

# Chapter 2: Client Care in Practice

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## Aims of this Chapter

This chapter will enable you to achieve the following learning outcomes from the ILEX syllabus:

- 3 Understand professional conduct issues arising in practice
- 4 Understand the importance of client care within legal practice

## 2.1 Introduction

Every relationship with a client is different. No matter how good you are at law, it is the ability to communicate that defines a good lawyer. Remember that first impressions count – the first time you meet your client will set the tone. This chapter will take you through meeting the client for the first time, the conduct of follow-up meetings and dealing with complaints. Although we hope that you will not need to face the latter, everyone makes mistakes and how you deal with these mistakes can make a great deal of difference.

## 2.2 Professional conduct – the first interview

As explained in **Chapter 1**, there are professional conduct rules that govern the relationship between you and your client. **Rule 2 SCC** is designed to help both you and your clients understand each other's expectations and responsibilities. This is particularly important at the beginning of your relationship with the client, although it should be adhered to throughout the case. It aims to ensure that the client is given the information necessary to enable him to make appropriate decisions.

### *Rule 2.01*

#### *Taking on clients*

*(1) You are generally free to decide whether or not to take on a particular client. However, you must refuse to act or cease acting for a client in the following circumstances:*

*(a) when to act would involve you in a breach of the law or a breach of the rules of professional conduct;*

*(b) where you have insufficient resources or lack the competence to deal with the matter;*

*(c) where instructions are given by someone other than the client, or by only one client on behalf of others in a joint matter; you must not proceed without checking that all clients agree with the instructions given; or*

*(d) where you know or have reasonable grounds for believing that the instructions are affected by duress or undue influence, you must not act on those instructions until you have satisfied yourself that they represent the client's wishes.*

*(2) You must not cease acting for a client except for good reason and on reasonable notice.*

A solicitor does not have to take on a client and can refuse to do so. This rule is important for a number of reasons. Circumstances where acting for a client may be a breach of the law or rules include acting where there is a conflict of interest or where there may be attempted money laundering. A lawyer should not act for a client where the firm or the lawyer has insufficient resources, which include:

- knowledge or qualifications;
- expertise;
- time;
- sufficient support staff.



### Example 7

A client contacts you regarding a highly complex but potentially lucrative case. Your firm is one which specialises in criminal and family law but the case concerns a matter of intellectual property. You have no experience in intellectual property law and there is no one in the firm with any experience of this kind of work. You should not accept the retainer as you and your firm lack sufficient expertise to advise on the case fully.

Under **Rule 2.01(1)(c)**, if someone other than the client gives instructions, a lawyer must check with the client that he agrees with the instructions given and that he wishes to instruct your firm. Similarly, if there is more than one client, all clients must agree with the instructions given. Lawyers must guard against clients who are suffering duress or undue influence. Some clients are more vulnerable than others, for example, elderly clients and those with language or learning difficulties. If a lawyer suspects that a client is being pressurised, then the lawyer should exercise his judgment about whether he can continue to act. Signs to watch out for include a friend or relative who accompanies the client and tries to exert pressure; if necessary, the lawyer should insist on seeing the client alone with an independent translator or third party.

#### *Rule 2.02 Client Care*

*(1) You must:*

*(a) identify clearly the client's objectives in relation to the work to be done for the client;*

*(b) give the client a clear explanation of the issues involved and the options available to the client;*

*(c) agree with the client the next steps to be taken; and*

*(d) keep the client informed of progress, unless otherwise agreed.*

(2) *You must, both at the outset and, as necessary, during the course of the matter:*

(a) *agree an appropriate level of service;*

(b) *explain your responsibilities;*

(c) *explain the client's responsibilities;*

(d) *ensure that the client is given, in writing, the name and status of the person dealing with the matter and the name of the person responsible for its overall supervision; and*

(e) *explain any limitations or conditions resulting from your relationship with a third party (for example a funder, fee sharer or introducer) which affect the steps you can take on the client's behalf.*

(3) *If you can demonstrate that it was inappropriate in the circumstances to meet some or all of these requirements, you will not breach 2.02.*

According to **Rule 2.02**, during the first client interview, you must agree an appropriate level of service and explain your responsibilities in the case as well as the client's responsibilities. The client must also be given the best information possible about the likely overall cost of a matter at the outset and, if appropriate, as the matter progresses (**Rule 2.03**).

After the interview, you must also inform the client, in writing, of the name and status of the person dealing with the matter as well as the person who has overall responsibility for supervision of the case.

## 2.3 First interviews

The client interview is an opportunity for the client to meet his lawyer and decide if he wishes to place the case in his hands, an opportunity to ask questions and to receive advice. For the lawyer, an interview is an opportunity to receive information, ask questions and engage the client. First interviews are extremely important and can set the tone for the whole of the client/lawyer relationship. Meetings will also be held with counsel, opponents, witnesses and other professionals.

Interviews can be conducted face-to-face or via telephone, email or letter, although the latter categories probably cannot properly be described as "interviews". The advantages and disadvantages are shown below.

	<b>Advantages</b>	<b>Disadvantages</b>
Face-to-face	Reassuring for client; value of personal contact and human face; good to build a relationship; builds confidence in the lawyer	Lengthy; expensive; requires a maintained office; risk from dangerous client
Telephone	Cheap; convenient	Caller can terminate call more easily than in a meeting; no non-verbal communication; risk of being overheard; lawyer has less control; problem of misinterpretation

	<b>Advantages</b>	<b>Disadvantages</b>
Email	Cheap; quick; flexible location for both parties; instantaneous	Security risk; no control over replies to client, impersonal; can go astray or be unavailable due to technical problems; perceived as informal communication; problem of misinterpretation
Letter	Writer has opportunity to draft carefully; control over speed of communication	Slow; non-verbal communication; problem of misinterpretation
Webcam/Video Conference	Convenient; offers choice of location	Not widely available; expensive equipment

It is important to be fully prepared before meeting a client. The client may be nervous, apprehensive, angry or fearful. It is important that he is reassured and offered an appointment promptly and also that the lawyer is fully prepared for the interview.

Before the first interview, the Law Society advises that:

“when the client attends the interview the following information must be explained to them and confirmed in writing:

- name and status of the solicitor or other person conducting the interview;
- information on the costs for the interview;
- details of who to contact if they have a complaint.”

This information can be prepared in advance and a copy should be kept on file. This gives the client the reassurance of having a contact and information in advance.

### **2.3.1 Preparing for the interview**

The interview should be in private and the client should not be able to be overheard by others nearby. The interview should not be interrupted by the telephone or others entering the room. It should last a sufficient length of time to take instructions properly, give considered advice and to give the client the lawyer’s full attention.

The lawyer should prepare for the interview too. For the first interview, it is important not to pre-judge what the client’s problem may be – it often takes time for a client to disclose his problem, particularly in more sensitive cases. In later meetings, you are likely to have an agenda and will know what the discussion is to be about, but always be prepared for the client to disclose new problems or to have fresh concerns.

You should ensure that your office is prepared for the interview by making sure that you have a ready supply of:

- pens and paper;
- funding/CLS forms;
- court forms in case of a need to make an urgent application;
- standard forms, for example, file checklists;
- business cards.

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