

# Chapter 2: Professional Conduct and Ethics

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## Aims of this Chapter

This chapter will enable you to achieve the following learning outcome from the CILEx syllabus:

- 1 Understand the main underlying features that enable an act of litigation

## 2.1 Introduction

Although you probably want to jump straight into civil litigation, there are some ethical considerations which we will need to consider first in this chapter. A solicitors' firm and all its employees must have regard, when dealing with matters of any nature and not just civil litigation, to the duty of skill and care owed to the client, and also to the requirements of the **Solicitors Regulation Authority Handbook (SRA Handbook)**. This sets out 10 mandatory Principles which define the values that should shape a fee-earner's professional character and which must be displayed in their professional conduct. It also includes the **SRA Code of Conduct 2011 (SRACC 2011)** which sets out professional duties owed by solicitors and their employees (including chartered legal executives). These duties cover important areas including costs and funding, conflicts of interest and confidentiality.

We will then discuss the requirements of the **Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017** on firms, including the requirements for due diligence.

## 2.2 The Principles

Solicitors and their employees (including chartered legal executives) are required to:

1. uphold the rule of law and the proper administration of justice;
2. act with integrity;
3. not allow your independence to be compromised;
4. act in the best interests of each client;
5. provide a proper standard of service to your clients;
6. behave in a way that maintains the trust the public places in you and in the provision of legal services;

7. comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and co-operative manner;
8. 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;
9. run your business or carry out your role in the business in a way that encourages equality of opportunity and respect for diversity; and
10. protect client money and assets.”

## 2.3 The SRA Code of Conduct 2011 (SRACC 2011)

The SRA Handbook contains **SRACC 2011**. It is divided into five sections:

- you and your client (**Chapters 1–6**);
- you and your business (**Chapters 7–9**);
- you and your regulator (**Chapter 10**);
- you and others (**Chapters 11–12**);
- application, waivers and interpretation (**Chapters 13–15**).

Each section sets out detailed Outcomes (**Os**) which the legal practitioner must achieve. Compliance with the Outcomes is mandatory. Each section also contains Indicative Behaviours (**IBs**) illustrating how legal practitioners can show that they have achieved the Outcomes and complied with the Principles.

We will not cover every section of **SRACC 2011** in this manual. What follows highlights the main provisions that will concern you as a civil litigator.

### 2.3.1 The retainer letter

The relationship between client and legal adviser is one of contract. There is a contract, whether implied or express, between your firm and your client. As with all contracts, it is best practice for the terms of that contract to be express and in writing. This is usually done by writing a letter to the client known as a “retainer letter” or a “client care letter”. This will assist the client to understand precisely what it is that the legal adviser will be doing and it will set out the basis upon which the client will be liable to pay the legal adviser. The retainer letter should also contain the information which you are required to give your client under **Chapter 1 SRACC 2011**; all information should be provided in a clear and accessible form which is appropriate to the needs and circumstances of the client (**IB(1.19)**). The **Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (CC(ICAC)R 2013)** have imposed more onerous obligations into the client care requirements. Clients now have the right to cancel without giving any reason in situations where the legal representative contracts with the client away from the office. This will affect many situations when the client care letter is sent to the client and the client signs it at home rather than in the office. In addition, in the case of serious personal injury matters you may have to visit the client in hospital or at home. Again, if the client signs the client care terms and conditions there then, as it is away from the office, **CC(ICAC)R 2013** will apply. **CC(ICAC)R 2013**

allow for a 14-day cancellation period (so the legal representative is advised not to commence work within this period), and apply only to clients who are individuals. Also note that it is permissible to email the client care and standard terms to the individual only if the individual has agreed to this expressly. If you do not comply with **CC(ICAC)R 2013** you may be subject to criminal investigation. The contract will also be deemed unenforceable and therefore the legal representative will not be paid.

### 2.3.2 Client care – general

Under **Chapter 1 SRACC 2011**:

You must treat your clients fairly (**O(1.1)**); you must provide services in a manner which protects your client's interests in their matter, subject to the proper administration of justice (**O(1.2)**); and the service that you provide must be competent, delivered in a timely manner, and take account of a client's needs and circumstances (**O(1.5)**). In order to meet these outcomes you should:

- agree an appropriate level of service with your client, such as the type and frequency of communications (**IB(1.1)**);
- explain to the client your responsibilities and those of your client (**IB(1.2)**);
- tell your client, in writing, the name and status of the person(s) dealing with the matter, and the name of the person responsible for its overall supervision (**IB(1.3)**);
- explain any limitations or conditions on what you can do for the client (**IB(1.5)**); an example of this would be where your services are being funded by insurance and you are obliged to obtain authority from the insurer to take certain steps.

You must ensure that clients 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 (**O(1.12)**). In order to meet this outcome you should discuss with your client whether the potential outcomes of the client's matter are likely to justify the expense or risk involved, including any risk of having to pay someone else's legal fees (**IB(1.13)**).

You must inform your client in writing at the outset of the matter of their right to complain and how complaints can be made (**O(1.9)**); you must inform your client in writing of their right to complain to the Legal Ombudsman, the time frame for doing so and full details of how to contact the Legal Ombudsman (**O(1.10)**); and the client's complaints must be dealt with promptly, fairly and effectively (**O(1.11)**). In order to meet these Outcomes, you and your firm should:

- have a written complaints procedure which is brought to the client's attention at the outset of the matter (**IB(1.22)**) and which goes on to give further details regarding the required procedure;
- provide a copy of the complaints procedure to the client upon request (**IB(1.23)**);

- in the event that a client makes a complaint, provide the client with all necessary information concerning the handling of the complaint (**IB(1.24)**).

### 2.3.3 Client care – costs and funding

You must ensure clients receive the best possible information, both at the time of engagement and when appropriate as their matter progresses, about the likely overall cost of their matter (**O(1.13)**). In order to meet this Outcome you should:

- clearly explain your fees and if and when they are likely to change (**IB(1.14)**). This is likely to include explaining the hourly rates charged by the firm and when they will be increased;
- warn the client about any other payments for which they may be responsible (**IB(1.15)**). This is likely to include the payment of disbursements such as court fees, expert witness fees and counsel's fees.

You must only enter into fee agreements with your clients that are legal, and which you consider are suitable for the client's needs and take account of the client's best interests (**O(1.6)**). In order to meet this outcome:

- you should discuss how the client will pay, including whether public funding may be available, whether the client has insurance that might cover the fees, and whether the fees may be paid by someone else such as a trade union (**IB(1.16)**);
- where you are acting for a client under a fee arrangement governed by statute, such as a conditional fee agreement or damages-based agreement, you should give the client all relevant information relating to that arrangement (**IB(1.17)**). This will include the circumstances in which your client may be liable for your costs and whether you will seek payment of these from the client.

You must inform your clients of their right to challenge or complain about your bill and the circumstances in which they may be liable to pay interest on an unpaid bill (**O(1.14)**).

### 2.3.4 Conflicts of interest

**Chapter 3 SRACC 2011** covers the important area of conflicts of interest. **Principle 4** requires you to act in the best interests of your clients but sometimes these interests will conflict. The most obvious example of this for a civil litigator is where both parties to a dispute ask you to act on their behalf; you cannot possibly act in the best interests of both parties. It is also possible that the interests of your client might conflict with your own interests.

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