

Conflict of Interest Guidance

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What is a conflict of interest?

A conflict of interest situation arises where a person, or a firm, has two (or more) competing interests, and where serving one of those interests could damage or harm the other.

For you, this could be between the interests of two separate clients or alternatively between you or your firm and a client.

In many situations where a relationship is built on trust, such as that of lawyer and client, the perception of a conflict of interest may be just as damaging as an actual conflict. Reputational damage can easily occur and, given that the SRA conduct rules require solicitors to cease acting in cases of potential conflict as well as actual conflict, these are situations to be avoided at all costs...

Best practice

In order to minimise the chances of a conflict arising, put together a conflict of interest policy/system which, among other things, should:

- Comprise a clear statement of what a conflict of interest is and what to do about it.
- Have a means of registering, reviewing and managing conflicts and potential conflicts..
- Have a means of monitoring the conflicts of interest system.

Each new matter should be conflict checked via a trusted database of historical matters to check not only whether you might have acted for that client or the opposing party before but also whether you have been (or are currently) involved in any related matters involving, perhaps, the same property or company. Conflicts can often be hard to spot at this stage, and the more data that is recorded at the time a new matter is opened, the easier it will be to spot potential problems before they arise.

Key things to look at when determining whether the firm has a direct or potential conflict include:

- Do you already act for any other parties involved in the matter?
- Have you acted for any of the parties involved in the matter previously?
- Do you have any vested interest in the outcome of the matter?
- Do any other individuals at your firm have a vested interest in the outcome?

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When can't you act?

Lawyers are prohibited from acting when a conflict exists, or when there is a significant risk of a conflict, between a client and the firm – either as individuals of that firm or as the firm itself.

Conflict between a firm and a client can often arise where the firm has made (or it is alleged that it has made) a mistake on their client's matter. This is a potential minefield, and we would encourage you to call us if you are in this situation so that we can guide you through safely.

Essentially, you should not attempt to rectify a mistake and should instead alert the client of the problem or potential problem, advise them of the potential conflict and inform them of their right to seek independent legal advice. It may thereafter be appropriate for you to continue acting, but extreme care is required. This is where your broker can either help or put you in touch with someone who can.

You should certainly cease acting where serving the best interest of one client will be to the detriment of another client. This also needs to balance with your duty of confidentiality and disclosure. For example, if one client gives the firm a document which is materially beneficial or detrimental to another client, the firm's ability to safeguard the confidentiality of the client who provided the document and the duty to act in the best interest of the other client will be in conflict. Should this happen, the firm should cease acting for both clients.

When can a firm continue to act?

If the conflict is between two clients the firm can continue to act if those clients share a substantially common interest, or if they are working toward the same objective.

However, safeguards need to be in place if a firm decides to act in either of the above situations. These might include setting up information barriers to prevent the confidential information of one client being divulged to the other.

A firm may also continue to act in the presence of a conflict if both clients are made aware of the potential conflict and agree to the firm continuing to act, providing steps are taken to ensure that the two files are kept separate and that there is no chance of information being passed between the two files. This is a precarious situation. We would advise against going down this route unless necessary.

If the conflict is personal to a specific lawyer at the firm, the client can again be informed. If the client is happy, the firm can continue to act providing that safeguards are in place to prevent the lawyer with the conflict being able to access the file.

Summary

- Conflicts of interest cause regulatory interest and are professionally embarrassing. This is an area where prevention is infinitely better than cure.
- Whilst situations exist where you could potentially continue to act when in potential conflict with your client, this must be approached with extreme care and utter transparency with the client concerned and can only be done with their consent and having advised them of the situation fully (and, if necessary, their right to seek independent legal advice).
- In a potential claim scenario, we would strongly advise you to speak with us before venturing down a route that is liable to put you into a conflict situation. We have dedicated expertise both in house and via our panel solicitors who can safely guide you through.