



Think Ahead



Menu 

The importance of letters of engagement

[Home](#) / [Technical activities and advice](#) / [2020](#) / [June](#) / The importance of letters of engagement

Make sure you include key considerations when drawing up a letter

A letter of engagement is a mandatory requirement which sets out the legal relationship between a professional firm and its client.

It should be provided before any work is undertaken as it sets out key information including the scope of the contract, who will be responsible for the work undertaken, what fee will be charged and when the work should be completed by. All of this will help to protect the firm in the event of any future misunderstandings that could lead to a complaint or claim for professional negligence.

While every letter of engagement will vary – and there are numerous templates available online – there are a number of key areas that should be considered when drawing up your letter. These include:

- scope of work
- responsibility for your work
- your client's responsibilities
- limitation of liability (For further information on limiting liability, visit Lockton's [resource centre](#).)
- fees
- instructions.

Of particular importance to a professional indemnity insurer is whether or not you exclude liability for third-party advice. This is not to be confused with the standard liability of third-party rights clause, where you seek to exclude liability to a third party to whom a client has disclosed advice or information. Rather, this clause is to exclude liability for advice provided by a third party eg a financial adviser, whom you have recommended to your client.

We have seen a number of claims brought against accountants for advice that was not provided directly by them, in particular in the area of tax mitigation where accountants have referred clients to specialist scheme providers. Where there has not been an express exclusion of liability for this third-party advice, the accountants have been drawn into claims where a scheme has come under the HMRC spotlight and the client has found themselves facing large tax penalties.

Another area where we have seen claims arise includes going beyond the scope of work set out in your engagement letter. In one example, the accountant was engaged to provide advice in relation to tax returns, but along the way was asked for advice relating to VAT and capital gains tax. The accountant was later held liable for providing incorrect advice and was required to pay the VAT plus interest and penalties, which went above and beyond the limit of their professional indemnity policy. In the event that this type of request occurs, you should include a provision in your letter for what will happen if the client's instructions change, as it may be necessary to issue an amended letter of engagement.

Other areas where claims occur include a failure to specify who has authority to give instructions and by what method. It is important that you stipulate who has authority to instruct, particularly if you have joint clients or if your client is an organisation, and by what means, as poor communication is a key contributory factor in many claims.

Clarity of instructions is also important when it comes to financial transactions and cybersecurity. Specifically, it is important to be clear who has authority to make bank transfers and who is responsible for advising changes to bank details. Any change in payment instructions should be independently verified before a payment is made.

The above are just some of the common issues we see arising out of engagement letters, if not properly addressed. This is not a full analysis, and of course there are many other factors to consider when drafting your engagement letters, guidance for which can be obtained from your regulating body or other legal or professional services.

To discuss the contents of this article or should you have any other questions, please contact a Lockton adviser on 0117 906 5057 or email ACCAaccountants@uk.lockton.com.

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