

Terms of Business

Risk and exposure audit

2025

Introduction

Clear and compliant terms of business are essential for managing client expectations, mitigating legal risk and demonstrating adherence to regulatory obligations. For law firms, these documents must satisfy a web of requirements, from the SRA Standards and Regulations to consumer protection law, data protection and anti-money laundering rules, while also serving as a practical and accessible guide for clients.

Our team regularly supports law firms in reviewing and refining their client care letters and terms of business. We understand the regulatory framework, but more importantly, we know how law firms work and how terms and conditions can either reduce risk or create it.

This audit is designed to help your firm assess its client engagement documentation against regulatory requirements and best practice. It highlights key areas for review, including pricing transparency, limitation of liability, data protection, outsourcing and complaints procedures. It also provides practical guidance on internal processes to ensure consistency and enforceability across the business.

Assessing risk and exposure

- Review client care letter (CCL) and terms of business (TOB).
- Identify if clients are business clients / consumer clients and assess whether firm carries out work within scope of the 2017 AML regulations.
- Assess for compliance with:
 - SRA Standards and Regulations 2019 and SRA guidance
 - Law Society Practice Notes
 - Provision of Services Regulations 2009
 - Solicitors Act 1974
 - GDPR / data protection law
 - Anti-money laundering requirements (to the extent applicable)
 - Consumer Contracts (Information, Cancellation and Additional Charges) Regulations, where applicable
 - Lexcel or other applicable standards, where applicable
- Review contract drafting.

Review templates

- Check information about the firm and contact details provided (including information regarding corporate and regulatory status under SRA Transparency Rules and company law).
- Ensure correct balance between specific information in CCL (with key information highlighted) and general information in TOB.
- Ensure language is accessible and not overly legalistic.
- Check explanation of the purpose of the CCL and TOB and clarity as to what action is required of the client in terms of next steps.
- Check explanation on regulatory status.
- Check information provided on VAT registration.
- Review how pricing and costs information provided.
- Review information on right to complain following guidance on publishing complaints procedure. Ensure reference is made to Legal Ombudsman and that the timeframes for submitting a complaint are accurate and reflect recent changes.
- Review financial services authorisation information.
- Review information provided on banking and Financial Services Compensation Scheme.
- Check if client consent required under confidentiality obligations in Code of Conduct for (a) outsourcing and (b) transfers of information to any affiliated entities.
- Review terms related to interest on client account.

- Review right to cancel, where the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations apply.
- Review statements of responsibility of firm and client.
- Check dispute resolution or jurisdiction clause is compliant with legislation referred to above and does not purport to cut across client's statutory rights (e.g. under the Solicitors Act 1974).

Risk management

- Review statement of scope and exclusions of scope.
- Review jurisdictional limitations.
- Review service standards to manage expectations.
- Review limitation of liability clauses:
 - Check exclusion of personal liability for partners / staff.
 - Check liability cap is not below the minimum level of cover required under the SRA Indemnity Insurance Rules (currently £3m for LLPs and £2m for some qualifying general partnerships).
 - Check liability for consequential loss.
 - Assess for compliance with Unfair Contract Terms Act and/or the Consumer Rights Act.
 - Check exceptions to limitations.

Process

- Review internal process for setting up CCL and TOBs to ensure consistency.
- Consider whether training should be given for new staff (and potentially for existing staff) on using the CCL and TOB.
- Review process for client to agree to the CCL and TOBs to ensure enforceability.

This overview is general guidance. It should not be relied upon without first taking separate legal advice. Neither the author nor Fox Williams LLP accept any responsibility for any consequences resulting from reliance on the contents of this document. Fox Williams LLP 10 Finsbury Square, London EC2A 1AF