

Lawyer/client relationship: Conflict of interest

What happens when a client approaches your firm?

Most people in the UK will need to use the services of a lawyer at some point in their lives. Legal advice may be necessary in a whole range of situations, from starting a company to writing a will.

The lawyer or firm a client will choose not only depends on what type of legal issue they have, but also on a variety of factors including what service they can afford, the location of the firm's office, or the reputation of the firm/individual they want to use.

Before taking on a client: Identifying your client

Lawyers must comply with the law when deciding whether to take on a potential client. New government regulations mean that individuals must be able to prove who they are before they can instruct a lawyer.

This means that the client will have to show their lawyer some personal documents which can include:

- Current signed passport
- Driving licence
- A recent gas, electricity or other household bill

If the client does not have these documents, then they must find another way in which the client can satisfy their lawyer that they are who they say they are.

Duties owed by the lawyer to the client

Lawyers are known as 'regulated' individuals which means they have to follow a special set of rules, and have certain obligations and responsibilities they have to keep at all times. For solicitors, these rules are contained in a document called the Solicitors Regulation Authority (the 'SRA') Handbook ('the Handbook'). For other legally qualified individuals, their obligations and responsibilities are governed by their particular regulating body (for example, see the CILEx Code of Conduct). The requirements of the

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different regulating bodies are quite similar, so for the purpose of simplifying matters we refer here only to the SRA materials.

The very first section of the Handbook sets out 'ten mandatory principles' which apply to all solicitors. They set out the ethical requirements that individuals who are involved in the provision of legal services must follow at all times, even when they are not at work. These principles should be the starting point for all solicitors when faced with an ethical dilemma.

The 10 mandatory principles are as follows:

1. You must uphold the rule of law and the proper administration of justice - this means balancing the obligations you owe to your clients, courts and third parties;
2. You must act with integrity – i.e. honestly, and with strong morals;
3. You must not allow your independence to be compromised - for example, you cannot put yourself in a position where a third party can tell you what to do;
4. You must act in the best interests of each client - though when acting for two clients, the confidentiality of each client comes first;
5. You must provide a proper standard of service to your clients - this includes taking into account the needs and circumstances of each client;
6. You must behave in a way that maintains the trust the public places in you and in the provision of legal services – as undermining this trust could damage the profession's ability to serve society;
7. You must comply with your legal and regulatory requirements and deal with your regulators and ombudsmen in an open, timely and cooperative manner - this includes also complying with your obligations to regulators other than the SRA;
8. You must run your business or carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles – the business needs to be run well for the benefit of the clients;
9. You must run your business or carry out your role in the business in a way that encourages equality of opportunity and respect for diversity – you must act without discrimination of any kind;
10. You must protect client money and assets – this is an integral part of acting in your clients' best interests.

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The second section of the Handbook contains special rules called the SRA Code of Conduct 2011 (“The Code”). This Code sets out the standards and requirements that all solicitors are expected to meet.

The Code sets out the various duties which a solicitor owes their client. For example, solicitors owe their clients a duty of confidentiality which means that all the information which the client shares must be kept confidential subject to very limited exceptions.

Disciplinary proceedings may be brought by the SRA against a solicitor who does not follow the Code. If the solicitor has acted particularly badly, they could be told they can never practise as a solicitor ever again.

Do lawyers need to take on every client’s case?

While a client has an absolute entitlement to choose any lawyer they like, the lawyer does not have to agree to act for them.

There are many reasons why a lawyer may not take on a client - they may be too busy to take on another case, they may think another law firm would be more suitable, they may not have enough knowledge of that particular area of law, or they may not think the individual’s case is strong enough to pursue.

One key reason why a firm or a lawyer may not be able to take a client’s case on is because there is a ‘conflict of interests.’

What is a ‘conflict of interests’?

A ‘conflict of interests’ is a situation where the aims of two different parties are incompatible. This can happen when someone cannot make a fair decision because they will be personally affected by the result. It can also happen when a person must answer to two different individuals or groups whose needs are at odds with each other.



One example might be if a lawyer was asked to act for both a seller and a buyer in relation to the same property. In this case the seller will probably want to sell the

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property for the highest price possible so they can make the most profit. The buyer on the other hand is likely to want the property for the lowest price possible. In this case, the lawyer cannot properly act for both the seller and the buyer because they both want completely opposite outcomes.

As a lawyer you must always try to act in 'the best interests' of each of your clients. This is not possible when the interests of your clients are not the same.

The most common conflict of interest in a criminal litigation scenario is when a lawyer is asked to represent two or more clients in relation to the same matter. One example might be if you are at a police station representing two clients for the offence of robbery, where one client blames the other because they feel it would benefit them.

This is an example of a 'client conflict.' If there is a conflict between two or more current clients a lawyer must not act for all, or any, of the clients¹.

Lawyers need to be aware of potential conflicts of interests from the very first time they meet a new client. They should always check their current and past list of clients to make sure that there is no conflict before they take on a new case. This check should be done before the lawyer takes any confidential information from the prospective client. This known as carrying out a 'conflict check.'

Sometimes the conflict is obvious from the start. However, there are situations in which a conflict may not be immediately clear. When two parties first instruct a lawyer and they both want the same thing, it may be that there is no conflict. The lawyer will, however, need to be aware that if the clients' instructions change later, there may be a conflict.

What happens when a client 'instructs' a lawyer?

As a lawyer you are 'instructed' by your client. Put simply, this means the client will ask you to represent them and you will enter a contractual relationship.

At the beginning of a case, once the initial checks have been carried out, lawyers usually conduct an initial consultation. At this stage, the client should provide some information on their circumstances and what they would like legal advice on. The lawyer

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should provide their initial view on how to proceed and provide an estimate of what they believe the service will cost based on the information provided by the client.

If the client is happy to use the service of that firm/individual, lawyers should send their clients a letter – sometimes known as an ‘engagement letter’, ‘client care letter’, or ‘retainer’ – which sets out what work the lawyer will do and how it will be paid for. Once the client has signed this letter and agreed to its terms, then the lawyer is said to be ‘instructed.’

The role of the lawyer is then to advise their clients on legal matters, so each client can make informed decisions about their case. Clients will then need to “instruct” their lawyer as the case progresses on how they wish them to proceed. The lawyer will then act on those instructions, as long as they are both legal and within the rules of professional conduct.

¹ Subject to exceptions set out in the Code