

# Transparent information for clients

## Purpose

1. This guidance explains our requirements relating to the provision of clear and accurate information to clients on your services, costs and associated matters. It helps you to understand ways in which you might comply with your obligations, as well as providing wider best practice advice. It is mainly aimed at sole traders and firms regulated by us. It will also be relevant to consumers.

## Overview

2. We have set out our rules relating to the provision of such information in rules 1.1, 1.2 and 1.4 of our Code of Conduct. These provide that:

Rule 1.1 - *Clients* receive the best available information about your work and costs, both at the time of engagement and, when the context applies, as work progresses.

Rule 1.2 - *Clients* receive an appropriate explanation of any financial benefits, including but not limited to any commission, foreign exchange uplifts, discount or rebate received as a result of their instructions.

Rule 1.4 - Information about any referral arrangements in place, including the payment of a referral fee and fee sharing arrangements is provided to the *client*.

3. The rules should be read in conjunction with other relevant obligations in our Core Regulatory Framework, including:

- Principle 2: You must act in a way that upholds public confidence in the regulated profession
- Principle 4: You must be honest
- Principle 5: You must act with integrity
- Principle 7: You must act in the best interests of each *client*
- Principle 8: You must maintain proper standards of work
- Rule 3.2 of our Code of Conduct : Effective governance arrangements are in place so that you and those you contract with can comply with *IPReg's regulatory arrangements*
- Rule 4.2 of our Code of Conduct: *Clients* are aware of where their money is being held – including where this is held on trust – the reasons for this and the regulatory protections afforded to them.

## **Rule 1.1 : Work and cost information generally**

4. The Competition and Markets Authority (CMA) has found that consumers and small businesses needing legal advice often do not have clear information about the price and services they would receive, the redress that is available and the regulatory status of providers. They therefore have difficulty comparing providers and it is hard for them to make informed choices. This weakens competition and reduces access to justice. Although the users of intellectual property services are often businesses and more accustomed to using legal services, some will not be. A new business owner may be unfamiliar with how legal services are delivered and priced. Even sophisticated businesses need to be treated fairly and transparently. You should always act with integrity and in your client's best interests.
5. Our rules therefore require you to provide your clients with the best available information that you can about the work you will do for them and its cost. 'Clients' include potential clients. You should explain clearly and transparently the terms upon which your services are to be provided, including the nature and extent of the work that you will do, the likely cost and timescales. You should also keep your client informed about any changes to the services that you will provide and any cost implications as the matter progresses. Although not a mandatory requirement, we also suggest that you let your clients know that you are regulated by IPReg and the benefits that such regulation brings with it.

### *Requirements at the point of engagement*

6. We expect that you will normally confirm in written terms of business (for example, in a client care or engagement letter) the detailed scope and nature of the work that you have agreed to do as well as an accurate estimate of how much this is likely to cost – both in terms of your fees and any anticipated disbursements. Where the precise scope of the work is initially unknown, such as where you are asked to advise on complex, long term projects or litigation, providing a wholly accurate estimate may be difficult at the point of engagement. However, you should aim to provide as much transparency and clarity at this stage as you possibly can.
7. The level of detail that you will need to provide will depend on a number of factors, including whether you have a pre-existing relationship with that client or whether they are new to your firm. You will also want to consider the experience of the client or the person responsible within the client's organisation who is instructing you. Long standing and sophisticated clients may require less detail at this stage than new clients. Lay clients are likely to require more detailed information and explanation than in-house counsel. Extra care should be taken when dealing with potentially vulnerable clients such as private individuals - in particular where there may be risk factors related to a person's circumstances (e.g. bereavement, illness or disability, etc.) which increase the likelihood of the client being at a disadvantage or suffering detriment.

8. You should also note that if you request payment in advance of your costs, you will need to comply with our requirements in rule 4.2 in relation to the holding of such money. You will also need to make sure that your client understands the available regulatory protections. See our guidance on Client Monies.

*Best practice advice - information prior to engagement*

9. New or less sophisticated users of legal services often need to access information to help them understand the services that may be available and the likely costs before they decide to enter into a formal retainer. We appreciate that in many cases you will have had significant contact with the prospective client before terms of engagement are agreed. For example, you may have responded to an initial website enquiry with an indication of the type of services that you can offer and a rough idea of your charges. For new or less sophisticated consumers, we suggest that you provide them with our standard information sheet which is designed to help them understand the sorts of information about fees and other costs that you should give them and, if necessary, the questions they should ask. This should help consumers in making informed choices. Many complaints made by clients are about unanticipated or excessive charges so providing this information upfront may also assist in avoid misunderstandings and cost related complaints in the future.
10. Although we have not made it a mandatory requirement in our rules, we also encourage you to publish proactively such information on your website to help all potential clients understand the services you offer and their price. There are benefits for your business and consumers in providing more information and a significant number of our regulated firms already choose to do this. We know that consumers, including small businesses, often assume that legal services are expensive and unaffordable. This results in them deciding not to engage a lawyer to carry out necessary legal work. Being clear about the services that you can provide and their cost may encourage such prospective clients to approach your firm. Your website can also explain that your firm has the right experience and skills to help them with their specific legal problem. Research has also consistently found that the most important factor people consider when choosing a legal service provider is quality, closely followed by price. You may therefore wish to consider, to attract new or individual/ small consumers, using an online review service that can showcase the quality of your work.

*Requirements as the work progresses*

11. You should tell your client, as soon as possible, of any changes to the information you provided at the point of engagement. How you choose to do this will be a matter for you based on your relationship with, and knowledge of your client and their

expectations. It may not be necessary to give frequent updates as to how matters are progressing to a sophisticated business client for whom you are managing a large portfolio. But you should make sure that clients receive as often as necessary an explanation, appropriate to the client's reasonably apparent or expected level of understanding, as to the issues in a matter, the progress of the matter and the likely timescales. You should also update them periodically on the costs as the matter progresses, including your fees and disbursements which have been incurred, or are likely to be incurred. We suggest that these updates are in writing. When new or amended instructions are received orally, it is sensible practice for the avoidance of future disputes as to the precise instructions given, for you to confirm back to the client in writing the instructions received and the cost implication of these.

12. The fees you finally charge should be based upon the information provided in the letter of engagement or any subsequent amendments or updates to these. Where you have given an estimate of the likely cost of work (i.e. not a fixed fee), you should make sure that the client is informed in advance if it appears the estimate will be significantly exceeded. The key point is that you should always be transparent with your client and able to justify your charges.

#### **Rules 1.2 and 1.4 - Information about financial benefits and referral arrangements**

13. As a general requirement, the law provides that lawyers, as fiduciaries, should account to their clients for any financial benefit received as a result of their instructions unless they have the client's informed consent to keep it. In addition, it is very important that none of your commercial interests or financial arrangements should adversely affect the independence of your advice or your ability to act impartially in your client's best interests and to provide a proper standard of service.
14. Our rules require that you give appropriate explanations to your clients about any financial benefits that you may receive as a result of the work that you do for them including commissions, foreign exchange rate uplifts or discounts or rebates (rule 1.2). You also need to inform your client about any referral arrangements in place such as payment of a referral fee and fee sharing arrangements (rule 1.4). By this we mean that you should give clear, accurate and sufficient information to your clients about these matters.
15. It is a matter for you to decide how you provide information to your clients about these issues and the level of detail that is required. This may depend on a number of relevant factors, such as their level of commercial sophistication, experience in procuring IP services and any previous relationship you have with the client.

*An example – referral arrangements*

16. The specific international nature of much IP work necessitates close collaboration/relationships with overseas lawyers and other agents. These generally serve your clients' interests, by enabling you to provide a high standard of service and to access the foreign expertise that they require. We appreciate that these sorts of relationships may result in broad reciprocal referral arrangements and volume based bulk discounts or other tangential benefits to you and your firm across the wide range of client matters that you act on. We do not expect you to attempt to quantify or apportion any such benefit on an individual client basis; this would clearly be disproportionate and burdensome. However, you should make your client aware that you may receive financial benefits from such arrangements. You must always act with independence, integrity and in your client's best interests. So, your choice of overseas lawyers or agents should always be driven by these principles and not by any benefits that you may otherwise receive. You should explain to your client why the lawyer or agent you have chosen is the best one to deal with their matter. You should also make clear that the client can choose another lawyer or agent if they wish to.

*An example – foreign exchange uplifts*

17. We understand that the international nature of IP practice may also involve you making a number of payments to overseas agents and IPOs in foreign (non-sterling) currencies. We appreciate that uncertain exchange rate fluctuations can expose you and your client to some uncertainties and risks.

18. We understand that firms we regulate try to deal practically with these uncertainties in several different ways. For example:

- such anticipated disbursements may be billed to the client in advance (based on current foreign exchange rates). Once paid by the client, these will then be paid promptly to the overseas agents. If, due to currency fluctuations, a subsequent shortfall or overpayment arises, the firm will reconcile the differences and bill or refund the difference or, with the client's permission, apply it against future costs; or
- the firm pays the disbursement from their own business account and once the sterling cost is known it is billed this to the client in the normal way; or
- the firm may seek to manage exchange rate fluctuations by entering into a forward contract which delivers the required foreign currency at a chosen future date for a certain amount that can be then charged to the client.

Whatever approach you use, you must explain it to your client.

19. In addition to these methods, we understand that some firms chose to use a modestly favourable exchange rate and then apply a percentage mark-up to cover the exchange rate risk, as well to cover the cost to the firm for handling, processing and paying for such disbursements. We understand that such percentages can vary widely but that a range of 10% - 12% is quite common and a mark-up of 20% or more are not unknown.
20. The approach that you use must be explained to your client and if the amount you charge your client for the payment includes an element of your profit cost, i.e. for processing the payment, this should be clearly described as such.
21. We suggest that in deciding your approach to dealing with exchange rate fluctuations, you should consider:
- how you would justify to your clients (or to us if we received a complaint) the appropriateness of the mark-up you have applied;
  - how often you should analyse the risk from the exchange rate transactions that you are exposed to. It may be that for stable currencies the exchange rate risk is much less than it would be if you act for clients in locations with more volatile currencies;
  - any tax or VAT implications. If you bill the client for a disbursement that includes an element of your profit, you may have to charge and account for VAT on the amount.

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