

DRAFT RETAINER LETTER 7A: PROPERTY SALE

The need for a retainer letter

Although the issuing of a full retainer letter is far the most obvious means to comply with the SRA Code of Conduct ("the Code") to the effect that clients must be able to make informed decisions about the services they are to be provided and the options available to them".

The full retainer format that forms the basis of the draft letter where the client has regular dealings with the firm, and it might in any event be preferable to issue a full letter. Although an abbreviated letter might be appropriate, care is needed if dispensing with this. The following are some reasons why "my client has told me they do not want a retainer letter".

- there is no authority for the firm to require the client to sign a right to be informed of the firm's terms of business
- should problems arise with the firm, the client will not be able to show that they have been charged for which payment is due

Lexcel implications

The retainer process is also a key part of the firm's compliance with the Lexcel standard and this is therefore a further consideration for those who may intend to become so in the future. The relevant standard in the CQS Scheme ("CQS") the relevant standard is the Lexcel standard in any event and the firm should follow the advice notes in the draft which follows as if Lexcel were the standard.

Unfortunately, Lexcel has not adopted the outcome-focused approach adopted by the SRA. The Lexcel standard is quite mechanistic in its list of requirements and in the Standard - references are made to the relevant section of 6.2 not addressed in the draft. It is clear that dealing with the cost benefit of the firm requires this particular issue to be addressed. It would be the case with costs risks in the firm's business. The Lexcel office is not specific in its requirements to accept the logic of not including a retainer letter, but in the absence of clear guidance, the firm takes a more pedantic approach.

requirement as such it is by the SRA Code of Conduct 1.12 of the SRA Code of Conduct to make informed decisions about the services they are to be provided and the options available to them".

In many cases, especially where the client has regular dealings with the firm, and it might in any event be preferable to issue a full letter. Although an abbreviated letter might be appropriate, care is needed if dispensing with this. The following are some reasons why "my client has told me they do not want a retainer letter".

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The more general terms of business documents, which are less technical in their nature, are likely to be unattractive to clients. The terms of business document ("TOB"): so and lack of differentiation between them is likely to be unattractive to clients, however, and for reasons set out in your complaints process and the liability you seek to impose. For more information see [Infolegal Factsheet 7](#).

The retainer letter in costs litigation

Your retainer correspondence management standard requires you to ensure that your prospects of success if taking proceedings are clear. In a complaint the Legal Ombudsman will consider this in detail.

How to use this precedent

The text that follows consists of variables to be edited on by the user. The precedent as a whole appears as a single document. You may dispense with this once you have edited the variables.

What follows is a template precedent. liability will be accepted for any claim made by the client pack and you should be sure to check the draft is suitable for your firm or department in

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requirements and quite accompanying terms of business document but its length and technical requirements of business document, highlight in your letter and any limitation of your TOB documents see

certain SRA and any so be critical to your if you are subject to a retainer correspondence in

in italicised text for on the drafting of the message that you would use within your firm.

way of formal advice: no the drafts contained in this which the draft is suitable

use this letter, along with within your legal practice consultancy, training or advice safeguard our intellectual

provided, are and remain need to refer to this fact precedent letters in this

Dear

Re: Your purchase of [address]

Thank you for instructing this firm to act on your behalf in relation to the above property and the accompanying Terms of Business. I now propose to do for you, how we will do so and the terms of the proposed transaction.

The scope of the work and your instructions

You have instructed me that it is your wish to purchase the above property at a price of £..... In addition to acting on your behalf in relation to the above property, as is customary, to advise you on the legal aspects of the proposed purchase and to deal with the necessary documentation and paperwork.

The main steps to be taken in relation to the proposed purchase are:

- Check the seller's title to the property, including searching the Land Registry and other providers to ensure that the seller has the right to sell your proposed purchase;
- Reviewing and, if necessary, advising you on the legal aspects of the proposed purchase and to dealing with the seller in relation to the mortgage;
- Exchanging Contracts if you are ready to proceed with the completion of the purchase and the necessary searches;
- Making the appropriate arrangements for the payment of Stamp Duty Land Tax (SDLT) and the completion of the SDLT Return Form;
- Registering your ownership of the property with the Land Registry and ensuring that all SDLT monies are paid.

[You have provided me with/Or I now propose to] write to the Seller in relation to the proposed purchase.

[Confirm any other specific details of the proposed purchase, such as completion date etc.]

Timescale

It is not possible to be specific as to the timescale for the proposed purchase on a number of other factors which may arise, and, if there is a chain of purchases, the timescale may be longer.

purpose of this letter and the accompanying Terms of Business. I now propose to do for you,

above property at a price of £..... The Seller has also instructed this firm to act on their behalf in relation to the proposed purchase and to deal with the necessary documentation and paperwork.

and enquiries about the property and other information. I will also advise you on the legal aspects of the proposed purchase and to deal with the Seller in relation to the mortgage.

and to dealing with the Seller in relation to the mortgage;

and then arranging for the completion of the purchase and the necessary searches;

s for the purposes of Stamp Duty Land Tax (SDLT) and the completion of the SDLT Return Form;

Registry and ensuring that all SDLT monies are paid.

from the Estate Agents [so that you can be informed of the details.

completion date etc.]

proceed as this is dependent on a number of other factors which may arise, and, if there is a chain of purchases, the timescale may be longer.

completed on the same date. If
transactions take between 2-6
may be relevant to you please

Responsibility for the work

¹ I will be the person with responsibility for the continuity of cover in the event of the absence of the [partner/director/associate/assistant manager/para-legal/trainee solicitor] who is in the supervision of this matter in the corporate/commercial department.

Please note that [my secretary
access to the file in relation to
that might arise.

Fees

In relation to this firm's fees, I based on the information available we are required to do work without or if particular complications arise advance of any such additional

If, for any reason, this matter proceeds to that time at my hourly rate of \$1,000 per hour will in any event not be charged.

Any estimate provided in your instructions from you on the additional work which will incur

²In addition to our fees in relation to the transaction, we may incur on your behalf ("disbursements") certain expenses that are necessary in this transaction and

This is an advisory issue in the in Lexcel at 6.2.i and 6.2.j. Case suggests that it is important to the matter - see Pilbrow v Pearl

² The SRA Code of Conduct mentions the availability of fee information about the likely breakdown between fees and disbursements. See SRA Code of Conduct 2007. Such a breakdown

Item	£
Stamp duty	
Land Registry fees	
Search fees <ul style="list-style-type: none"> • Local search • Drainage • Environmental • Land Registry s • Chancel repair • Bankruptcy • Official search 	

At completion it will be necessary for the seller(s) by telegraphic transfer to the charge made to us by our bank processing the payment.

Other charges that can be involved include:

- company search fee
- landlord's consent fee
- other

Value Added Tax ("VAT") at the appropriate rate which is charged on the costs and disbursements at

Payments on account

Our normal practice is to ask for payment of anticipated costs and disbursements. It is helpful if you please let us know as soon as possible the costs of the searches we will be unable to

Please also note that we reserve the right to exercise a 'lien' until we have received payment from release

Identification

representatives of the £ consisting of the sum payable to this firm for

include:

costs and disbursements at

of anticipated costs and disbursements. In the case of any difficulty please let us know as soon as possible the costs of the searches we will be unable to [half/behaves]. Please note that we will be unable to

and paper from release

³The other issue that needs to be taken into account for us to take for our file suitable evidence is the result of the law and regulations. We cannot proceed until this requirement is met. We will bring the required documents to you and advise you on the alternatives.

If you are an individual, we need evidence of your name and address:

(a) as evidence of your name:

- a current passport;
- a current photocard UK driving licence;
- a current valid HM Forces Identity Card; or

(b) as evidence of your address:

- a bank/building society statement of account;
- ⁴a utility bill (receipted for the last three months); or
- a local authority council tax bill.

We are also required by law to verify the nature and will therefore ask you to provide evidence. Please note that in the event of a discrepancy between the information provided to us as to the source of funds and the evidence provided, we may be unable to proceed with your application.

³ On the need for compliance with the MLR 2017 in general, and the need for suitable evidence of the client's identity, see sections 3 and 4. Within Lexcel see section 3.1.5. For more general reference to the regulations at Outcome 1, see the main company details as below. In addition, "reasonable measures" to identify the "ultimate beneficial owner" or "UBO" of the company will opt to conduct a full personal search of the Companies House for "persons with significant control" (beneficial ownership). Although the MLR 2017 r.28(9)). What follows is a summary of the check on one or more of the directors.

⁴ The seemingly odd preference for utility bills (see the Mortgage Lenders Handbook for more details) and so is important if you are a landlord. Note also the duties on both sets of representatives under the Court of Appeal decision in *Re B (Children)* [2008] 1 WLR 1144.

start on work for you is for the purpose of the MLR 2017. We need to do this as a result of the law and regulations and will be unable to proceed until this requirement is met. We will bring the required documents to you and advise you on the alternatives.

ing:

ograph; and

ths;
from the last three

used in a purchase of this form for this purpose. The information from the information actually received we may be

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unable to complete your purchase or if the other party or parties involved

Cyber fraud

You may have seen news reports about cyber fraud, by which criminals monitor and detect e-mail traffic through a number of methods. Such losses have involved conversion by e-mail and we maintain suitable security and confidentiality of all such communications, but given

- we will never request access to your account should become necessary; and
- we will be unable to accept completion monies (if we are also due repayment due to you) or any to us when we take your

Limitation of liability

⁵Having taken into account all liability of whatever nature whether or otherwise, to you and to all our work for losses arising from no circumstances exceed [insert]. For more details of the scope of terms of business document.

Client Care

⁶[Name of firm is/We are] committed to client care. If you are unhappy about

⁵ Outcome 1.1 of the Code of Ethics has been suggested that to apply the value or importance to the client obligation and, in high value transactions, a blanket cap on liability is appropriate with in the "small print" of the recommendation to bring this

⁶ The SRA requires full details of attention, including the firm's (1.10-1.11) and the ability to check (outcome 1.14, relating to the

s for damages from the

fraud, by which criminals monitor and detect e-mail traffic through a number of methods. Such losses have involved conversion by e-mail and we maintain suitable security and confidentiality of all such communications, but given

: in the event that this person in person first to explain

submit any of the completion monies (if we are also due repayment due to you) or any account you have notified

propose that our total (negligence), under statute the benefit of or rely on matter in question will in [insert]. For more details of the scope of terms of business document.

quality legal advice and client care. If you are unhappy about

dealt with "fairly" and it has matters regardless of their This wording reflects this could be given to whether a liability that is merely dealt with - see IB (1.8) and the recommendation to bring this

right to the client's person's scheme (outcomes assessment process In Lexcel see section 6.5.b.

please let me know or, if you prefer, we can discuss this with ourselves) [*Name of complainant*] on [*phone number*] or by email to [*email address*] or by post. The firm's complaints procedure is available on request. The firm's complaints procedure sets out details of the complaints handling process and your entitlement to have bills assessed.

Data protection

This firm is registered with the Information Commissioner's Office and is committed to complying with the provisions of the EU General Data Protection Regulation. If you wish to exercise your rights as a data subject please contact the firm.

Summary

I hope that you have found this letter helpful. If you have any queries as to any of the contents of these documents, please let me know. We can both be confident that we are acting in your best interests. If, on what terms, please sign the documents. If you are not happy with the sum of £ ... on account of the bill, please sign and return one copy of the bill to me. If you are happy with the account and payment details, please sign and return one copy of the bill to me.

We look forward to being of assistance to you.

Yours sincerely

name

For and on behalf of [*name of firm*]

⁸I/we confirm my/our instructions in writing in this letter and the enclosed terms and conditions.

⁷ On the advisability of not publishing this letter until payments are received, see the guidance in the Legal Sector Affinity Group's guidance on the use of the legal sector's standard terms and conditions.

⁸ It is preferable for a retainer to be agreed in writing, but not strictly essential (See FCA's guidance on the costs implications in not having a written retainer, r.48(8) and under s.74(3) of the Legal Services Act 2007).

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Signed

Dated

Signed

Dated

Any other signatories please sign