



THE LAW SOCIETY
of SCOTLAND

www.lawscot.org.uk

Standards for Scottish Solicitors

Introduction

This booklet outlines the standards of the solicitor profession in Scotland.

Clients are entitled to good standards from solicitors. Solicitors are entrusted to help people at important times of their lives. Whether buying a house, providing support and advice at a time of bereavement or acting on a client's behalf in a court case, solicitors interact with a wide cross-section of society to protect the rights of the vulnerable and support business and economic growth. The standards that they work to reflect the legal, moral and professional obligations of solicitors to clients, the courts, the public and others in the legal profession.

The majority of these standards are not new; solicitors have always worked to professional standards. However, the Law Society recognised that it would be helpful to have a clearer statement outlining the standards so that they are easily understandable and accessible by both solicitors and their clients.

Service and Conduct

Standards can be divided into standards of conduct and standards of service.

Standards of service refer to the quality of the service a client can expect from a firm of solicitors or an individual solicitor. Typically these include service issues such as delivering on commitments and using clear language to communicate.

Standards of conduct refer to the behaviour of the individual solicitor. These include acting with integrity and honesty and not working for two or more clients where there is a conflict between those clients.

Many standards have both a service and conduct element to them.

Solicitor Standards - Summary

- Solicitors must act with honesty and integrity at all times.
- Solicitors and their staff must keep their client's business confidential.
- Solicitors must act in their client's best interests, although they must balance this duty with their other duties such as their duty to the courts or other solicitors.
- The fees charged by solicitors must be fair and reasonable.
- Solicitors can only work on their client's behalf when they have their client's permission or permission from a court with the relevant authority.
- Solicitors must be thorough, diligent and know the relevant law.
- Solicitors must communicate clearly and effectively with their clients.
- Solicitors will treat each other with mutual respect and trust. This respect and trust includes not communicating directly with each other's clients.
- When providing a legal service, solicitors must be independent and must not be influenced by inappropriate or illegal considerations.
- When solicitors are consulted about matters in which they have a personal interest, they must explain that interest to the client.
- Solicitors must behave with respect towards the court and must state the law and the facts honestly and accurately.
- Solicitors cannot work for two or more clients where there is a conflict between the interests of those clients.
- Solicitors must have a good reason if they intend to stop working for a client.
- Solicitors must treat their clients with respect and recognise their diversity, different cultures and values.

Standards of conduct

Standards of conduct form part of the Solicitors (Scotland) Practice Rules 2008. To read the full practice rules, please go to the Society's website.

1. Trust and personal integrity

Solicitors must act with honesty and integrity at all times.

This duty applies not just towards clients but to all people that solicitors deal with, including the courts, witnesses and other solicitors.

Solicitors must behave in a way which shows that they have personal integrity and are fit to carry out the duties of a solicitor.

2. Confidentiality

Solicitors and their staff must keep their client's business confidential. There is no time limit to this obligation and only the client, Parliament or the court can override this duty.

Confidentiality does not apply when a client indicates to their solicitor that they intend to commit a crime.

3. The interests of the client

Solicitors must act in their client's best interests, although they must balance this duty with:

- the duties that they have to others such as the courts and others in the legal profession
- their duty to remain independent
- the specific rules that solicitors have to follow
- the law
- the principles set out in these standards.

Sometimes there is a conflict between the client's wishes and a solicitor's other duties. On these occasions, solicitors may have to refuse to do what a client asks.

Solicitors must put the interests of their clients before their own or those of their firm.

4. Professional fees

The fees charged by solicitors must be fair and reasonable.

A reasonable fee will take account of:

- the amount of work and the time involved (including how complicated, difficult or novel the matter is)
- the level of specialised knowledge, responsibility and supervision needed
- the length, number and importance of any documents which need to be prepared or read
- the place where and the circumstances in which the work is done
- the urgency of the case
- the amount of money or value of any property involved.

5. Proper Instructions

Solicitors can only work on their client's behalf when:

- they have their client's permission
- responding to an instruction from a court with authority in the matter
- routine work cannot progress because it is impossible or impractical to get the client's permission.

Solicitors must not carry out work for a client if it is illegal or contrary to their professional standards. However, they can advise clients what the law is and what the consequences of any suggested course of action could be. When solicitors agree to carry out work for a client, this does not mean they support or agree with their client's political, social or moral views or activities.

6. Competence, diligence and appropriate skills

Solicitors must have the relevant legal knowledge and skill to provide a competent and professional service. They must be thorough and prepared in all their work and should only agree to work for a client when they can do this adequately and completely within a reasonable period of time.

7. Effective communication

Solicitors must communicate clearly and effectively with their clients. Information should be comprehensive and, where necessary, confirmed in writing using clear and simple language. This allows the client to make informed decisions about the work being carried out or the advice being given.

Information that solicitors must communicate to their clients:

- details of work to be carried out
- costs, including fees
- any significant development - in particular, solicitors should inform clients in writing when it becomes known that the cost of work will be significantly more than was estimated
- who will carry out the work.

8. Relations between solicitors

Much of the work of solicitors involves other solicitors.

Solicitors must treat each other with mutual respect and trust. This respect and trust includes not communicating directly with each other's clients.

9. Independence

When providing a legal service, a solicitor must be independent and must not be influenced by inappropriate or illegal considerations. These include the possibility of unreasonable pressure being put on the solicitor.

10. Disclosure of interest

When solicitors are consulted about matters in which they have a personal interest, they must explain that interest to the client. This will let the client decide whether or not they want the solicitor to continue working for them.

If the personal interest is significant and a solicitor's advice could be affected by it, the solicitor must decline to work for the client and advise them to look for another solicitor.

Solicitors must make information available to their clients about any payments they receive for referring clients to others such as mortgage brokers.



11. Drafting a will

Solicitors must not write a will for a client where they (or anyone close to them such as a spouse or business partner) will benefit from that will.

There are exceptions such as a solicitor writing a will for his/her spouse, or when only a token is left to the solicitor, but in general, where these situations arise, the solicitor must advise the client to use another firm of solicitors.

12. Relations with the courts

Solicitors must behave with respect towards the court and must state the law and the facts honestly and accurately.

Solicitors have a duty to the court to help ensure that those who give evidence only give truthful and honest statements which they can accurately remember. Solicitors will treat those who give evidence with the appropriate respect and courtesy.

When solicitors have to question a person in court who does not have a solicitor and is representing him or herself, they must co-operate with the court in allowing that person to state their case.

13. Conflict of interest

Solicitors cannot work for two or more clients in cases where there is a conflict between the interests of those clients. Equally, a solicitor cannot work for a client when there is a conflict between the interest of the client and the solicitor. This also applies to other organisations that solicitors work for.

Where there is a conflict of interest, solicitors must inform all of the clients involved.

Even where there is only a possible conflict of interest, solicitors should be very careful. In certain situations solicitors can work for both clients if there is full knowledge and agreement by both.

14. Withdrawing from acting if instructions are accepted

Solicitors must have a good reason if they intend to stop working for a client. When solicitors do stop working for a client, they must inform the client of the reason. Solicitors should give their client reasonable notice that they will no longer work for them and that they should seek another source of legal advice.

15. Diversity

It is against the law for anyone, including solicitors, to discriminate because of race, sex, marital status, disability, sexuality, religion and belief or age. This applies to all their professional dealings with clients, employees or other lawyers.



Standards of Service

Standards of service are based on broad principles recognising the range and variety of work that can be undertaken by a solicitor. At the heart of providing a legal service are the interests and needs of the client. Service standards have equal application to individual solicitors (whether as a partner in a firm or an employee) and to firms. The application of these standards requires the use of effective systems, good training and appropriate supervision.

1. Competence

- Know and apply the relevant law
- Keep up-to-date
- Ensure that those to whom work is delegated are properly trained and supervised

In deciding whether or not to agree to work for a client and in carrying out the work, a solicitor must consider the nature and complexity of the matter and must have the appropriate level of professional skills to do that work. This means that a solicitor must consider if he or she has the knowledge

and experience needed. Given the range of specialised areas of legal work it is essential that a solicitor recognises the need to keep his/her knowledge up-to-date and to make an ongoing commitment to continuing professional development.

Where a solicitor delegates work, whether to another solicitor (or solicitors) or to paralegals or other members of staff, it is essential that such staff are properly trained and that there are systems in place to ensure that the delegated work is adequately supervised.

2. Diligence

- Deliver on commitments
- Act in the best interests of each client
- Maintain and review systems of work
- Prompt and transparent fee arrangements

It is expected that a solicitor will fulfil commitments made to the client, other solicitors and the court. By way of example, this would include responding to letters, e-mails and telephone calls within an appropriate or agreed timescale. A solicitor must only agree to work for a client where the work can be done within a reasonable timescale. Where a solicitor considers, for example, that the service to a client would be inadequate because they already have so much work to do that it would not be dealt with within a reasonable period of time, they should not agree to take on the work.

The solicitor will at all times seek to do his or her best for the client. This will include identifying the client's objectives in relation to the work to be done, giving the client a clear explanation of the issues involved and the options available to the client, and agreeing with the client the next steps to be taken. In keeping the client informed, the solicitor must provide updates on progress.

With the increasing advancement of technology, it is expected that the solicitor will regularly look at ways in which technology can support client service. By way of example, this may include client reporting systems, file and data management systems and use of knowledge management systems.

At the conclusion of the work, or earlier if agreed, the solicitor will ensure that the fees to be charged are promptly notified to the client and that a clear explanation and breakdown is provided. If there is any variation from the fees previously discussed, the solicitor must explain the reasons for the variation. The solicitor must respond promptly to any clarification sought from the client.

3. Communication

- Use of clear language and explanation from the perspective of the client
- Agreement on the means and frequency of communication between client and solicitor
- Letters of engagement or their equivalent clearly explaining and defining the service to be carried out, how that work will be carried out, who is responsible and the cost associated with the service
- How complaints will be handled in the event of dissatisfaction

Whatever the nature of the work carried out by a solicitor, communicating effectively with the client is very important. Solicitors must make sure that they communicate clearly, effectively and in plain understandable language with their clients and others. This includes keeping clients informed regularly about progress with the matter. The overriding aim is to ensure that the client can gain a proper understanding of what is being communicated. This necessarily requires the communication to be tailored to suit the audience, their needs and interests. Communication requires the solicitor to listen to the client and understand their objectives.

Solicitors must send a letter to their clients as soon as possible after the first instruction providing information about:

- (a) the work to be carried out;
- (b) what the fees and other costs will be, or the basis upon which such fees and costs will be charged including where appropriate the hourly rate to be charged. Where the client is receiving legal advice and assistance or legal aid, they should be told about any contribution that might be payable, the consequences of preserving or recovering property, and where appropriate their possible liability for the expenses of the other party;
- (c) the name of the person or persons who will do the work; and
- (d) the name of the person the client should speak to if they are unhappy about the work done.

Clients who use a solicitor or firm regularly to carry out the same type of work should be sent such a letter whenever there is any change in the terms previously agreed with them. Solicitors should advise their clients of any significant development in relation to the matter they are working on for them and explain matters clearly in order to allow clients to make informed decisions. Information should be clear, easy to understand and comprehensive and where necessary or appropriate confirmed in writing. In particular solicitors should advise clients in writing as soon as it becomes known that the cost of work will exceed any estimate previously provided.

The duty to communicate effectively includes the duty of solicitors to report to their clients at the appropriate time about all money related to their matter which is handled by the solicitor.

4. Respect

- Treat each person as an individual
- Recognise diversity, different cultures and values

The relationship between solicitor and client is a mutual one built upon trust and respect. Relationships based on openness, trust and good communication enable the solicitor to work in partnership with the client to address their needs. Implicit within a good level of professional service provided by a solicitor is that each and every client will be treated respectfully and with courtesy, in recognition of their dignity and rights as individuals. The solicitor also has a responsibility to treat colleagues, other members of the legal profession and the public with similar politeness and respect.

The solicitor must listen to and understand the interests and needs of the client and bring his or her knowledge and experience to the work.

The solicitor must treat clients fairly and in line with the law. The solicitor must not discriminate against clients because of their age, sex, race, ethnic origin, nationality, special needs or disability, sexuality, health, lifestyle, beliefs or any other relevant consideration.

Most people consulting a solicitor are satisfied that the solicitor and the solicitor's firm have met the standards explained in the booklet.

Occasionally people are dissatisfied. In such situations they should discuss the matter with the solicitor or the firm's client relations partner.

If the matter is still unresolved then the person should contact the Scottish Legal Complaints Commission (SLCC) on 0131 528 5111.

The SLCC is responsible for sorting the complaints into service and conduct. The service complaints are dealt with by the SLCC itself and any conduct complaints against solicitors are referred to the Law Society of Scotland.

More information about making a complaint can be found on the Society's website: www.lawscot.org.uk



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