are mainly practical reasons for sending the letter, but **what about the more legal ones**?

We'll now look at these in the context of the SRA's regulatory requirements. Note however that there are also client care requirements in the CLC Code of Conduct, which licensed conveyancers must abide by.

The SRA has imposed various regulatory client care obligations in recent years and the current ones are contained in the SRA Standards and Regulations, which came into effect in November 2019. Under these regulations there are two SRA Codes of Conduct which must be complied with, one for firms regulated by the SRA and one for individual solicitors. We'll refer to these as the SRA Codes.

The client care letter is used to provide information to the client which is required by the SRA under its regulatory regime. Some of this information is required to be provided in writing and some is not. Some obligations are very specific, whereas some are framed in wider terms. In any event, the letter provides a good way of providing all the information in an effective and comprehensive way. If there was a client complaint and the SRA investigated the firm, the letter on the file would indicate that the regulatory requirements had been complied with.

So, **what else will be in the client care letter**?

The SRA Codes state that clients must be given information so that they are in a position to make informed decisions about the services they need, so they know how their matter will be handled and so they understand the options available to them.

The client care letter will therefore give clients the name, status and contact details of the person handling their matter and of the person supervising it. The letter may also give details of other staff members who will be familiar with the file and can assist, for example if the fee earner is on holiday or is unavailable when the client calls.

The SRA Codes state that firms must have a complaints' handling procedure and that clients must be told in writing of their right to complain (free of charge) about the firm's service or charges. Clients must be told in writing about the procedure for making a complaint, to whom complaints should be made together with advice about how to complain to the Legal Ombudsman.

The SRA Codes also contain obligations to provide information to clients about how much their matter will cost, both at the time they instruct the firm and, when appropriate, as the matter progresses. The information must relate to the overall cost and any specific costs incurred. In a conveyancing matter, this will normally include details of the firm's fixed fee quote for the work (e.g. £950), the VAT to be added (20% extra) and details of the disbursements (outgoings) which will be payable. Examples of disbursements on a purchase transaction would be fees for the various searches on the property, Land Registry fees, stamp duty land tax if payable and things like bank transfer fees for transmitting the completion funds to the seller's firm.

The letter will also explain when the firm's fees might have to be revised, for example if the work turned out to be far more complex or time consuming than originally thought. Imagine for example that there were unforeseeable and major issues with the title, perhaps involving something vital like the accessway to the property. This might necessitate unexpected work and expense. There will also be information about the firm's charges if the matter does not proceed to completion, for example if the buyer has had a bad survey saying that the roof is about to collapse and decides to withdraw from the purchase before exchange of contracts.

The letter will also give details of all the firm's terms and conditions, asking clients to read and accept them. Typically, clients might be asked to sign a duplicate copy and return it to the conveyancer. These terms and conditions will cover various practical and regulatory issues such as information about confidentiality and data protection, storage of documents, holding of client money, termination of instructions, anti-money laundering obligations, client identification requirements and storage of documents after the matter has been dealt with.

As you can see, a good client care letter contains a lot of important information and hopefully provides a solid foundation for all the conveyancing work to follow.

CONTINUE

Knowledge check

This knowledge check is a self-assessment to see how well you understood the content of this chapter and it does not count towards your course mark.

There are 3 questions in this knowledge check.

1. Suleiman has transferred £15,296 to your firm. This represents £14,000 which is to be used in the purchase of his new flat and £1,296 which will cover disbursements. Into which account will you pay the transfer money initially?

- ◯ a. Business
- ◯ b. Client

SUBMIT

Complete the content above before moving on.

2. Which of the following is **Principle 5 CILEX Code of Conduct**?

a. Act competently in the best interests of your client and respect client confidentiality.

b. Act competently in the best interests of your client and respect client opinions.

SUBMIT

Complete the content above before moving on.

3. What is the SRA's definition of an **undertaking**?

a. '...a statement, given orally or in writing, whether or not it includes the word "undertake" or "undertaking", to someone who **reasonably**

places **trust** on it, that you or a **second** party will do something or cause something to be done, or refrain from doing something'.

b. '...a statement, given orally or in writing, whether or not it includes the word "undertake" or "undertaking", to someone who **reasonably** places **reliance** on it, that you or a **third** party will do something or cause something to be done, or refrain from doing something'.

c. '...a statement, given orally or in writing, whether or not it includes the word "undertake" or "undertaking", to someone who **fairly** places **trust** on it, that you or a **third** party will do something or cause something to be done, or refrain from doing something'.

SUBMIT

Complete the content above before moving on.

7.9 Chapter summary

(1) Chartered legal executives are regulated by CILEX Regulation.

(2) Solicitors are regulated by the SRA Standards and Regulations 2019.

(3) Law firms and their staff have a duty to keep all details of their clients confidential.

(4) Conveyancers should avoid conflicts of interests between clients or a “significant risk” of a conflict of interest.

(5) It is not normally permissible for the same conveyancer to act for the seller and the buyer in the same conveyancing transaction under CILEX Code of Conduct or the SRA rules of conduct; the CLC takes a different view.

(6) Private client practitioners must avoid conflicts when drafting wills particularly in relation to a proposed gift by a testator to the person drafting the will.

(7) Lawyers are under a duty at the beginning of the matter to give their clients details about costs and their clients' right to complain; this is usually done in a client care letter.

(8) Practitioners have legal and regulatory responsibilities under the AML legislation to be able to identify their client.

(9) An undertaking is a professionally binding promise which is binding on the firm or person giving it; failure to comply amounts to professional misconduct.

(10) All undertakings should be recorded on the relevant file.

(11) Firms must assess the risk to their firm of money-laundering and have appropriate policies and procedures in place and must appoint an MLRO.

(12) Staff members should report suspicious activity to the MLRO who can then decide whether to notify the NCA.

(13) CILEX Regulation, the SRA and CLC have accounts rules with which their regulated firms must comply.

(14) Money received by the firm on behalf of the client must be paid into the client account.

(15) Money which belongs to the firm (e.g. payment of bills for legal fees) must be paid into a separate office account.

(16) If uncleared funds are paid out of a client account, this is a breach of the accounts rules.

(17) Prudent firms will take cybercrime and fraud prevention measures.

(18) CILEX Regulation, SRA and CLC regulated firms can use TPMAs.

(19) CILEX Regulation, SRA and CLC regulated firms must include details of their legal fees for conveyancing, probate and other specified legal services on their websites in accordance with their Transparency Rules.

(20) CGT is a tax on the profit made when a taxpayer sells an asset that has increased in value.

(21) Most residential conveyancing transactions do not involve the consideration of CGT due to the private residence relief.

(22) SDLT (and LTT in Wales) is a tax on land transactions which imposes a legal obligation on a buyer to declare the transaction; different rates apply depending on the value of the transaction.

(23) IHT is a tax on the estate of someone who has died.

(24) There is normally no IHT to pay if either:

(a) the value of the estate is below the £325,000 threshold; or

(b) the deceased has left everything above the £325,000 threshold to their spouse, civil partner or a charity.

(25) If the value of the estate is below the threshold, it may still be necessary to report it to HMRC.

(26) The standard IHT rate is 40 per cent. It is only charged on the part of the estate that is above the threshold.

You have completed Chapter 7.

EXIT