

LPC BUDDY

Professional Conduct & Regulation
2023 / 24



THE DEFINITIVE,
DISTINCTION QUALITY
STUDY GUIDE FOR THE LPC

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Professional Conduct & Regulation

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Colour Coding Guide	<ul style="list-style-type: none"> ❖ Blue Text – Reference to statutes and case law. ❖ Green Text – Reference to textbook paragraphs¹, workshop tasks² and other notes in LPC Buddy. ❖ Purple Text – Reference to Professional Conduct Rules or Principles.
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www.lpcbuddy.com
support@lpcbuddy.com

¹ Textbook references are to the CLP Legal Practice Guides by CLP Publishing.

² References to Workshop tasks are to University of Law workshop tasks (which may be adopted by other LPC institutions). The content and structure of Workshops is subject to change at short notice and so task references should be treated as a general guide only.

The Principles¹

❖ Legal Foundations, Chapter 8

Overview	<ul style="list-style-type: none"> ❖ The SRA Codes of Conduct are underpinned by <u>7 overarching Principles</u>. ❖ These form the “<i>fundamental tenets of ethical behaviour that [the SRA] expect all those [the SRA] regulate to uphold</i>”, and apply: <ul style="list-style-type: none"> ➤ To <u>all individuals and bodies regulated by the SRA</u>; and ➤ To a solicitor’s <u>personal</u>, as well as <u>professional</u> life.
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What happens when two Principles conflict?	<ul style="list-style-type: none"> ❖ Where <u>two principles conflict, those which safeguard the wider public interest take precedence</u> over individual client interests (Introduction to the SRA Handbook). ❖ A solicitor should, where relevant, inform their client of the circumstances in which their duty to the court and other professional obligations <u>outweigh</u> their duty to the client.
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	<u>Principle</u>	<u>Points to Note</u>	<u>Examples of Breach</u>
<u>Principle 1 – Justice and the Rule of Law</u>	<ul style="list-style-type: none"> ❖ A solicitor must act in a way that <u>upholds the constitutional rule of law</u> and the proper administration of justice. 	<ul style="list-style-type: none"> ❖ This is arguably an <u>overriding duty</u>; as stated above, the Introduction to the SRA’s Handbook provides that where two principles conflict, the one which <u>safeguards the public interest</u> takes precedence, which will commonly be the need to uphold justice and the Rule of Law. ❖ Breaches of certain obligations in the Codes of Conduct are highly likely to also breach this <u>Principle</u>, for instance, where a solicitor fails in their obligation to: <ul style="list-style-type: none"> ➤ Not mislead or attempt to <u>mislead the court</u> (para 1.4 CFS / CFF). ➤ Not <u>misuse or tamper with evidence</u> or attempt to do so (CFS para 2.1 / CFF para 7.1(a)). ➤ Not seek to <u>influence the substance of evidence</u> e.g., by generating false evidence, or persuading witnesses to change 	<ul style="list-style-type: none"> ❖ A solicitor commits a criminal offence. ❖ A solicitor calls a witness whose evidence the solicitor knows is untrue. ❖ A solicitor continues to act if a client asks the solicitor to mislead the court / third parties. ❖ A solicitor constructs facts to support a client’s case/falsifying documents.

¹ [Introduction to Professional Practice, Professional Conduct Workshop 1, Prep Task 1](#)

² [SRA Principles - Introduction](#)

	<u>Principle</u>	<u>Points to Note</u>	<u>Examples of Breach</u>
		<p>their evidence (CFS para 2.2 / CFF para 7.1(a)).</p> <ul style="list-style-type: none"> ➤ Only make assertions or put forward statements, representations or submissions to the court or others which are properly arguable (CFS para 2.4 / CFF para 7.1(a)). 	
Principle 2 – Public Trust	<ul style="list-style-type: none"> ❖ A solicitor must act in a way that <u>upholds public trust and confidence</u> in the profession. 	<ul style="list-style-type: none"> ❖ This Principle is <i>particularly relevant</i> to behaviour in a solicitor’s personal life. ❖ All Principles regulate a solicitor’s behaviour in their <u>personal, as well as professional life</u>, however immoral or illegal behaviour “outside of the office” can easily damage the reputation of the profession, and amount to a breach of this Principle. 	<ul style="list-style-type: none"> ❖ A solicitor is convicted of a criminal offence. ❖ A solicitor makes offensive posts on social media. ❖ A solicitor gives a false reference. ❖ Using money from the client account to fund a new car. ❖ Involvement in fraudulent investment schemes. ❖ Sending of derogatory or offensive emails. ❖ Misleading advertising.
Principle 3 – Independence	<ul style="list-style-type: none"> ❖ A solicitor <u>must act with independence</u>. 	<ul style="list-style-type: none"> ❖ This Principle refers to both the fact that: <ul style="list-style-type: none"> ➤ A solicitor <u>must give independent advice</u> (that is, advice that is in their client’s best interests and not coloured by any personal interest of the solicitor); <u>and</u> ➤ Ensure <u>their own, and their firm’s independence</u>, meaning a solicitor should avoid being in a position where they are influenced by a third party, or 	<ul style="list-style-type: none"> ❖ Giving control of a practice to a third party beyond the reach of the SRA. ❖ If the solicitor will be called as a witness to a matter they are acting on, they must satisfy themselves that this will not prejudice their independence.

	<u>Principle</u>	<u>Points to Note</u>	<u>Examples of Breach</u>
		<p>give control of their firm to a third party.</p> <ul style="list-style-type: none"> ❖ This includes independence from the client; meaning a solicitor may need to say “no” to a client if they are asked to do something which would lead to the solicitor breaching their obligations under the Codes of Conduct. 	
Principle 4 – Honesty	<ul style="list-style-type: none"> ❖ A solicitor must act with honesty. 	<ul style="list-style-type: none"> ❖ The SRA takes this extremely seriously; where a solicitor is convicted of a dishonesty offence, they will likely be struck off. ❖ The SRA adopts a two-stage test³ in determining whether a solicitor’s conduct is dishonest: <ul style="list-style-type: none"> ➤ What was the solicitor’s actual knowledge or belief of the facts? This part of the test is subjective. ➤ In view of the solicitor’s knowledge or belief at the time, was their conduct dishonest by the standards of ordinary decent people? This part of the test is objective. ❖ Again, it is important to note that this applies to the solicitor’s professional life and life outside practice. 	<ul style="list-style-type: none"> ❖ There are several SDT Tribunal decisions where solicitors have been struck off for dodging train fares. ❖ Conviction of a criminal offence where dishonesty is a component element of the offence, such as theft. ❖ Lying on a CV. ❖ Helping other people to act improperly, such as by giving credibility to a dubious or suspicious investment scheme run by others. ❖ Backdating or creating false documents.
Principle 5 – Integrity	<ul style="list-style-type: none"> ❖ A solicitor must act with integrity. 	<ul style="list-style-type: none"> ❖ A solicitor should behave in a manner which reflects the position of trust that they are put in. ❖ This involves, for example, avoiding misleading, or taking unfair advantage of clients or third parties. 	<ul style="list-style-type: none"> ❖ A solicitor obtains litigation funding on behalf of a client but uses this to repay the firm’s debts⁴.

³ In accordance with the Supreme Court decision in [Ivey v Genting Casinos \(UK\) Ltd t/a Crockfords \[2017\] UKSC 67](#)

⁴ [Wingate and another v SRA and Malins v SRA \[2018\] EWCA Civ 366](#)

	<u>Principle</u>	<u>Points to Note</u>	<u>Examples of Breach</u>
		<ul style="list-style-type: none"> ❖ This applies to: <ul style="list-style-type: none"> ➤ All professional dealings with clients, the court, other lawyers the public; ➤ The solicitor’s private life if the conduct touches realistically upon their practice of the profession, or it is sufficiently serious that it calls into question whether they meet the high standards required of a member of the profession. ❖ <i>“You [must] not abuse your position by taking unfair advantage of clients or others” (para 1.2 CFS / CFF).</i> 	<ul style="list-style-type: none"> ❖ A solicitor mishandles or misappropriates client funds (for example by using them for an unauthorised purpose). ❖ The solicitor otherwise takes unfair advantage of clients or third parties.
<u>Principle 6 – Equality, Diversity and Inclusion</u>	<ul style="list-style-type: none"> ❖ A solicitor must act in a way that encourages equality, diversity and inclusion. 	<ul style="list-style-type: none"> ❖ Solicitors must comply with all relevant equality and anti-discrimination laws, including the Equality Act 2010. ❖ Solicitors and firms cannot allow their personal views to affect professional relationships and the way in which they provide their services (para 1.1 CFS / CFF). 	<ul style="list-style-type: none"> ❖ Failing to make reasonable adjustments for disabled clients/ employees. ❖ The solicitor is found guilty of unlawful discrimination. ❖ Discriminating when instructing a barrister on the grounds of, for example, age, race, sex or disability. ❖ If such a preference is client driven and they will not change their mind, you must cease to act.
<u>Principle 7 – Best Interests of the Client</u>	<ul style="list-style-type: none"> ❖ A solicitor must act in the best interests of each client. 	<ul style="list-style-type: none"> ❖ A solicitor-client relationship is a fiduciary relationship; the solicitor owes their client a duty at common law to put the interests of the client before their own. ❖ You must ensure that the service you provide to clients is competent and 	<ul style="list-style-type: none"> ❖ A solicitor abuses their position by taking advantage of clients (in breach of para 1.2 CFF / CFS). ❖ A solicitor misleads or attempts to mislead

	<u>Principle</u>	<u>Points to Note</u>	<u>Examples of Breach</u>
		<p><u>delivered in a timely manner</u> (para 3.2, CFS 3.2 / para 4.2, CFF).</p> <ul style="list-style-type: none"> ❖ This may include, for example: <ul style="list-style-type: none"> ➤ Declining to act if you are being asked to act in an area outside of your specialism. ➤ <u>Ensuring you have sufficient capacity to act.</u> 	<p><u>clients</u> (in breach of para 1.4 CFS / CFF).</p> <ul style="list-style-type: none"> ❖ A solicitor acts where their <u>personal interests conflict</u> with the interests of their client (in breach of para 6.1 CFS / CFF). ❖ A solicitor places themselves in a situation where <u>confidential information could be disclosed to another</u> (new or existing) <u>client</u> (in breach of para 6.3 CFS / CFF - (confidentiality)). ❖ Acting where there is a <u>conflict of interest between clients</u> (<u>unless</u> either of the exceptions set out in the Codes are met (para 6.5 CFS / CFF)). ❖ <u>Making a secret profit</u> whilst acting for the client. Solicitors and firms must <u>account to clients for any financial benefit</u> they receive as a result of their instructions (para 4.1 CFS/ para 5.1 CFF).

<u>Example 1</u>	<ul style="list-style-type: none"> ❖ <u>Mr Monks wishes for you to act for him. He wishes to sue X Co in which you hold a significant number of shares.</u> <ul style="list-style-type: none"> ➤ You should not act in this situation. ➤ In accordance with Principle 7, you must act in your client’s best interests, which would conflict with your own in the circumstances. ➤ In accordance with Principle 3, you must also not allow your independence to be compromised. This would be the case in this instance due to the conflict between Mr Monks’ interests and yours, as Mr Monks’ actions may affect the share value of the company.
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Example 2

- ❖ **You specialise in patent disputes and are already overworked and struggling to keep up with your existing caseload. A client comes to you with lucrative work. Should you take this on?**
- No, you should not.
 - In accordance with [Principle 7](#), you must act in your client's best interests, which includes providing a proper standard of service to your clients.
 - Although this would be the case due to your *expertise*, if you are *overworked* there is a risk you would not comply with this Principle.



Client Care

❖ *Legal Foundations – Chapter 11; 7.4*

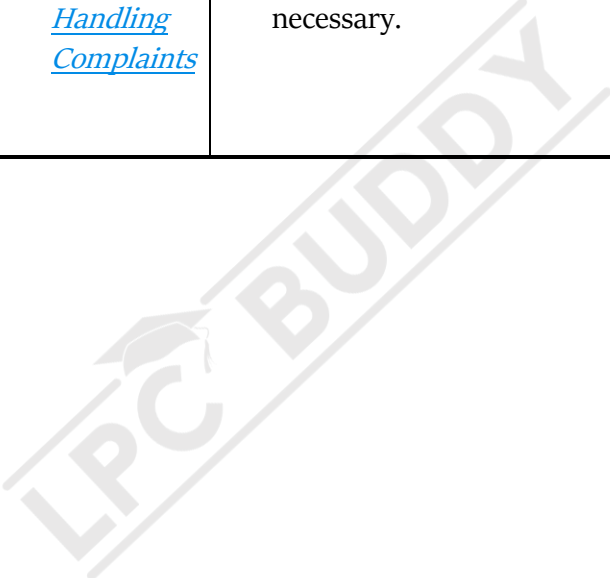
Overview	<ul style="list-style-type: none"> ❖ The <u>Codes of Conduct</u> set down requirements on both solicitors and firms which dictate how a client should expect to be treated during the course of their retainer. ❖ The provisions cover various areas, including: <ul style="list-style-type: none"> ➤ The standard of service provided; ➤ The management and supervision of personnel; ➤ A requirement to account to clients for financial benefits; ➤ A requirement to explain to clients how services are regulated; and ➤ The management and handling of complaints.
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Standard of Service	<ul style="list-style-type: none"> ❖ Solicitors should provide a competent level of service to their clients, in accordance with the following obligations: 		
<i>Legal Foundations, 11.2.1 – 11.2.2</i>	A solicitor/firm must:	Source	Explanation
<u>Provide a competent level of service...</u>	<ul style="list-style-type: none"> ❖ Para 3.2, CFS ❖ Para 4.2, CFF 	<ul style="list-style-type: none"> ❖ The service provided by solicitors and firms must be competent and delivered in a timely manner. 	
<u>...That is in accordance with the individual client's attributes.</u>	<ul style="list-style-type: none"> ❖ Para 3.4, CFS ❖ Para 4.2, CFF 	<ul style="list-style-type: none"> ❖ In providing a competent level of service, the solicitor must take account of their client's attributes, needs and circumstances. ❖ This includes, for example, the type and frequency of the solicitor's communications being tailored to an individual client's needs and preferences. 	
<u>Maintain competence.</u>	<ul style="list-style-type: none"> ❖ Para 3.3, CFS ❖ Para 4.3, CFF 	<ul style="list-style-type: none"> ❖ A solicitor must: <ul style="list-style-type: none"> ➤ Maintain their competence to carry out their role; and ➤ Keep their professional knowledge and skills up-to-date. 	
<u>Ensure that clients are able to make informed decisions.</u>	<ul style="list-style-type: none"> ❖ Para 8.6, CFS ❖ Para 7.1(C), CFF 	<ul style="list-style-type: none"> ❖ Solicitors and firms must: <ul style="list-style-type: none"> ➤ Give clients information in a way that they can understand; and ➤ Ensure clients are in a position to make informed decisions about: <ul style="list-style-type: none"> ▪ The services they need; ▪ How their matter will be handled; and ▪ The options available to them. 	

			<ul style="list-style-type: none"> ❖ This includes, for example, discussing with a client: <ul style="list-style-type: none"> ➤ Whether the likely outcomes of the client’s matter justify the risk/expense involved; and ➤ The risk of paying someone else’s legal fees.
<p>Personnel</p> <p><i>Legal Foundations, 11.2.4</i></p>	<ul style="list-style-type: none"> ❖ To provide a competent standard of service, solicitors and firms must adhere to certain requirements relating to the management and supervision of personnel: 		
	<p>A solicitor/ firm must:</p>	<p>Source</p>	<p>Explanation</p>
<p>Ensure those they <i>manage</i> are <i>competent</i> to carry out their role.</p>	<ul style="list-style-type: none"> ❖ Para 3.6, CFS 	<ul style="list-style-type: none"> ❖ A solicitor must ensure that the individuals they manage: <ul style="list-style-type: none"> ➤ Are competent to carry out their role; and ➤ Keep up to date their: <ul style="list-style-type: none"> ▪ Professional knowledge and skills; ▪ Understanding of their legal, ethical and regulatory obligations. 	
<p>Provide <i>effective supervision</i> and remain <i>accountable</i> for work carried out by those they supervise.</p>	<ul style="list-style-type: none"> ❖ Para 3.5, CFS ❖ Para 4.3, CFF ❖ Para 4.4, CFF 	<ul style="list-style-type: none"> ❖ Solicitors and firms, when supervising others, remain accountable for the work carried out through them. ❖ They must, therefore, supervise effectively work that the people whom they supervise do for clients. ❖ Firms have an additional obligation to have an effective system in place for supervising clients’ matters (para 4.4, CFF). 	
<p>Financial Benefits</p>	<ul style="list-style-type: none"> ❖ Solicitors and firms must properly account to clients for any financial benefit they receive as a result of their instructions (para 4.1, CFS / para 5.1, CFF). ❖ “Accounting for any financial benefit” is not an obligation to pay this to the client; it could mean any of the following: <ul style="list-style-type: none"> ➤ Paying it to the client. ➤ Offsetting it against their fees. ➤ Keeping it where the client has agreed to this. 		
<p>Provision of information on regulation.</p> <p><i>Legal Foundations, 11.2.5</i></p>	<ul style="list-style-type: none"> ❖ Solicitors and firms must ensure that clients understand whether and how services they provide are regulated (para 8.10, CFS / para 7.1(c), CFF). ❖ This includes: <ul style="list-style-type: none"> ➤ Explaining the activities that are carried out by the solicitor as an “authorised person” (i.e., someone authorised by the SRA, or CiLEX, etc.) ➤ Explaining what services are regulated by an approved regulator; and 		

	<ul style="list-style-type: none"> ➤ Ensuring that they <u>do not represent a non-authorised business</u> as being <u>regulated</u> by the SRA. ❖ Solicitors and firms must also ensure that clients understand the <u>regulatory protections available to them</u> (para 8.11, CFS / para 7.1(c), CFF), including, for example: <ul style="list-style-type: none"> ➤ Their entitlement to the protection of the <u>SRA Compensation Fund</u>. ➤ The fact that the firm has <u>indemnity insurance</u>. 												
<p>Complaints</p> <p><i>Legal Foundations, 7.4</i></p>	<ul style="list-style-type: none"> ❖ A number of provisions dictate the standards of service the SRA expect firms to adhere to when <u>managing and handling complaints</u> from clients: <table border="1" data-bbox="302 590 1511 1944"> <thead> <tr> <th data-bbox="302 590 505 674"><u>A solicitor/ firm must:</u></th> <th data-bbox="505 590 724 674"><u>Source</u></th> <th data-bbox="724 590 1511 674"><u>Explanation</u></th> </tr> </thead> <tbody> <tr> <td data-bbox="302 674 505 915"><u>Establish or participate in a complaints handling procedure.</u></td> <td data-bbox="505 674 724 915"> <ul style="list-style-type: none"> ❖ Para 8.2, CFS ❖ Para 7.1(c), CFF </td> <td data-bbox="724 674 1511 915"> <ul style="list-style-type: none"> ❖ Solicitors and firms must ensure that they: <ul style="list-style-type: none"> ➤ Establish and maintain; or ➤ Participate in... ➤ A <u>procedure for handling complaints</u> in relation to the legal services they provide. </td> </tr> <tr> <td data-bbox="302 915 505 1514"><u>Inform the client how they can complain.</u></td> <td data-bbox="505 915 724 1514"> <ul style="list-style-type: none"> ❖ Para 8.3, CFS ❖ Para 7.1(c), CFF </td> <td data-bbox="724 915 1511 1514"> <ul style="list-style-type: none"> ❖ Clients must be informed: <ul style="list-style-type: none"> ➤ In <u>writing</u>; ➤ At the <u>time of engagement</u>; ➤ About: <ul style="list-style-type: none"> ▪ <u>Their right to complain</u>; <ul style="list-style-type: none"> • About services and charges; ▪ <u>How complaints may be made and to whom</u>; and ▪ <u>Any right they have to make a complaint to the Legal Ombudsman and when they can make such a complaint.</u> </td> </tr> <tr> <td data-bbox="302 1514 505 1944"><u>Resolve complaints within 8 weeks.</u></td> <td data-bbox="505 1514 724 1944"> <ul style="list-style-type: none"> ❖ Para 8.4, CFS ❖ Para 7.1(c), CFF </td> <td data-bbox="724 1514 1511 1944"> <ul style="list-style-type: none"> ❖ If a complaint has not been resolved to the client's satisfaction <u>within eight weeks</u>, the client must be informed, in writing, of: <ul style="list-style-type: none"> ➤ Their <u>right to complain to the Legal Ombudsman</u>; ➤ The <u>timeframe</u> for doing so; and ➤ Full details of <u>how to contact the Legal Ombudsman</u>. ❖ If the firm's complaints procedure has been exhausted, solicitors and firms are obliged to inform the client: </td> </tr> </tbody> </table>	<u>A solicitor/ firm must:</u>	<u>Source</u>	<u>Explanation</u>	<u>Establish or participate in a complaints handling procedure.</u>	<ul style="list-style-type: none"> ❖ Para 8.2, CFS ❖ Para 7.1(c), CFF 	<ul style="list-style-type: none"> ❖ Solicitors and firms must ensure that they: <ul style="list-style-type: none"> ➤ Establish and maintain; or ➤ Participate in... ➤ A <u>procedure for handling complaints</u> in relation to the legal services they provide. 	<u>Inform the client how they can complain.</u>	<ul style="list-style-type: none"> ❖ Para 8.3, CFS ❖ Para 7.1(c), CFF 	<ul style="list-style-type: none"> ❖ Clients must be informed: <ul style="list-style-type: none"> ➤ In <u>writing</u>; ➤ At the <u>time of engagement</u>; ➤ About: <ul style="list-style-type: none"> ▪ <u>Their right to complain</u>; <ul style="list-style-type: none"> • About services and charges; ▪ <u>How complaints may be made and to whom</u>; and ▪ <u>Any right they have to make a complaint to the Legal Ombudsman and when they can make such a complaint.</u> 	<u>Resolve complaints within 8 weeks.</u>	<ul style="list-style-type: none"> ❖ Para 8.4, CFS ❖ Para 7.1(c), CFF 	<ul style="list-style-type: none"> ❖ If a complaint has not been resolved to the client's satisfaction <u>within eight weeks</u>, the client must be informed, in writing, of: <ul style="list-style-type: none"> ➤ Their <u>right to complain to the Legal Ombudsman</u>; ➤ The <u>timeframe</u> for doing so; and ➤ Full details of <u>how to contact the Legal Ombudsman</u>. ❖ If the firm's complaints procedure has been exhausted, solicitors and firms are obliged to inform the client:
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			<ul style="list-style-type: none"> ➤ That the solicitor cannot settle the complaint; ➤ Of the name and website address of an alternative dispute resolution (ADR) approved body to deal with the complaint; and ➤ Of whether they agree to use that ADR scheme.
<p><u>Deal with the complaint promptly, fairly, and free of charge.</u></p>	<ul style="list-style-type: none"> ❖ Para 8.5, CFS ❖ Para 7.1(c), CFF 	<ul style="list-style-type: none"> ❖ Solicitors and firms must deal with complaints: <ul style="list-style-type: none"> ➤ Promptly ➤ Fairly; and ➤ Free of charge. 	
<p><u>Respond to complaints even if they believe the allegations concern negligence.</u></p>	<ul style="list-style-type: none"> ❖ Law Society Guidance Handling Complaints 	<ul style="list-style-type: none"> ❖ Solicitors must respond to complaints even if they believe the allegations concern negligence and a referral to the firm’s insurance provider will be necessary. 	



The Retainer

❖ Legal Foundations - Chapter 10

Overview	<ul style="list-style-type: none"> ❖ The “retainer” is <u>the contract between the solicitor and their client.</u> ❖ Implied into the contractual relationship are certain obligations under the general law. The solicitor must ensure they comply with these, as well as obligations in the Codes of Conduct.
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<p>Duties During the Retainer</p> <p>Legal Foundations, 10.4</p>	<ul style="list-style-type: none"> ❖ The solicitor is under the following duties, which will be implied into the retainer: <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr style="background-color: #e0e0e0;"> <th style="text-align: center;">Duty</th> <th style="text-align: center;">Explanation</th> </tr> </thead> <tbody> <tr> <td style="background-color: #e0e0e0;"><u>To exercise reasonable care and skill.</u></td> <td> <ul style="list-style-type: none"> ❖ A solicitor has a duty to carry out their services under the retainer with <u>reasonable care and skill.</u> ❖ This is an established duty both at common law (tort) and is also implied by s13 of the Supply of Goods and Services Act 1982. </td> </tr> <tr> <td style="background-color: #e0e0e0;"><u>Fiduciary Duties</u></td> <td> <ul style="list-style-type: none"> ❖ A solicitor is a <u>fiduciary</u> for their client. ❖ A fiduciary is, in summary, someone who is <u>entrusted with power or property on behalf of another.</u> They are placed under certain duties at common law, including a duty to: <ul style="list-style-type: none"> ➢ <u>Act in their client’s best interests</u> <ul style="list-style-type: none"> ▪ Reflected in Principle 7. ➢ <u>Not make a secret profit at the expense of their client.</u> <ul style="list-style-type: none"> ▪ Reflected in Rule 4.1 CFS/5.1 CFF which requires solicitors to account to clients for financial benefits. ➢ <u>Not take advantage of clients.</u> <ul style="list-style-type: none"> ▪ Reflected in Principle 5 (integrity), and para 1.2 of both Codes of Conduct: “<i>You [must] not abuse your position by taking unfair advantage of clients or others</i>”. </td> </tr> <tr> <td style="background-color: #e0e0e0;"><u>Confidentiality</u></td> <td> <ul style="list-style-type: none"> ❖ A solicitor and their firm have a duty to <u>keep the affairs of their client confidential.</u> ❖ See notes on Confidentiality and Disclosure. </td> </tr> <tr> <td style="background-color: #e0e0e0;"><u>Disclosure</u></td> <td> <ul style="list-style-type: none"> ❖ A solicitor owes the client a duty to <u>disclose all relevant information to the client.</u> ❖ See notes on Confidentiality and Disclosure. </td> </tr> <tr> <td style="background-color: #e0e0e0;"><u>Provide Information on Costs</u></td> <td> <ul style="list-style-type: none"> ❖ A solicitor is obliged to <u>provide information on costs</u> both at the time of engagement and, when appropriate, as the client’s matter progresses (para 8.7 CFS, and para 7.1 CFF). </td> </tr> </tbody> </table>	Duty	Explanation	<u>To exercise reasonable care and skill.</u>	<ul style="list-style-type: none"> ❖ A solicitor has a duty to carry out their services under the retainer with <u>reasonable care and skill.</u> ❖ This is an established duty both at common law (tort) and is also implied by s13 of the Supply of Goods and Services Act 1982. 	<u>Fiduciary Duties</u>	<ul style="list-style-type: none"> ❖ A solicitor is a <u>fiduciary</u> for their client. ❖ A fiduciary is, in summary, someone who is <u>entrusted with power or property on behalf of another.</u> They are placed under certain duties at common law, including a duty to: <ul style="list-style-type: none"> ➢ <u>Act in their client’s best interests</u> <ul style="list-style-type: none"> ▪ Reflected in Principle 7. ➢ <u>Not make a secret profit at the expense of their client.</u> <ul style="list-style-type: none"> ▪ Reflected in Rule 4.1 CFS/5.1 CFF which requires solicitors to account to clients for financial benefits. ➢ <u>Not take advantage of clients.</u> <ul style="list-style-type: none"> ▪ Reflected in Principle 5 (integrity), and para 1.2 of both Codes of Conduct: “<i>You [must] not abuse your position by taking unfair advantage of clients or others</i>”. 	<u>Confidentiality</u>	<ul style="list-style-type: none"> ❖ A solicitor and their firm have a duty to <u>keep the affairs of their client confidential.</u> ❖ See notes on Confidentiality and Disclosure. 	<u>Disclosure</u>	<ul style="list-style-type: none"> ❖ A solicitor owes the client a duty to <u>disclose all relevant information to the client.</u> ❖ See notes on Confidentiality and Disclosure. 	<u>Provide Information on Costs</u>	<ul style="list-style-type: none"> ❖ A solicitor is obliged to <u>provide information on costs</u> both at the time of engagement and, when appropriate, as the client’s matter progresses (para 8.7 CFS, and para 7.1 CFF).
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Client Authority and Third-	<ul style="list-style-type: none"> ❖ A solicitor can only act for clients on instructions from: <ul style="list-style-type: none"> ➢ <u>The client;</u> or ➢ Someone <u>properly authorised to provide instructions on their behalf.</u> ➢ (CFS 3.1 / CFF 4.1). 												

<p>Party Instructions</p> <p><i>Legal Foundations, 10.5</i></p>	<ul style="list-style-type: none"> ❖ Where someone purports to provide instructions on a client’s behalf, such as a relative, you MUST confirm that third party’s authority to provide instructions (e.g., by obtaining a form of authority from the client).
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Terminating the Retainer

❖ *Legal Foundations, 10.6 – 10.7*

<p>When will the retainer terminate?</p> <p><i>Legal Foundations, 10.6 – 10.7</i></p>	<ul style="list-style-type: none"> ❖ A retainer with a client will be terminated in three circumstances: <ul style="list-style-type: none"> ➤ Where it is terminated by the client; ➤ Where it is terminated by the solicitor; and ➤ Where it is terminated at law. 	
	<p>Client termination.</p>	<ul style="list-style-type: none"> ❖ A client has unfettered discretion as to when they terminate the retainer. ❖ However, the client will normally be liable to pay fees for work done up until the point of termination. ❖ A solicitor may require their costs be paid before they will forward the client’s file to the client: <ul style="list-style-type: none"> ➤ A solicitor has an automatic lien (that is, a right to withhold a debtor’s property) over the client’s papers where their fees remain unpaid. ➤ The court does, however, have the power to order the solicitor to deliver up any papers to the client (s68 of the Solicitors Act 1974).
	<p>Termination by the solicitor.</p>	<ul style="list-style-type: none"> ❖ A solicitor does not have unfettered discretion to terminate a retainer; they must be able to justify this with regard to their obligations under the Codes of Conduct. ❖ In particular, Para 7.2 CFS / Para 3.2 CFF requires solicitors and firms to be able to justify their decisions and actions to demonstrate compliance with their regulatory obligations. ❖ Ceasing to act without good reason is likely to amount to a breach of Principle 7 (best interests of the client).
		<p>Examples</p>
		<ul style="list-style-type: none"> ❖ Examples of what might be considered good reasons for terminating a retainer (from the previous Code of Conduct 2007) include: <ul style="list-style-type: none"> ➤ The client provides instructions which would involve a breach of the law.

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		<p>Statutory right to terminate in contentious business.</p> <p>s65(2) Solicitors Act 1974</p>	<ul style="list-style-type: none"> ❖ A solicitor has a statutory right to terminate a retainer if they are: <ul style="list-style-type: none"> ➤ Acting on contentious business (i.e., litigation); and ➤ A client does not pay money on account of costs within a reasonable time of being requested to do so 									
	<p>Termination by law.</p>	<ul style="list-style-type: none"> ❖ A retainer may be terminated by operation of law; for example, where a solicitor is declared bankrupt, or either party loses mental capacity 										
<p>Situations when a solicitor must stop acting for a client.</p> <p>Legal Foundations, 10.3.2</p>	<ul style="list-style-type: none"> ❖ The Codes of Conduct prescribe that, in certain instances, a solicitor must cease acting for a client: 											
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			<p>and 3.4 CFS and para 4.2 CFF due to, for instance, being overworked.</p> <ul style="list-style-type: none"> ➤ Where a solicitor does not have expertise in the area in which the client seeks advice
<p><u>Where a client makes a gift of “significant value”.</u></p>	<ul style="list-style-type: none"> ❖ Para 6.1 CFS / CFF. 		<ul style="list-style-type: none"> ❖ Where your client proposes to make a gift of “significant value” to you or a member of your family, it may be appropriate to refuse to act unless the client takes independent legal advice. ❖ To act in such circumstances will normally give rise to an own-interest conflict. Per para 6.1 CFS/CFF, you cannot act where there is an own-interest conflict. There are no exceptions to that rule (see notes on Conflicts of Interest). ❖ The Codes of Conduct do not define when a gift will constitute “significant value”, however, a steer can be found in Law Society guidance¹ which provides that: <ul style="list-style-type: none"> ➤ You should carefully consider any gift to determine whether it may be considered “significant” in the circumstances. ➤ You can assume that the following gifts will be considered “significant”: <ul style="list-style-type: none"> ▪ <u>A gift worth more than 1% of the client’s estate.</u> ▪ A gift that might become valuable at some point, especially after the death of a client. ▪ A gift that provides a benefit to an individual that is more valuable than their relationship reasonably justified. ➤ You should exercise great care if the proposed gift in question is a specific item or items with an uncertain value, like a painting or piece of furniture.
<p><u>Where you cannot otherwise comply</u></p>	<ul style="list-style-type: none"> ❖ Principle 1 		<ul style="list-style-type: none"> ❖ You should decline to act in a situation where: <ul style="list-style-type: none"> ➤ <u>You cannot uphold the rule of law and proper administration of justice (Principle 1).</u>

¹ [Law Society Guidance: Preparing a will when your client is leaving a gift for you, your family or colleagues](https://www.lawsociety.org.uk/topics/private-client/preparing-a-will-when-your-client-is-leaving-a-gift-for-you-your-family-or-colleagues) (https://www.lawsociety.org.uk/topics/private-client/preparing-a-will-when-your-client-is-leaving-a-gift-for-you-your-family-or-colleagues).

	<p><u>with the Codes.</u></p>		<ul style="list-style-type: none"> ➤ There is a conflict of interest (paras 6.1 and 6.2 CFS / CFF). ➤ Acting would result in a breach of the duty of confidentiality to another client (paras 6.3 CFS / CFF). ➤ The client seeks to deceive or mislead the court (para 1.4, CFS / CFF). ➤ Where a client asks you to settle a whiplash claim without a medical report (which is required by the Civil Liability Act 2018).
<p>Best practice on termination</p>	<ul style="list-style-type: none"> ❖ Where the retainer is terminated, the solicitor should: <ul style="list-style-type: none"> ➤ Inform the client in writing; ➤ Explain the client’s options for pursuing the matter; ➤ Deal with any property of the client; <ul style="list-style-type: none"> ▪ E.g., client monies. ▪ Generally, this should be returned to the client as soon as possible. ➤ Deal with the client’s paperwork; <ul style="list-style-type: none"> ▪ It may be advisable to retain a copy of the client’s file. ▪ Any personal data should be held in compliance with the Data Protection Act 2018. 		
<p>Refusal of instructions.</p> <p>Legal Foundations, 10.3.2</p>	<ul style="list-style-type: none"> ❖ A solicitor can normally refuse to take new instructions for any reason, save for as limited by the Codes of Conduct. ❖ In particular, a solicitor must not refuse to act because of unfair discrimination e.g., because of a client’s race or gender (para 1.1, CFS / CFF). 		