Solicitors Regulation Authority

High-volume consumer claims thematic review

22 August 2025

[/sra/research-publications/high-volume-claims-summary/]

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Introduction

High-volume consumer claims arise when large numbers of consumers file claims against the same organisation, or in relation to the same issue. Such claims may involve potential mis-selling of financial products and services, data breaches, diesel emissions, flight delays, housing disrepair or cavity wall insulation.

While in some circumstances there are schemes available for the public to pursue such claims directly, in many cases they will involve the claimant instructing a law firm or claims management company (CMC) to represent them.

Providers often market claims on a 'no-win, no-fee' basis and will usually take a percentage of any final settlement as payment for work undertaken.

Where claims are litigated, these arrangements are often underpinned by protections which are intended to cover any financial liabilities arising from an unsuccessful or discontinued claim, including paying for the other sides' legal costs.

We, and others in the industry, are growing increasingly concerned about issues we are seeing across the high-volume consumer claims market [/news/news/sra-update-137-high-volume-claims/] . Our concerns pertain to this area of the market not working as well as it should, which is leading to potential risks to consumers, and eroding trust and confidence in the solicitors' profession.

When it works well, the high-volume consumer claims sector can provide an effective route for consumers to enforce their rights. But worryingly, there is increasing evidence that some firms are exposing consumers to risk by failing to make sure compliance with firms' regulatory obligations.

Across all our work, the issues we are seeing are having widespread impacts across multiple sectors involved in the high-volume consumer claims process, including finance, insurance and claims management. We are working with other regulators and government departments to proactively build solutions.

As our work programme in this area has developed, the number of firms we are actively investigating in relation to potential misconduct has risen sharply over the past 12 months. As of 31 July 2025, we have 95 open investigations relating to 76 firms, who between them handle hundreds of thousands of claims.

The volume of consumer claims work undertaken by solicitors and the availability of litigation funding has increased significantly in recent years. The way this area of the legal services market operates is fast moving, in terms of the types of claims being made, the way firms acquire clients, and how claims are funded.

We carried out this thematic review to help us better understand what is happening in this sector, and how firms operating in this space are complying with our Standards and Regulations.

The findings have informed our broader programme of work, intended to protect consumers in the high-volume consumer claims process and maintain public confidence in legal services. We are doing this by identifying and addressing potential poor practice in the sector and supporting firms in ensuring they maintain high professional standards. We are also exploring wider issues about the operation of the market.

The full version of this thematic review report includes checklists, best practice examples and case studies. These are intended to be practical resources for those firms delivering high-volume consumer claims services.

What we did

We carried out a mandatory survey of firms identified as potentially carrying out volume consumer claims work. We identified 129 SRA-regulated law firms currently active in the consumer claims market, who between them were handling more than 2.4 million live claims.

We required these firms to provide us with information on:

- the type and volume of claims they handled
- whether they had referral arrangements in place
- whether they used litigation funding.

Following our survey work we visited 25 firms between October 2024 and January 2025. These visits involved:

- an interview with the relevant head of department and a fee earner
- reviews of two client files
- reviews of learning and development records and the firm's policies and procedures for how consumer claims work was handled.

What we found

Overall, we found a mixed picture in terms of how firms are operating in this area.

Some firms demonstrated good practice and effective compliance with our Standards and Regulations across all the areas of their consumer claims work. It was clear these firms were focused on acting in the best interests of their clients, and that they invested time and effort in meeting their regulatory obligations on an ongoing basis.

However, at other firms we identified concerns about compliance across several areas of our Standards and Regulations that relate to how high-volume consumer claims work is conducted.

Concerns identified included:

- failures to fully consider clients' best interests regarding litigation funding agreements and referral arrangements, and a lack of due diligence when entering into new arrangements
- failure to give clients the best possible information about the costs of their matter, how the matter will be funded, and the options available to them
- poor compliance with regulatory obligations when arranging After the Event (ATE) insurance for clients
- weak systems to check any referrer is working in a way that is consistent with the firm's regulatory obligations
- inadequate client onboarding processes, including checks on client ID, sanctions and conflicts of interest
- inadequate advice to clients about their claim's merits and prospects of success.

We have opened formal investigations into nine of the 25 firms we visited.

Key findings by area

Client acquisition

All marketing activity undertaken by law firms, or those working on their behalf, must be accurate and not misleading. Clients must have been given sufficient information to enable them to make an informed decision about entering into any claim.

Law firms are prohibited from using cold calling or making unsolicited approaches to attract claimants, or to accept referred clients obtained through such means. In 2024, we issued a Warning Notice [/solicitors/guidance/mergers-acquisitions-sales-law-firms/] to law firms regarding how they market to and acquire clients.

- Of the 21 firms visited which had referral arrangements in place, 20 were aware of the need for referrers to acquire clients in a way that complied with our rules. Despite this only a third could explain what those rules were.
- Twelve of 21 firms visited which had referral arrangements in place carried out checks directly with a sample of referred clients, or audits, to check referrers were complying with relevant rules.
- Only eight firms checked on referrers' authorisation with the Financial Conduct Authority (FCA), despite 17 of the 21 firms working in areas where referrers are required to hold this authorisation.

Onboarding clients

Firms in the high-volume consumer claims sector deal with large numbers of clients and cases, with many of these sourced through referrals from third parties. Wherever a client has been sourced from, firms must have robust systems in place to identify their clients and make sure clients provide informed consent to the terms of the firm's retainer.

- Of the 25 firms visited, 22 said they checked client ID, 18 carried out conflict of interests checks and 11 carried out sanctions checks. However, of the 50 files we reviewed:
  - client ID checks were not completed on 11 files
  - conflict of interest checks were not completed on 28 files
  - sanctions checks were not completed on 39 files.
- Files from one firm showed that clients had not received any written confirmation that the firm was acting for them.
- At one firm we found files with no evidence that clients had given written consent to the firm's retainer.

Funding claims

Typically, law firms generate income at the end of successful consumer claims. Some firms decide to use external litigation funding to finance the upfront costs of volume consumer claims.

Unless managed effectively, high levels of borrowing can carry significant risk to the financial viability of the firm. All firms have a duty to monitor their financial stability and manage all material risks to the business. This is intended to protect consumers from the detriment that can occur in the event of a disorderly firm closure.

- Thirty of the 129 firms which carried out volume consumer claims work had litigation funding arrangements in place. Collectively, this litigation funding totalled around £200 million.
- Twenty-four of 25 firms we visited had measures in place to actively monitor their financial stability.
- Of the 25 firms we visited, 18 had litigation funding in place. Seventeen of those firms carried out some form of basic check on the funder's ability to meet their financial commitments.
- Only six of the 18 firms visited who use litigation funding had included checks on how a litigation funder sourced investment funds in their due diligence, and fewer still included sanctions (four firms) or anti-money laundering checks (five firms).
- During our visits we identified concerns about litigation funding agreements between clients and funders that may not be in the clients' best interests, and where the advice given to clients may not be compliant with our Standards and Regulations. We have opened investigations into those matters.

ATE insurance

ATE insurance plays an important role in supporting access to justice by enabling people to pursue legal claims while remaining protected from potential financial risks should a claim fail.

High-profile cases, like SSB Group [/news/news/cavity-ssb-group/] , where consumers who entered into unsuccessful 'no-win no-fee' claims are now being pursued for significant costs due to potential issues with how ATE insurance was arranged.

Before starting a claim, firms must explain what arrangements are in place for covering the other side's costs if a claim is unsuccessful. Often firms will arrange ATE insurance for clients to protect against the risk of having to pay the other side's costs if the claim is unsuccessful.

- The SRA Financial Services (Conduct of Business) Rules [/solicitors/standards-regulations/financial-services-conduct-business-rules/] set out what is required of solicitors arranging ATE insurance on behalf of clients. Not all firms we visited were ensuring full compliance with these rules when arranging ATE insurance on behalf of clients.
- Two firms appeared to be arranging ATE insurance despite not being authorised by us as an exempt professional firm, or by the FCA as an authorised professional firm, as is required by the SRA Financial Services (Scope) Rules [/solicitors/standards-regulations/financial-services-scope-rules/] .
- Few firms gave clients all of the information required by the SRA Financial Services (Conduct of Business) Rules [/solicitors/standards-regulations/financial-services-conduct-business-rules/] and on two files, firms gave no information at all.
- ATE insurance was in place on 23 files we reviewed. But in 10 of these cases, clients had not been given the opportunity to read information about the cover before it was taken out.

Progressing claims

Where firms are acting for large numbers of related claims, it is vital that they have robust systems in place to deal with each case effectively and keep clients up to date in a timely manner.

- The firms we visited had good systems to make sure key dates were met and cases were being progressed in a timely way.
- More than half of the firms we visited updated clients at least monthly on progress (14), while most others updated whenever they had updates to share.

Advising clients

Every client must be properly advised about the merits of their claim and the options available to them. Firms should meet their obligations regardless of the volume of cases they are managing.

- Of the 50 files we reviewed, 34 showed that firms had advised clients on the merits of their claim at the outset.
- On five files (handled by three firms), there was no evidence of the client consenting to a settlement offer before the firm told the defendant it was accepted.

Client care, costs information and complaints

Most clients are not familiar with legal concepts and processes. Some may be vulnerable due to their personal needs and/or circumstances. Firms must make sure they provide clients with accessible and understandable information, so that they can make informed choices about their case.

Information we expect to be shared with clients would cover areas such as explanations of work to be undertaken, details of who will be conducting the work, likely timescales and complaint procedures.

A client must also be informed, before the firm starts work, about the funding options available and of the likely costs of their case.

- Only 11 of 25 firms' client files showed clients were given the full range of client care information we would expect to be provided.
- Only 12 of 25 firms' client files showed clients were given all the aspects of funding and costs information we would expect to be provided.
- Some firms failed to inform clients where options existed to pursue claims themselves at no cost.
- On 12 files clients had not been told about a referrer's financial interest as required.

Complaints handling

Firms must make sure clients know how to raise a complaint and have a procedure in place to deal with any complaints fairly and appropriately.

- All firms we visited had complaints handling procedures in place.
- Of the 50 case files we reviewed, clients had not received complaints handling information in 13 cases.

Maintaining competence

To safeguard clients' best interests, firms must have systems in place to make sure that all individuals working on client matters are competent and complying with their regulatory obligations.

- Most of the heads of department and fee earners we spoke to had worked in consumer claims for less than six years. For many firms and individuals, this was a relatively new area of practice.

- More than half of fee earners (14 of 25) and some heads of department (five of 25) had not read SRA guidance relevant to consumer claims work.
- Firms most commonly use knowledge sharing (20 of 25), staff training (19 of 25) and performance reviews (19 of 25) to keep staff competency up-to-date.

Use of experts

Firms must assess the prospects of success of each claim, so that they can properly advise their clients. To do this they sometimes instruct a subject matter expert for their opinion.

We spoke to 14 firms that routinely instruct subject matter experts to advise clients and reviewed 11 files relating to this.

- Not all firms were checking references, example reports or reported cases when selecting experts, which could be helpful to make sure an expert has the appropriate skills and expertise for a client's specific case.
- Firms were aware of the risk to an expert's independence if they were overly reliant on a firm as a source of work, but few firms took active steps to address this risk.

Next steps

We have written to firms active in the high-volume consumer claims sector, sharing the concerns we've outlined in the thematic review. Firms must complete a mandatory declaration confirming they are compliant with our relevant rules and obligations. Where we see poor practice, we will take robust action against those firms.

Our findings are also feeding into wider work on high-volume consumer claims. We have published warning notices and guidance to the profession and online consumer advice for the public, including guidance on motor finance claims.

Investigation work is continuing into nine of the 25 firms we visited.

Open all [#]

Background

This report explains the findings of our thematic review into the work of firms and solicitors acting for individuals bringing volume consumer claims.

Consumer claims may be brought via the courts, an ombudsman, or other alternative dispute resolution scheme, against businesses or organisations alleged not to have fulfilled their legal obligations when providing goods or services. Typically claims are funded by way of a conditional fee agreement (CFA) or damages-based agreement (DBA), and sometimes a third-party litigation funder will provide funds. After The Event (ATE) insurance policies are used to protect clients against the risk of having to pay the defendant's costs if a claim is not successful.

These funding models mean clients do not have to pay their legal costs at the outset of their claim, instead paying only if the case is successful. In this way, they can offer an important access to justice route for individuals who could not otherwise afford to bring a claim.

The volume of these claims, and the number of firms taking on this area of legal work, is increasing. Growth of the litigation funding market, consumer law reforms, improved collective redress routes, and developments in legal technology all appear to have contributed to the growth of the volume consumer claims market.

As we confirmed in our 2024/25 Business Plan, we have identified concerns about themes emerging from cases involving volume consumer claims. As of 30 June 2025, we have 89 ongoing investigations that relate to 73 firms providing volume consumer claims services. Completing a thematic review has enabled us to deepen our understanding of how firms are complying with our Standards and Regulations [/solicitors/standards-regulations/] for the benefit of their clients and the wider public interest.

The review findings will feed into our wider programme of work on ensuring clients are appropriately protected in this sector, and that firms maintain the high professional standards clients are entitled to expect. While this review is focused on the firms we regulate, we recognise that some of the issues we identify (such as those relating to litigation funding and ATE insurance) stretch beyond our own regulatory remit. Our wider programme of work will continue to engage with relevant stakeholders on these issues.

Our review covered firms providing different consumer claim types including financial service/product claims (including mis-sold car finance), diesel emissions, data breaches, flight delays and housing disrepair. Our investigative work indicated these may be the types of claim where we were more likely to receive reports about this sector.

Purpose of this report

This report is intended to be a practical resource for solicitors and firms, particularly for senior members of staff and compliance officers involved in deciding how volume consumer claims services are delivered. This includes decisions about how to fund this work, reach potential clients, and work with other parties including litigation funders, referrers, marketers and lead generators.

This review has identified significant regulatory risks, including risks to clients' best interests and public trust in the volume consumer claims sector. We highlight these to help those working in the sector to identify and address them. We have opened a number of investigations into firms following issues identified in the course of this thematic review, and will take enforcement action [/sra/corporate-strategy/sra-enforcement-strategy/] where there is serious misconduct.

However, the review has also identified examples of firms maintaining high professional standards. We share these best practice examples to support others working in the sector to also meet the standards required and deliver the service clients are entitled to expect.

Our wider work will continue to focus on ensuring firms in this sector are managing risks effectively and maintaining high professional standards.

What we did

We sent a survey to 192 SRA-regulated firms in October 2024 which:

- derived at least 10% of their annual turnover from consumer claims or related work and
- had websites that said they carried out common consumer claim work types.

The survey asked for information about the firms' work areas and volumes, referral arrangements, and litigation funding arrangements.

129 firms told us that they were offering at least one type of consumer claims service. Between them, they handled approximately 2.4 million live volume consumer claim matters.

We reviewed the survey responses and selected 25 firms to visit between October 2024 and January 2025. We selected firms carrying out at least one type of consumer claim at high-volumes and prioritised firms which received litigation funding and had referral arrangements in place for consumer claims work. We did so as we are aware these business relationships can lead to compliance risks if firms do not manage them effectively.

At each firm visit, we interviewed the person with overall responsibility for volume consumer claims work ('head of department' and a fee earner working on volume consumer claims. We reviewed two client files which were either currently open, or had been closed since 1 January 2024.

We also reviewed firms' policies and procedures relevant to volume consumer claims work, and the learning and development records of the individuals we spoke to.

We are grateful to all the firms who took part in our survey and our firm visits.

Key findings

Some firms we visited demonstrated effective compliance with our Standards and Regulations across all the areas of their volume consumer claims practice. It was clear that these firms were focused on acting in the best interests of their clients, and invested time and effort in meeting their regulatory obligations on an ongoing basis.

However, at other firms we found significant variation in awareness of, and compliance with, our Standards and Regulations. Areas of concern include:

- a failure to fully consider clients' best interests when entering and managing litigation funding agreements and referral arrangements
- a lack of due diligence when entering into new litigation funding and referral arrangements
- weak systems and controls to monitor the ongoing compliance of referrers with our Standards and Regulations
- poor awareness of and compliance with regulatory obligations when arranging ATE insurance for clients
- inadequate client onboarding processes, including checks on client ID, sanctions and conflicts of interest
- failure to give clients the best possible information about the costs of their matter, how it will be funded, and the options available to them
- inadequate advice to clients about their claim's merits and prospects of success
- poor awareness and understanding of our guidance relevant to volume consumer claims and continuing competence obligations.

We had concerns that some of the firms we visited were in breach of our Standards and Regulations. We have opened investigations into nine of the 25 firms we visited. We will take enforcement action where necessary to protect clients and the public interest.

Resources and next steps

Each section of this report includes a checklist which solicitors and firms may find helpful in reviewing their own arrangements for volume consumer claims work. There is a combined version of all the checklists in the resources section at the end of this report ('Firm checklist'). We have also included useful links to relevant guidance documents and warning notices ('Further information and resources').

Our Professional Ethics Helpdesk [/home/contact-us/] offers advice to solicitors and firms on all the issues covered in this report. This includes the application of the Standards and Regulations to marketing law firm services, working with referrers and litigation funders, providing clients with information and advice, and complying with the UK Sanctions Regime.

Funding claims

Why this is important

Because volume consumer claims are typically funded by way of a conditional fee agreement (CFA) or damages-based agreement (DBA) and can take years to conclude, they can involve substantial upfront costs for law firms and variable cash flow. Our review illustrated that some firms use borrowing to help manage these financial challenges. Borrowing also provided some firms with funding for expanding the services they offer, enabling them to pursue new and growing areas of work.

Unless managed effectively, high levels of borrowing in relation to volume consumer claims can carry significant risk. Firms may make forecasts of the likely outcome, profitability or timescale of their claims which turn out to be inaccurate. Borrowing decisions may be irresponsible or poorly judged, so that the level or terms of a firm's borrowing create a heightened risk of financial instability. Firms may have little in the way of financial contingency.

Levels of borrowing by firms in the volume consumer claims sector appear to be closely linked to the growth of the litigation funding market. Litigation funding agreements for volume consumer claims work can provide that a funder (who is independent of the claim) will cover some or all the legal costs of a claim. If the case is successful, the funder receives an agreed percentage of any damages received by the client, or a multiple of the funding provided, or sometimes a combination of both. If the claim is unsuccessful the funder receives nothing. This is sometimes referred to a ‘non-recourse litigation funding'.

We are also seeing other funding models in the volume consumer claims sector. Some funders are SRA-authorised partial or full owners of law firms within an SRA-regulated ABS structure. Other litigation funders are lending working capital to firms rather than funding individual claims or claims portfolios. These loans are charged at an agreed rate of interest, and typically the loan is drawn down by reference to the volume of claims the firm takes on. Repayment terms of the loan agreement are not determined by the outcome of a case or portfolio of cases, and repayment must be made in accordance with the loan terms even where cases are unsuccessful. Some funders market this arrangement as an alternative to traditional bank business loans. Litigation funding is typically secured by way of a charge over the firm, or over client files.

We have seen a number of firms in the volume consumer claims sector go into administration owing very significant sums to litigation funders. We are concerned that some firms are not effectively identifying, managing and monitoring risks (SRA Code of Conduct for Firms, Paragraph 2.5 [/solicitors/standards-regulations/code-conduct-firms/]) associated with the use of litigation funding, leading to the creation of unstable business models. Such models risk firms taking on large volumes of claims without properly satisfying themselves that they can meet their obligation (SRA Code of Conduct for Firms, Paragraph 4.2 [/solicitors/standards-regulations/code-conduct-firms/]) to ensure the service provided to clients is competent, delivered in a timely manner and takes account of the client's attributes, needs and circumstances. We know that financial instability can lead to large-scale, hurried and multiple transfers of client matters as firms seek to repay debt or exit a sector of the market. Poor financial management can also result in disorderly firm closures. As well as causing significant disruption to a firm's clients, this can undermine public trust and confidence in this sector of the legal services market. Disorderly firm closures also make it more likely that we will need to exercise our intervention powers to protect clients, which can result in costs to the profession overall.

We want to further our understanding of how firms in the volume consumer claims sector are complying with their regulatory obligation to monitor and manage material risk, including financial risk. This is important to ensuring that the interests of clients are properly protected and public confidence in the sector is maintained.

What we expect

When making decisions about how to finance legal work, including whether to use litigation funding, what type of funding to use and which funders to work with, firms and solicitors must act:

- in a way that upholds public trust and confidence in the solicitors' profession (SRA Principle 2 [/solicitors/standards-regulations/principles/])
- with integrity (SRA Principle 5 [/solicitors/standards-regulations/principles/])
- in the best interests of each client (SRA Principle 7 [/solicitors/standards-regulations/principles/]).

Firms must:

- actively monitor their financial stability and business viability (SRA Code of Conduct for Firms, Paragraph 2.4 [/solicitors/standards-regulations/code-conduct-firms/])

- identify, monitor and manage all material risks to their business, including those which may arise from their connected practices (SRA Code of Conduct for Firms, Paragraph 2.5 [/solicitors/standards-regulations/code-conduct-firms/])
- notify the SRA promptly of any indicators of serious financial difficulty (SRA Code of Conduct for Firms, Paragraph 3.6 [/solicitors/standards-regulations/code-conduct-firms/])
- not act if there is an own interest conflict or a significant risk of such a conflict (SRA Code of Conduct for Firms, Paragraph 6.1 [/solicitors/standards-regulations/code-conduct-firms/]).

Solicitors and firms must also comply with the UK Sanctions Regime [/solicitors/guidance/financial-sanctions-regime/] . It is best practice to check whether any funder is a designated person, or is owned or controlled by a designated person. Firms must also comply with the Proceeds of Crime Act 2002, including ensuring they do not acquire, use or have possession of criminal property.

What we found

Financial viability – awareness of regulatory obligations

Some firms had poor awareness of their regulatory obligations in relation to financial stability. When asked about their obligations, only 16 of 25 heads of department specifically mentioned the obligation to monitor the firm's financial viability, and 15 the obligation to report serious financial difficulty. Only 13 mentioned the obligation to manage financial risk.

We were concerned that not all heads of department appeared to have a good understanding of these important regulatory obligations, particularly in the volume consumer claims market, which can involve significant financial risk. Heads of department, Compliance Officers and law firm managers must make sure that they understand these duties and that they are complied with. By law firm manager, we mean the sole principal in a recognised sole practice, a member of a UK LLP, a director of a company, a partner in a partnership; or, in relation to any other body, a member of its governing body.

Monitoring financial stability

All but one firm we visited had measures in place to actively monitor financial stability.

- 24 of 25 firms produced regular financial reporting which was reviewed by senior members of the firm. For 21 of 25 firms, this was supplemented by reporting from an external auditor or accountant.
- 16 of 25 firms had formal governance arrangements covering the firm's financial decision making. Those that didn't tended to be small firms with modest turnover. Having formal structures for financial decision-making may assist firms in ensuring that their decisions include consideration of regulatory requirements, as well as commercial issues.

We were concerned that one firm had no measures in place to manage financial stability. The head of department emphasised it was a small firm, its financial model was low-risk (because there was no borrowing), and it was collecting information that would allow it to produce financial reporting in future. These reasons do not take away from the firm's obligations. The head of department did not appear to be familiar with the full extent of the firm's duties to monitor and manage the firm's financial stability. A failure to take active steps to comply with these duties poses a significant risk to a large number of clients should the firm become financially unstable.

Assessing financial viability of different claim types

Firms told us that they considered several factors when deciding whether claim types were financially viable for their firm. All firms considered the prospects of success of the claims. Most also considered risks associated with the claim type, client acquisition costs, staffing costs, legal costs and profitability.

Firms identified some claim types as carrying a higher financial risk because assessing prospects of success was more challenging. This was typically where the legal issues involved are novel or untested. This increased the risk of the firm investing money in pursuing claims which were ultimately unsuccessful, which could ultimately affect the firm's financial stability. Firms told us they sought to mitigate that type of risk by seeking advice from expert counsel, and by running a smaller volume of cases to test novel issues.

Claim types that may take a long time to settle, because of the volume of claimants (generally not just clients of the firm) and / or the defendant's position, were also identified as higher risk. Prolonged time to settlement carried the risk of cashflow issues for firms where they were expending cost to pursue claims, but recovery could take several years. Firms mitigated this risk by carrying out detailed financial analysis and some obtained expert financial advice where this was not available within the firm. For some firms borrowing was a way to manage cashflow issues.

Several firms carried out detailed financial and legal modelling work before deciding to take on a new claim type or expanding an existing area of work. A number used internal or external financial experts to support this

modelling. For more details on financial modelling, please see ‘Litigation funding and valuation of claims' below.

Taking an appropriately detailed approach to assessing the financial viability of claim types is an important part of managing material risks to a firm. Taking on a new type of claim without a thorough and detailed understanding of financial viability increases the risk of financial instability. This in turn can have negative consequences for clients. Firms should consider taking expert advice where appropriate – for example, if the firm lacks experience in the relevant claim type or in the financial management of large claim volumes.

Use of litigation funding

Litigation funding by claim type or working capital (30 firms)

Data breach	£600,000.00
Other claim type	£6,964,380.00
Housing disrepair	£12,832,994.56
Diesel emissions	£32,451,295.00
Financial Service Claims	£57,009,733.96
Working capital	£93,634,718.50

Litigation funding agreements for volume consumer claims work can provide that a funder will cover some or all the legal costs of a claim, in return for an agreed percentage of any damages, if the case is successful. Alternatively, some funders are lending working capital to firms rather than funding individual claims or claims portfolios. These loans are charged at an agreed rate of interest, and the loaned sum is usually drawn down by reference to the volume of claims the firm takes on. The repayment terms of the loan are not dependent on the outcome of cases, and repayment must be made in accordance with the loan terms even where cases are unsuccessful.

129 firms responded to our review questionnaire and told us they were carrying out volume consumer claims work. 30 of those firms (23%) used litigation funding either to fund a portfolio of claims or to provide working capital for the firm.

Those 30 firms had taken on a total of around £200 million of litigation funding. This was split almost evenly between funding for specific claims and for working capital.

18 of the firms we visited were using litigation funding. Of those firms, most (12) took out litigation funding to expand their volume consumer claims work. Only one firm said it did so because it had significant financial liabilities at the time.

Around half of the litigation funding arrangements firms had in place were linked directly to the outcome of specific portfolios of claims. These were generally financial services, diesel emissions and housing disrepair claims. The other half of the litigation funding arrangements provided working capital. Most of the firms using litigation funding had provided security for it.

Type of security for litigation funding	**Number of firms (out of 18)**
Charge over the firm	10
Charge over client files	2
Bespoke security arrangement	1
No security	5

Seven firms we visited were not using litigation funding. Instead, they funded claims from the firm's existing equity and / or the investment of individual owners. Three of those firms explained that they were cautious about their firm taking on debt, and two referred to the risks of litigation funding illustrated by firms in the sector going into administration after taking on high levels of borrowing.

Levels of litigation funding, financial stability and clients' best interests

Our review highlighted that some firms have taken on very high levels of litigation funding as compared to their annual turnover. Administrator reports for the small number of firms in the sector which have gone into administration in recent years have also highlighted the high levels of litigation funding some firms had taken on. Some firms we visited suggested that funders could be persistent in offering funding or additional funding, with one firm describing a funder's approach as aggressive.

This suggests some broad areas of financial stability risk connected with firms' use of litigation funding, including those detailed below.

- Where the funder has provided ‘per claim' funding, enabling a firm to take on cases at a volume they have not previously dealt with, firms might be unable to adapt their staffing and processes to these volumes in a timely way. Firms may also be unable to manage the changing resource demands of a high-volume claims portfolio as claims enter different stages.
- Where litigation funding is provided for working capital, problems can arise if a firm's financial forecasting model is inaccurate and / or the firm has insufficient financial contingency. Issues can arise where claims

take longer than forecast, meaning cash flow issues affect a firm's ability to make repayments. This may also be the case where the outcome of any relevant litigation or timescale of any resolution is unclear.

Firms told us that they typically prepare financial modelling of the cases they are seeking funding for. Forecasts function as a starting point for negotiations with a funder, and include likely volumes, timescales, costs and profitability of cases. Firms told us that some funders carry out their own detailed modelling in deciding whether to provide funding to the firm. Different funders may arrive at significantly different valuations and therefore offer very different levels of funding.

Firms must stay alert to the financial stability risks detailed above. They must ensure their commercial interest in securing litigation funding does not lead them to compromise their regulatory obligations. When considering whether to take on litigation funding, they must satisfy themselves that their level of borrowing will not compromise their ability to act in the best interests of clients, and to manage all material risks to the firm.

Due diligence on litigation funders

Litigation funders in the UK do not have to be regulated. Some volunteer to be members of the Association of Litigation Funders [https://associationoflitigationfunders.com/] (ALF) and abide by their code of conduct. ALF's Code of Conduct [https://associationoflitigationfunders.com/code-of-conduct/] includes requirements that funders:

- have adequate financial resources to cover all funded matters
- only withdraw agreed funding in certain specific circumstances
- do not act in a way that would cause a law firm to breach its regulatory obligations.

The 30 firms which responded to our questionnaire and were using litigation funding had arrangements with approximately 42 different litigation funders. Seven of those 42 litigation funders (16%) appeared to be funder members of the ALF. These businesses have agreed to abide by the ALF's Code of Conduct. Funding from those seven funders accounted for around 30% of the total £200 million of funding across the 30 firms.

Firms must carefully assess whether any proposed funding arrangement allows the firm to meet all its regulatory obligations, as well as its commercial needs.

We asked firms to tell us about the due diligence they completed on funders before entering into a litigation funding arrangement. Almost all firms (17 out of 18) using litigation funding had carried out some form of check on the funder's ability to meet their financial commitments – for example, checking accounts filed at Companies House or other financial information about the funders.

This is an important element of a firm's due diligence on a prospective funder as it helps firms avoid the risk of funders being unable to meet their financial commitment to fund claims which could, in turn, cause significant disruption for clients and jeopardise the firm's financial stability. We were concerned that only a minority of firms carried out other due diligence checks.

- six checked the source of the litigation funder's investment capital
- six received a recommendation from another firm or contacted another firm which had experience with a prospective funder
- five carried out an adverse media search
- five completed AML checks, and
- four completed sanctions and conflict checks on funders.

Our review suggests some funders are companies registered in jurisdictions where ownership and control may be difficult to establish. Completing appropriate due diligence will assist firms in understanding how a funder sources their investment funds, and whether there are any significant risks to the funders ability to meet their financial commitment to the firm.

Carrying out sanctions and anti-money laundering checks on funders is likely to be helpful in informing firms' overall assessment of any risk a funder may pose to the firm, and therefore its clients. This includes the risk that investment funds could include proceeds of crime or funds received from sanctioned individuals or businesses. It was concerning that only a small proportion of firms were including these types of checks in their due diligence, and that some firms did not know where their funders sourced the funds they were lending to the firm.

The main sanctions risk to firms is of unknowingly receiving money from a person designated under the UK Sanctions Regime (a designated person), particularly if their assets were under a freezing order. A firm could unwittingly breach the regime by dealing with these assets, for example by paying them out.

The Office for Financial Sanctions Implementation (OFSI) maintains a free search tool of its consolidated list. If a designated person has their funds frozen by OFSI, for example, this also applies to any entity under their ownership and control.

As set out in OFSI's general sanctions guidance, ownership and control by a designated person may not be straightforward to identify. Ownership and control is defined as:

- a designated person holding (directly or indirectly) more than 50% of the shares or voting rights in an entity

- designated person having the right (directly or indirectly) to appoint or remove a majority of the board of directors of the entity,
- or it is reasonable to expect that a designated person would be able to ensure the affairs of the entity are conducted in accordance with the designated person's wishes.

This is further complicated if the entity is registered in, or the chain of ownership runs through, jurisdictions where beneficial ownership is difficult to establish.

Litigation is not generally in scope of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, as it does not of itself involve any in-scope activities [/solicitors/resources/money-laundering/scope-money-laundering-regulations/] . All firms and activities, however, are caught by the Proceeds of Crime Act 2002 (PoCA).

In particular, a person commits a criminal offence under PoCA if they deal with criminal property. Relevant to litigation funding, this could include:

- concealing, disguising, converting, or transferring the criminal property (s.327)
- removing the property from the UK (s.327)
- acquiring, using, or having possession of criminal property (s.329)
- entering into or becoming involved with arrangements to facilitate the acquisition, retention, use or control of criminal property (s.328).

By making reasonable enquiries about the source of funds provided by a litigation funder, firms can protect themselves against being used to transmit proceeds of crime. Firms can read more about their obligations in our Proceeds of Crime Guidance, including obligations to report to the National Crime Agency.

Robust due diligence will assist firms in meeting their regulatory obligations to:

- identify, monitor and manage all material risks to your business (SRA Code of Conduct, Paragraph 2.5 [/solicitors/standards-regulations/code-conduct-firms/])
- act in a way that upholds public trust and confidence in the legal profession (SRA Principle 2 [/solicitors/standards-regulations/principles/])
- avoid breaching the Proceeds of Crime Act (PoCA) 2002 [/solicitors/guidance/proceeds-crime-guidance/] .

Litigation funding and the risk of an own interest conflict

As well as being alert to the risk of financial instability connected with litigation funding, firms must be alert to the risk of an own interest conflict when arranging funding for clients. Litigation funding is an appropriate way for many clients to pursue claims that they could not otherwise afford to fund. However, firms must ensure that their financial interest in having funding in place does not compromise their ability to provide clients with impartial advice about any specific litigation funding agreement. This includes advice about all the funding options available, not just those the firm offers. Firms must ensure that any funding arrangement is in their client's best interests and that their ability to advise the client is unfettered by the firm's own financial interests in having funding in place.

Case study

Litigation funding – acting in client's best interests

Firm A arranged litigation funding for clients from a funder. In the litigation funding agreement:

- the client and funder were parties to the agreement, but the firm was not (although it was arranging the funding)
- in all cases, irrespective of outcome, the funder charged, as disbursements, a significant arrangement fee and other fees connected with the funding. The client took out an ATE policy to cover these expenses if the claim was unsuccessful
- in successful cases the funder also recouped the amount loaned, plus an uplift of up to 100% of the amount loaned.

We had concerns about whether these litigation funding arrangements were in clients' best interests. They appeared to expose the client to a direct liability to the funder when it was not clear that clients had been given appropriate and impartial advice to enable them to make an informed decision about doing so. It was also unclear whether the clients had been given advice about the fees connected with the litigation funding (charged as disbursements), as compared to other funding options that may be available. We are investigating Firm A.

Firms must ensure that they act in the best interests of each client when arranging litigation funding. They must not let their own interest in securing an arrangement with a funder affect the impartiality of their advice to clients. Firms must give clients information in a way they can understand, ensuring they are able to make informed decisions about the services they need, how their matter will be handled and the options available to them. This includes the terms of any litigation funding agreement.

Checklist for firms/solicitors

- Ensure law firm owners, managers and compliance officers have a full understanding of their regulatory obligations to monitor financial stability and manage material risks.
- Put practical measures in place for effective monitoring of financial stability. For example, detailed financial reporting that is reviewed regularly by senior members of staff, including the firm's Compliance Officers.
- Consider putting in place formal written governance arrangements about the firm's financial decision-making process. Include the firm's regulatory obligations in relation to financial decision making.
- When taking on significant levels of litigation funding, consider obtaining independent financial advice if the firm does not have internal financial expertise. This is likely to be particularly important where a firm is new to the consumer claims market or taking on a new type of claim.
- Carry out robust due diligence on litigation funders and proposed funding arrangements. This enables the firm to understand and manage any risks arising from the funding arrangement, including any risks connected with ownership of the funder and how the funder sources investments. This should include consideration of the UK sanctions regime and avoiding any breach of the Proceeds of Crime Act 2022.
- Ensure that the firm carries out a robust and independent consideration of the best interests of its clients in relation to proposed funding arrangements. This includes taking into account the risk of an own interest conflict where the firm has a commercial interest in having funding in place, and ensuring that any funding arrangement does not carry financial instability risks that would not be in the best interests of clients.

Client acquisition

Why this is important

All marketing and client acquisition activity by law firms, or those working on their behalf, must be accurate and not misleading. This enables consumers to make properly informed decisions about whether they wish to pursue a claim. It also helps to maintain wider public confidence and trust in regulated legal services.

Cold calling, unsolicited approaches and directly targeted messaging are prohibited marketing activities for law firms and those acting on their behalf. This type of activity poses an unacceptable level of risk to individual consumers and undermines public trust in the legal profession.

Non-law firm businesses carrying out lead generation or other claims management activity in relation to housing disrepair or financial services claims, including for the purpose of introducing and referring prospective clients to law firms, must be authorised to do so by the Financial Conduct Authority (FCA) [https://www.fca.org.uk/firms/claims-management-regulation] .

We have received reports about prohibited marketing activity in the volume consumer claims sector, including reports of clients being acquired by cold calling and door knocking. In 2024, we issued a Warning Notice on marketing services to members of the public [/solicitors/guidance/marketing-public/] .

We continue to monitor reports of prohibited marketing activity and will take disciplinary action, in line with our Enforcement Strategy [/sra/corporate-strategy/sra-enforcement-strategy/] , where we identify breaches of our Standards and Regulations. We will also continue to liaise with other relevant stakeholders in this sector, including the FCA, to ensure that consumers are protected from targeted, intrusive and misleading marketing practices.

What we expect

All client acquisition activity carried out by law firms, or those acting on their behalf, must comply with the SRA Principles [/solicitors/standards-regulations/principles/] . This includes acting:

- in a way that upholds the constitutional principle of the rule of law and the proper administration of justice (Principle 1 [/solicitors/standards-regulations/principles/])
- in a way that upholds public trust and confidence in the legal profession (Principle 2 [/solicitors/standards-regulations/principles/])
- with integrity (Principle 5 [/solicitors/standards-regulations/principles/])
- in the best interests of each client (Principle 7 [/solicitors/standards-regulations/principles/]).

Solicitors must comply with the SRA Code of Conduct for Solicitors [/solicitors/standards-regulations/code-conduct-solicitors/] . This includes acting to:

- make sure any introducers or referrers they work with do not breach our Standards and Regulations in the way they acquire clients (Paragraph 5.1e [/solicitors/standards-regulations/code-conduct-solicitors/])
- ensure any publicity in relation to their practice is accurate and not misleading (Paragraph 8.8 [/solicitors/standards-regulations/code-conduct-solicitors/])
- not make unsolicited approaches to members of the public to advertise their legal services (Paragraph 8.9 [/solicitors/standards-regulations/code-conduct-solicitors/]).

Firms are accountable for compliance with the SRA's regulatory arrangements where their work is carried out through others, including any referrers they contract with (SRA Code of Conduct for Firms, Paragraph 2.3 [/solicitors/standards-regulations/code-conduct-firms/]). They must have effective systems and controls to make sure they and any third parties they contract with, are compliant (SRA Code of Conduct for Firms, Paragraph 2.1 [/solicitors/standards-regulations/code-conduct-firms/]).

Our findings

We wanted to understand what systems and controls firms had in place to ensure that their client acquisition activity is compliant with our Standards and Regulations. This includes any activity carried out by third parties contracted by firms.

Understanding relevant regulatory obligations

21 out of 25 firms had referral arrangements in place. 20 heads of department were able to explain their obligation to ensure referrers acquired clients in a way that is compliant with our Standards and Regulations. However, a much smaller proportion were able to explain other regulatory obligations relevant to working with referrers.

Firms must understand their regulatory obligations in order to comply with them. It is important that all those responsible for agreeing and managing referral arrangements are familiar with the full extent of the regulatory requirements relating to referral arrangements. This includes our guidance and Warning Notice on marketing services to members of the public [/solicitors/guidance/marketing-public/] .

For more details on firms' awareness of our guidance, please see the section on 'Maintaining competence'.

Marketing activity

Nearly all firms we visited were carrying out some form of marketing activity. This included marketing material presented on the firm's website and via social media and internet advertising. There was a roughly even split between firms who devised and delivered at least some of their marketing material themselves, and those who exclusively used an external provider to carry out this work.

All 13 firms using an external provider had some processes and controls to ensure marketing content was compliant with their regulatory obligations. 10 firms had a written agreement with the provider, and nine of those 10 also carried out regular checks of the provider's work and / or signed off on all content before it was published.

Of the three firms that did not have a written agreement in place, two had an arrangement under which the firm signed off on all content. While this is better than having nothing in place, it is unlikely to be adequate. Having a written agreement enables a firm to set out clearly what their expectations of the provider are, and the importance of their regulatory obligations. A written agreement also enables a firm to hold a provider to account for complying with the agreed terms.

One firm's only control on marketing content created and published by an external provider was to complete regular checks on the published material. This runs the risk that inaccurate or misleading publicity will not be identified before being published. Firms should take proactive steps to ensure providers do not breach their regulatory obligations. As mentioned above, this should include having a written agreement with the marketing company, specifying which marketing activity is prohibited for law firms and what constitutes a breach of our Standards and Regulations.

Firms should also ensure that they are aware of the extent of the FCA's regulation, including that relevant lead generation activity requires non-law firm businesses to be authorised by the FCA. In relation to claims management activity, the FCA define a lead generator as 'a person [https://www.handbook.fca.org.uk/handbook/glossary/G869.html?date=2025-03-20] who carries on the regulated activity [https://www.handbook.fca.org.uk/handbook/glossary/G974.html?date=2025-03-20] of seeking out, referrals and identification of claims or potential claims [https://www.handbook.fca.org.uk/handbook/glossary/G4596s.html?date=2025-03-20] .'

Referral arrangements (including lead generators / introducers)

We are using the term 'referral agreement' to cover a range of arrangements firms have with other businesses to source prospective clients, including:

- claims management businesses which identify individuals who may have an eligible claim and refer them to a law firm
- lead generators which provide contact details of prospective clients to law firms
- panel firm / fee sharing arrangements that involve the introduction of individuals to firms.

Our review suggests most firms in the volume consumer claims sector have some form of referral arrangement with an external business. 110 of the 129 firms who, in response to our questionnaire told us they were carrying out volume consumer claims work, had at least one referral arrangement. Between them, those 110 firms had almost 500 referral arrangements. The number of referral arrangements were particularly high in the housing disrepair sector.

Most of the firms we visited (21 out of 25) had at least one current referral agreement with an external business. Some firms had multiple agreements. All 21 firms were able to show us a written agreement covering their referral arrangements.

Due diligence on referrers

Before agreeing to a new referral arrangement, most firms carried out some form of due diligence on referrers. This included obtaining references, having a trial period and reviewing examples of the referrers' work. These are sensible steps for firms to take to assure themselves that referrers are reliable businesses.

However, we were concerned that not all firms completed appropriate due diligence checks on referrers. Only eight firms included checks on referrers' authorisation with the FCA. This was despite the fact that 17 of the 21 firms with referral arrangements dealt with housing disrepair and / or financial service claims, where FCA authorisation is mandatory to carry out lead generation and referral activity. Furthermore, only three firms completed Information Commissioner's Office (ICO) registration checks, despite the large amounts of data processing likely to be involved in any referral arrangement.

One firm we visited had a referral arrangement for housing disrepair claims where the referrer did not appear to be authorised by the FCA to carry out that activity. When we brought this to the firm's attention, the head of department contacted the referrer promptly to address the issue.

It is not sufficient for firms to rely on assurances from referrers about key requirements such as authorisation by the FCA and registration with the ICO. Firms must check these independently to ensure that clients have not been acquired in a way which would breach their regulatory obligations.

Businesses carrying out referral activity without being authorised by the FCA may be committing an offence under the Financial Services and Markets Act 2000. A law firm that facilitates the commission of an offence in this way, for the purpose of both the referrer and the law firm making financial gain, should expect us to take action.

Balancing commercial interests with clients' best interests

Commercial considerations are important for firms when entering any referral arrangement. However, firms must ensure that their commercial interests do not compromise their ability to comply with our Standards and Regulations.

Many firms told us that they ensured their referral arrangements were in their clients' best interests by ensuring the referral process included robust vetting and onboarding. One firm told us:

> 'Our contractual agreements include SRA regulations. We do due diligence and trials with the referrer. We always ask clients if they are happy to proceed with the claim. The introducers' job is very discrete – they just refer the client and then they drop out of the picture. They have no say in what clients we accept or reject.'

Three firms told us about their arrangements in flight delay and timeshare claims where individual consumers agreed a funding agreement with a referrer (which included the provision of legal services by the law firm) before the individual was referred to the firm. The agreement provided that the referrer would receive up to 50% of the individual's damages if their claim was successful.

For two of the firms, the agreement also included the individual consenting to any compensation / damages being paid directly to the referrer, or to the law firm, who would then transfer funds to the referrer. The referrer would deduct their entitlement under the agreement before distributing funds to the client. There was a separate agreement between the referrer and the firm in relation to how the firm would be paid.

It was not clear that the firms had fully considered relevant regulatory obligations when entering into these referral arrangements. It was not clear how the firms had satisfied themselves that the agreements between the referrer and the referred client were in the clients' best interests, and that the clients had given informed consent to the funding agreement. Two of the firms were reliant on the referrer for nearly all their work and we were concerned that this reliance on the referrer may have affected the impartiality of the advice the firms were providing to their clients. We are investigating the conduct of three firms involved.

It is important that any firms entering a referral arrangement give full and thorough consideration as to whether the arrangement is compatible with our Standards and Regulations. This includes the obligations to act in the best interests of each client and not to act where there is a significant risk of an own interest conflict.

We remind firms that the Solicitors Disciplinary Tribunal has on a number of occasions criticised solicitors for failing to give independent advice to their clients where their own commercial interests in a referral arrangement conflict with the interests of the client. Firms must act with independence at all times.

Ongoing monitoring

Carrying out appropriate due diligence, and ensuring commercial interests are balanced against a full and proper consideration of clients' best interests, are important when entering into new referral arrangements. However, these measures alone are unlikely to be sufficient to make sure any introducers or referrers do not

breach our Standards and Regulations in the way they acquire clients (SRA Code of Conduct for Solicitors, Paragraph 5.1(e) [/solicitors/standards-regulations/code-conduct-solicitors/]).

Many firms (12) we visited had had concerns about the conduct of a referrer they had worked with. Eight had terminated an agreement with a referrer because of these concerns. Four were able to address their concerns in discussions with the referrer. We were concerned about some of the referrer behaviours firms told us about, for example:

- One firm discontinued a referral agreement because the referrer had referred individuals who had already instructed other firms. The firm was concerned this was deliberate and dishonest conduct by the referrer, who was seeking to be paid for referrals which they knew were inappropriate.
- One firm said more than one referrer had suggested using marketing content which would be in breach of the firm's regulatory obligations. The referrers gave the justification that other firms were using that material, and it was therefore acceptable. The firm explained that this experience made it take a more robust approach to checking all marketing by its referrers was compliant.

These examples highlight the importance of firms carrying out ongoing monitoring of referral arrangements to ensure clients are being acquired appropriately.

We asked firms what monitoring activity they undertook:

- 12 firms either carried out checks directly with a sample of referred clients, or carried out an audit or quality check on referred matters. These appeared to be helpful controls.
- Five firms relied on checks directly with the referrer and two relied on checking marketing materials used by the referrer to attract potential clients. While these were useful steps, they were unlikely to be as helpful as checking directly with a sample of referred clients about how they were contacted and the information they were given about the referral process.
- One firm did not take any steps to check on their referrers' compliance. This firm was too reliant on its agreement with the referrer as being sufficient to ensure compliance. It was unlikely that the firm would be able to promptly identify and address any issues with the conduct of a referrer. This could place consumers at risk of being targeted with prohibited marketing practices. We are investigating the conduct of this firm.

All firms should have robust systems in place to monitor the conduct of referrers they contract with. This is an important part of avoiding regulatory breaches and safeguarding the interests of clients and the public.

Case studies

Due diligence on referrers – good practice

Firm C has a comprehensive approach to due diligence on referrers. Before it enters into a new referral arrangement, Firm C:

- completes identity and conflict of interest checks on key individuals at the referral business
- reviews the referral business' Companies House information
- reviews samples of the referrer's work, including their marketing material and referred cases
- provides written guidance to the referrer on their obligations when carrying out work on the firm's behalf, including examples of compliant and non-compliant marketing material
- checks references and recommendations from other law firms
- checks whether the referrer is authorised by the FCA
- agrees a trial period with the referrer to ensure that they perform in line with the firm's expectations and regulatory obligations.

This approach enables the firm to identify and address any potential risks of working with the referrer at an early stage. Giving the referrer guidance on acceptable conduct provides clarity and accountability, promoting a working relationship where regulatory compliance is a priority.

Ensuring referrers are aware of and address risks

Firm D acts for clients in housing disrepair claims. It worked with a referrer who used leafleting to make members of the public aware of their legal rights and options in relation to pursuing a housing disrepair claim. As well as the usual contact details, the referrer also offered the option of arranging a home visit in connection with any prospective claim. We understand this practice may be used by other referrers in the housing disrepair sector.

This arrangement carries significant risks. Firms should be mindful that:

- many individuals with a possible housing disrepair claim are vulnerable, both because of their housing situation and their financial circumstances
- while sending leaflets to people's homes is permitted, leaflets must not be selectively sent to only specific homes or specific individuals based on information held by firms or a referrer (as set out in our guidance on unsolicited approaches to members of the public [/solicitors/guidance/unsolicited-approaches-advertising/])
- any visit to a prospective client's home can create a situation where an individual may feel obliged or pressured to agree to the services being offered. This risk is likely to be higher where prospective clients

are vulnerable and where the person making the home visit has a financial interest in the consumer agreeing to progress a claim.

Firms must ensure that any referrer / lead generator working on their behalf is aware of these risks and how the firm's regulatory obligations apply. Firms must have processes to enable them to monitor referrer compliance effectively and identify any issues reasonably promptly.

Monitoring referral arrangements – good practice

Firm E has the following processes in place when working with referrers:

- including the firm's regulatory obligations in contracts with the referrer
- having an agreed script for in-person meetings between the referrer and prospective clients
- completing regular quality checks on the referral process directly with referred clients
- approving all marketing materials before they can be used by the referrer
- thoroughly vetting all cases to ensure the firm only accepts matters with good prospects of success
- incentivising referrer compliance by including a term in the contract allowing the firm to clawback its payment to the referrer where referrals do not meet the agreed standard.

Checklist for firms/solicitors:

- Staff working on volume consumer claims, and all referrers and marketers, should understand the firm's regulatory obligations in relation to marketing the firm's services and the referral of individuals. This includes relevant SRA guidance and warning notices.
- Have suitable processes in place to ensure all marketing material is compliant, whether prepared by the firm or another provider. This includes all websites, online and social media advertising, and any print materials.
- Complete robust due diligence when entering a new marketing or referral arrangement. Key information should be independently checked or verified.
- Ensure regulatory obligations are fully considered when entering a new marketing or referral arrangement. Duties under the SRA Principles and the Codes of Conduct should be given as much attention in the due diligence process as the commercial aspects of the arrangement.
- Have a process in place to ensure marketers and referrers continue to comply with the firm's obligations over time. Firms' processes should allow them to identify any compliance issues reasonably promptly.
- Identify where an arrangement may carry additional risk (such as the referral of vulnerable client groups) and, where necessary, adjust processes to ensure the firm remains compliant.

After The Event Insurance

Why this is important

After The Event (ATE) insurance is a vital protection for people who could not otherwise risk the cost of an unsuccessful legal claim. It is a key part of enabling access to justice for individuals.

A refusal of ATE cover can have serious, distressing and long-lasting impacts for affected clients. Recent media coverage has highlighted the distress experienced by former SSB Group clients, who received demands for payment of defendant costs where an ATE insurer declined cover under their policies because of alleged failings by staff at SSB Group.

In a recent case [https://solicitorstribunal.org.uk/wp-content/uploads/2024/05/12579.2024.Seth_.pdf] the Solicitors Disciplinary Tribunal fined a solicitor and imposed a restriction order for a number of breaches connected with the handling of mortgage mis-selling claims. This included placing clients' ATE insurance at risk by failing to adhere to a policy term which required the firm to seek the insurer's approval before issuing claims.

Although these cases represent only a fraction of all claims backed by ATE insurance, they have the potential to greatly influence public trust and confidence in the legal profession. As a result, it is essential for firms and solicitors to manage ATE insurance responsibly to ensure they are protecting clients' best interests. This includes complying with both the terms of ATE insurance policies and our Standards and Regulations.

Firms must give clients the best possible information about costs and funding, so they can make informed decisions about their case. This includes providing them with information about the ATE insurance policy and making sure they fully understand and consent to its terms.

What we expect

Firms can carry out regulated financial services activities that are directly linked to the legal services they provide. To do so, they must be registered on the Financial Services Register as an Exempt or Authorised Professional Firm and notify us [/solicitors/firm-based-authorisation/existing-firms-applications/financial-services/] of their financial services activities. These activities include insurance distribution, which covers arranging ATE insurance on behalf of clients.

Carrying out regulated financial services activities without being registered as an Exempt or Authorised Professional Firm is prohibited under section 19 of the Financial Services and Markets Act 2000. Arranging ATE insurance without the required registration may be a criminal offence.

Under Rule 5.2 of the SRA Financial Services (Scope) Rules [/solicitors/standards-regulations/financial-services-scope-rules/] :

- You must not carry on any insurance distribution activities unless you:
- are registered in the Financial Services Register; and
- have appointed an insurance distribution officer who will be responsible for your insurance distribution activities

The SRA Financial Services (Conduct of Business) Rules [/solicitors/standards-regulations/financial-services-conduct-business-rules/] set out how Exempt Professional Firms should carry out insurance distribution activities. Before any ATE insurance policy is put in place, firms must give clients the following information in writing, and obtain and document their consent:

- the firm's status disclosure (Rule 2)
- whether the firm is providing a personal recommendation (Rule 10) and if so, the details in Rule 11 must be provided
- a statement of the client's demands and needs (Rule 12)
- any remuneration the firm receives in relation to the insurance policy (Rule 16)
- any fee payable by the client (Rule 17).

Our guidance on law firms carrying on insurance distribution activities [/solicitors/guidance/law-firms-carrying-insurance-distribution-activities/] provides further information on how to comply with these requirements.

What we found

Authorisation as an Exempt or Authorised Professional Firm

Most firms (17 out of 25) we visited arranged ATE insurance for clients in relation to volume consumer claims. Some (seven) firms had delegated authority to issue policies to clients directly. None of the firms received any form of commission for arranging ATE insurance.

We were concerned that two firms we visited appeared to be arranging ATE insurance without being registered as Exempt Professional Firms on the Financial Services Register.

- One firm identified that the omission was the result of an administrative error and was able to rectify the issue very quickly.
- The other firm was not aware of their obligations under the Scope rules (including the requirement to register as an EPF), which had led to the omission. It acted promptly to rectify the situation and notified the ATE insurer it was working with to confirm that the ATE insurances policies currently in place remained valid despite its oversight. We are investigating this matter to decide whether further action should be taken.

Reporting to ATE insurers

Firms need to have a clear understanding of the information required by insurers under their clients' ATE policies to ensure compliance with policy terms.

We found the information firms were required to provide to ATE insurers differed significantly between firms. Most were required to provide updates on progress of the insured claim, its prospects of success, any offers to settle and its conclusion.

We asked firms how they made sure they were providing the necessary information to ATE insurers in the required timeframes.

Most (15 out of 17) firms had at least one process in place that allowed them to proactively identify when updates to an ATE insurer were due. However, two firms did not have any proactive measures in place. One firm only provided updates if the ATE insurer asked for them. The other firm told us that it expected the insurer to check the broker portal through which the policies were issued if it wanted updates. Unless they were certain that the ATE insurer required no further information than this, the approach of these firms could place clients' ATE policies at risk.

Firms must make sure they are sharing all the required information with ATE insurers. They must check the specific terms of the ATE insurance policy and make sure they are meeting all the reporting obligations. Failure to do this could invalidate an insurance policy and put clients at significant risk.

Managing ATE insurance cover

It can be necessary to increase the level of ATE insurance cover where a case becomes more complex or takes longer than planned when the policy was initially taken out. This is an important part of protecting clients' best interests, helping to ensure that the policy in place will be sufficient to cover any costs awarded against the

client if their claim is not successful. We wanted to understand what processes firms had in place to identify cases where a client's ATE insurance cover may need to be increased.

All but one of the firms arranging ATE insurance had a process in place to ensure they reviewed clients' level of ATE cover. A number of firms were dealing with matters under Group Litigation Orders where consideration of ATE coverage for clients within the group forms part of the formal case management process and is reviewed at regular intervals during the litigation, with updates provided via a client committee. These firms were reviewing ATE cover at least quarterly and this was often in addition to other measures by the firm to keep clients' ATE insurance under review. On matters that are not covered by Group Litigation Orders, firms told us that generally key stages in the case triggered a review of ATE cover. Typically, this was when there was an indication a trial may be necessary, but for other firms, allocation to a specific claims track was a trigger point.

Firms acting on Group Litigation Order matters told us that defendants commonly insisted that claimants' ATE insurance policies include anti-avoidance clauses, to reduce the risk of coverage disputes in the event of an unsuccessful claim. This protects all parties by making sure defendant costs can be covered by ATE insurance where claims are unsuccessful.

Firms told us that it was unusual to need to make a claim on an ATE insurance policy on a client's behalf. Almost all firms had never experienced an ATE insurer declining cover when they submitted a claim. However, one firm had a claim declined because it could not demonstrate that the client had returned a signed copy of the insurance policy.

This demonstrates the importance of firms ensuring that all the appropriate ATE insurance documents are in place and retained on file. Where a client fails to complete ATE insurance documentation, they should be warned of the consequences, including that the ATE insurer could decline cover. If the client does not return the documents, or give fully informed consent to not taking out ATE insurance, the firm would need to consider whether it could continue to represent the client.

Providing ATE insurance information to clients

ATE insurance was in place on 23 files we reviewed. None of the firms received commission or remuneration in relation to the ATE policies. We found that few firms were giving clients all of the information required by the Scope Rules and Conduct of Business Rules. On two files, firms gave no information at all.

We were also concerned that in many cases (10 out of 23 files), clients did not have the opportunity to read information about the ATE policy and raise any queries before the policy was put in place. Clients should clearly consent to the ATE policy, but we did not see evidence of this on four files. We have opened investigations into two firms as a result of these findings.

Firms must give clients the best possible information on costs and ensure they can make informed decisions about how their case will be handled. They must also comply with the Conduct of Business Rules and Scope Rules. All of the required information about ATE insurance must be provided in a fair and clear way. Clients must be able to store the information and access it again when necessary. Giving ATE insurance information in written form is a good way of meeting these obligations.

ATE insurance arrangements can be complex. Firms should take steps to ensure that clients fully understand the terms of any ATE insurance policy and clearly consent to them. This consent should be recorded in writing to avoid any ambiguity.

We visited several firms which conducted diesel emissions claims under Group Litigation Orders. We saw a difference in practice on these files. Clients consented to a committee of representatives making key decisions on the case, including the inception and terms of ATE insurance. On these files, detailed ATE insurance information was given to the committee, which reviewed and consented to the policy before it was put in place. Within this framework, firms provided individual clients with less detailed information about ATE insurance, on the basis that they had authorised the committee of representatives to make decisions on their behalf. There was ongoing oversight of ATE insurance from defendants and the courts, which ensured that the terms of the insurance were adequate to mitigate any risks. Clients also received regular standardised group updates on the progress of the litigation, including hearings about costs and ATE insurance cover.

Case studies

Arranging ATE insurance – good practice

Firm F arranged ATE insurance on behalf of clients. It had a documented process to provide timely updates to ATE insurers. It gave ATE insurers regular updates on claims' prospects of success, progression of cases, settlement offers and costs. This ensured that the firm was complying with the terms of the ATE insurance policies. The firm and insurer also had regular meetings to review the adequacy of ATE insurance cover for the firm's claims. This was a proactive measure to safeguard clients' interests.

Before ATE insurance policies were issued, Firm F provided clients with all of the information required by the Conduct of Business Rules. They gave these details in writing, in a clear and understandable format. This

information included the firm's status disclosure, details about the personal recommendation of the firm, a demands and needs statement, and the ATE insurance fee payable by the client. The firm made sure they had written client consent to the ATE insurance policy before it was put in place.

Checklist for firms/solicitors

- Ensure your firm is registered as an Exempt Professional Firm or Authorised Professional Firm before arranging insurance on clients' behalf. Put a process in place to check that your firm's FCA register entry remains accurate and up to date.
- Comply with the SRA Financial Services (Conduct of Business) Rules [/solicitors/standards-regulations/financial-services-conduct-business-rules/] by giving clients the following information in writing:
  - your firm's status disclosure (Rule 2)
  - whether your firm is providing a personal recommendation (Rule 10) and if so, give the details in Rule 11
  - a statement of the client's demands and needs (Rule 12)
  - any remuneration your firm receives in relation to the insurance policy (Rule 16)
  - any fee payable by the client (Rule 17).
- Appoint an Insurance Distribution Officer from within the firm's management to oversee the firm's insurance distribution activities and make sure they comply with our Standards and Regulations.
- Make sure your Insurance Distribution Officer and all relevant staff have a clear and accurate understanding of what information must be reported to any ATE insurer. Check that they know what steps to take to comply with the terms of any ATE insurance policies issued to clients.
- Put processes in place to ensure ATE insurers receive all the information and updates required under the terms of clients' policies.
- Have procedures to identify when a client needs an increase in their ATE insurance cover and to address that need promptly.
- Obtain and document fully informed client consent to the ATE insurance policy before it is put in place.

On boarding clients

Why this is important

Firms must have robust systems in place to identify their clients and verify the client information they hold. Every client must provide the firm with clear and informed consent to act and confirm their agreement to the terms of the retainer. If firms cannot comply with these requirements, they should not act.

Firms in the volume consumer claims sector deal with large numbers of clients and cases. Many firms source clients through referrals from third parties. It is important that firms have effective client onboarding processes to ensure that every instruction complies with our Standards and Regulations.

What we expect

Firms and solicitors must:

- identify their clients in accordance with the SRA Code of Conduct for Solicitors (Paragraph 8.1) [/solicitors/standards-regulations/code-conduct-solicitors/], Code of Conduct for Firms (Paragraph 7.1) [/solicitors/standards-regulations/code-conduct-firms/] and our guidance on identifying your client [/solicitors/guidance/identifying-client/]
- comply with the Sanctions and Anti Money Laundering Act 2018 (UK Sanctions Regime) by mitigating the risks of acting for a sanctioned client (see our Guidance on complying with the UK Sanctions Regime [/solicitors/guidance/financial-sanctions-regime/])
- not act if there is a conflict of interest or significant risk of it arising (SRA Code of Conduct for Solicitors [/solicitors/standards-regulations/code-conduct-solicitors/], Code of Conduct for Firms [/solicitors/standards-regulations/code-conduct-firms/], Paragraphs 6.1 and 6.2)
- only act on instructions from the client or someone authorised to provide instructions on the client's behalf (SRA Code of Conduct for Solicitors, Paragraph 3.1 [/solicitors/standards-regulations/code-conduct-solicitors/])
- have effective governance structures, arrangements, systems and controls in place to ensure that those they contract with do not cause or substantially contribute to a breach of their regulatory obligations (SRA Code of Conduct for Firms, Paragraph 2.1(c) [/solicitors/standards-regulations/code-conduct-firms/])
- identify, monitor and manage all material risks to the business (SRA Code of Conduct for Firms, Paragraph 2.5 [/solicitors/standards-regulations/code-conduct-firms/])
- remain accountable for compliance with regulatory requirements where their work is carried out through third parties, including those they contract with (SRA Code of Conduct for Firms, Paragraph 2.3 [/solicitors/standards-regulations/code-conduct-firms/]).

What we found

Checks on clients

We asked firms whether they carried out any checks on clients at the outset of a matter. Almost all firms (22 out of 25) told us that they did client ID checks. Many (18) firms said that they did conflict of interest checks, and some (11) said they did sanctions checks.

However, of the 50 files we reviewed:

- client ID checks were not done on 11 files
- conflict of interest checks were not done on 28 files
- sanctions checks were not done on 39 files.

We were concerned by the lack of checks that firms were carrying out on clients, and that heads of department seemed to believe checks were being completed that were not. Firms must be able to satisfy themselves that they have identified their client, complied with the UK Sanctions Regime, and are not acting in a conflict of interest. Carrying out these checks is a way of making sure that they are complying with these obligations. If they do not carry out these checks, they must be able to show how they have complied with these requirements.

Failing to verify the client's identity is not just a breach of regulatory duties. It can also have negative practical consequences for clients. On one file we reviewed, the firm asked for the client's ID but did not receive it. At the point of settlement, the firm could not pay out damages to the client because it was not able to verify the client's identity. We are currently investigating this firm for multiple potential breaches of our Standards and Regulations.

Verifying client information

All firms said that they needed the client's name, address, and details that would enable the firm to establish that it had a valid claim. Many (13 out of 25) firms had standard criteria that the client had to meet in order for the firm to accept their matter. This ensured that firms did not take on and pursue any cases that were meritless (SRA Code of Conduct for Solicitors, Paragraph 2.4 [/solicitors/standards-regulations/code-conduct-solicitors/]).

Almost all (21) firms sourced clients through third party referrers. We asked whether firms took steps to check that the information passed from third party referrers about clients was correct. Most firms contacted clients in writing (12) and/or verbally (10) to verify the information. However, two firms did nothing to verify the information. This is not acceptable. We have opened an investigation into both of these firms. A few firms took additional steps to confirm the information passed from referrers was correct, including:

- automated checks on the details provided
- audits and quality assurance checks on the referrer
- giving clients an online platform to provide information to the firm directly.

We asked firms what they did when they had concerns about the accuracy of the information provided by third party referrers. 14 out of 21 firms who sourced clients through referrers said they had had such concerns. Most (10) firms had discussions with clients, and some (eight) had discussions with the referrers to address and resolve issues. A few firms took more significant steps, such as terminating their referral arrangements and closing claims where the clients or prospects of success could not be verified.

It is firms' responsibility to ensure that the information they hold about clients and their matters is accurate. It is not sufficient to rely on third party referrers without taking active steps to verify client and matter information. Firms are accountable for referrers' compliance with our Standards and Regulations. They should take steps to manage the risk of advancing claims based on inaccurate client and matter information provided by referrers. This includes being prepared to terminate referral arrangements if there are concerns about the referrer's conduct.

Obtaining client consent to act

Explaining the terms of the retainer to the client and obtaining their informed consent to act is a fundamental part of client onboarding. Firms must not act if they do not have client instructions. We reviewed 50 files to understand how firms handle this.

We expect all firms to confirm their instruction to the client. This was done on 48 out of 50 files. We were concerned that on two files, the firm did not confirm that it was instructed by the client. This firm relied on its third party referrer to carry out all due diligence checks, communicate with the client about the terms of the retainer, and obtain client consent for the firm to act. We reviewed the communications between the referrer and the clients. It was not made clear to clients that they had entered into a retainer with the firm. There was no clear written authority from clients allowing the firm to act. We have opened an investigation into this firm.

We could not see written client consent to the retainer on two further files. The firm relied on its third party referrer's agreements with clients, entered into prior to its instruction. The firm was not able to show us these agreements, and we could not verify that they included the client's authority for the firm to act. We are investigating this firm.

The firms which confirmed their instruction to the client did so in a variety of ways, and some used more than one method. On 42 files, they sent clients a letter of engagement. On 16 files, they confirmed their instruction by email. On 11 files, they phoned the client and made written records of their calls. These initial phone calls were also used to address client queries.

Clients must fully understand and consent to their retainer with the firm. Firms must not act unless they have informed client consent. To do so is likely to be a breach of our Standards and Regulations.

Use of websites and technology

Many firms we visited used their websites as part of the client onboarding process. Some prospective clients could input their details into a website, which would generate an automated document with terms and conditions for the client to sign or click to confirm their agreement. Some websites included the facility for automated checks on the client's details. Using technology in this way can be efficient, effective, and accessible to a large number of consumers.

However, where websites are being used as part of the client onboarding process, firms must ensure that clients are properly informed about the retainer they are entering into with the firm. Firms should make sure clients have a readily accessible copy of the retainer information, make their involvement clear (especially where the website is under a trading style or operated by a third party), and obtain a form of client consent to the firm's instruction that can be recorded on the firm's system.

Outsourcing client onboarding

Of the 25 firms we visited, seven firms outsourced client onboarding to a third party referrer. For some firms, this was limited to due diligence checks, and for others, this included sending clients information about the retainer and obtaining their authority to act.

Firms remain accountable for compliance with our Standards and Regulations, even where onboarding is carried out through third parties. We had concerns that five of the seven firms which outsourced client onboarding were not actively checking that contracted third parties were identifying clients and obtaining clients' consent for the firms to act. This includes having processes for the ongoing monitoring of third parties, such as regular audits or quality assurance checks.

For more details on firms' relationships with referrers, please see the section on 'Client acquisition'.

We are currently investigating all five firms where we identified concerns about onboarding practices.

Case studies

Managing the client journey – good practice

Firm G runs a website under a different trading style. Its website is its main method of sourcing clients, and it does not use third party referrers. Under the banner of the website, it clearly states it is a trading style of Firm G.

The website has a detailed FAQ section which deals with common client queries, such as costs, funding, and the eligibility criteria for a claim. It also makes clear that clients do not need to use a legal representative and can pursue their claim through the ombudsman for free.

If they wish to instruct the firm, clients enter their details on the website. This generates a letter of authority which clients must sign to allow the firm to request the necessary evidence from defendants. This enables the firm to determine whether the client is eligible to bring a claim. Clients must also sign a damages-based agreement (DBA), which explains key costs and client care information in accessible and easily understandable language. This DBA confirms again that the client can pursue their claim through the ombudsman for free.

The firm contacts clients to carry out due diligence checks, including client ID and e-verification checks. It gives clients access to an online portal where they can access all documents and communications with the firm. Copies of the letter of authority and DBA are also available to download from the website and emailed to the client directly. On all documents, the name of Firm G is clearly used, so clients understand that they are entering into a retainer with the firm.

The firm requires client consent to commence each claim, and for each stage of the claim. The firm will not contact the defendants for evidence until it has received the client's signed letter of authority and DBA. On gathering this evidence, the firm reviews whether the eligibility criteria for a claim are met. If they are not met, the firm will inform the client that they have no claim, and close the file.

If there are multiple defendants against whom the client could bring a claim, the firm makes sure it has consent from the client to pursue each claim separately. The firm will not proceed to the next stage of any claim without client consent, which is obtained by email and recorded on the online portal.

A designated member of staff is responsible for overseeing the client journey through the website, checking that all templates and automated content remains correct and up to date, and making sure the system is working correctly.

Outsourcing onboarding and client care – poor practice

Firm H has an arrangement with a third party (Referrer X) which refers clients to them and provides funding for the firm's consumer claims work. Firm H outsources its client onboarding and communication to Referrer X. Referrer X operates a website through which clients are sourced. Firm H is not mentioned on the website.

Clients enter their details if they wish to pursue a claim. A series of automated checks are carried out to establish whether the client is eligible to bring a claim. If these checks are passed, the website informs the

client that they have a valid claim and requests their consent to the terms of business, via e-signature. Clients are not informed that they can pursue claims directly without legal representation.

On the website, there is a small link to the terms of business, which provides some client care and costs information. However, it is not possible to download and/or print the terms of business for future reference. Once the client provides their e-signature, the terms of business are not accessible again.

The terms of business include authority for the firm to use the client's e-signature. Firm H told us it used client e-signatures to contact defendants under Article 17 of the General Data Protection Regulation (GDPR) to make applications under the right to be forgotten, without informing clients of this or obtaining their express consent to do so. There was no awareness that this was going significantly beyond what the client had authorised the firm to do. The firm also told us it agreed settlements without explicit approval from clients, based on the general consent in the terms of business.

Referrer X is responsible for handling communications with the client. Firm H is referred to as a 'partner' of Referrer X in the terms of business, but not mentioned in any other communications. The financial interest received by the firm and Referrer X as a result of the referral arrangement is not disclosed to the clients. It is unlikely that clients are aware they have entered into a retainer with Firm H, or consented to its terms.

Firm H does not keep records of any due diligence checks undertaken, any client consents given, or any communications with the client.

We have opened an investigation into this firm.

Checklist for firms/solicitors

- Identify your clients. Carrying out client ID and verification checks are good ways of ensuring you are complying with this fundamental duty.
- Ensure you are complying with the UK Sanctions Regime. Carrying out sanctions checks helps to mitigate the risks of acting for sanctioned clients.
- Do not act if there is a conflict of interest or significant risk of a conflict of interest arising. Carrying out conflict of interest checks on clients is an important way of mitigating this risk.
- Obtain clear client consent to your instruction. This includes making sure that the client is fully informed of, and understands, the terms of the retainer with you before they enter into it. The client's consent and instructions should be clearly evidenced on each file.
- Check that the information you hold about the client and their matter is accurate.
- If you are sourcing clients through third parties, or have outsourced client onboarding processes to third parties, you must have systems and safeguards in place to ensure that:
  - the above steps are taken by the third party and you have evidence of that
  - the third parties are complying with our Standards and Regulations.

This might include carrying out checks on information they have provided, audits and quality control processes, and regular feedback channels.

Client care and costs information

Why this is important

Many clients are not familiar with legal concepts and processes. Some may be at greater risk of vulnerability due to their personal needs and/or circumstances. It is crucial that firms give clients the information they need to make informed decisions about their case, in a way that is accessible and readily understandable. This includes what costs will be charged and how their claim will be funded.

Where firms are dealing with large volumes of clients and cases, it is common practice to use templates or automatically generated documents. Firms must make sure that all information which goes out to each client is accurate and relevant to them. This is a fundamental part of acting in the client's best interests.

What we expect

Firms and solicitors must comply with the Code of Conduct for Solicitors [/solicitors/standards-regulations/code-conduct-solicitors/] , including:

- providing clients with information in a way they can understand, so that they are in a position to make informed decisions about the services they need, how their matter will be handled and the options available to them (Paragraph 8.6 [/solicitors/standards-regulations/code-conduct-solicitors/])
- ensuring that clients receive the best possible information about how their matter will be priced and, both at the time of engagement and when appropriate as their matter progresses, about the likely overall cost of the matter and any costs incurred (Paragraph 8.7 [/solicitors/standards-regulations/code-conduct-solicitors/])
- informing clients of any financial or other interest received by a referrer or the firm as a result of a referral arrangement (Paragraph 5.1(a) [/solicitors/standards-regulations/code-conduct-solicitors/])
- informing clients of any fee sharing arrangement relevant to their matter (Paragraph 5.1(b) [/solicitors/standards-regulations/code-conduct-solicitors/]).

What we found

Client care information

We reviewed the written information that firms gave to clients at the outset of a matter on 50 files. This was usually in the form of a letter of engagement and/or terms of business. On 47 files, the following information was provided:

On three files, none of the above information was provided at all.

This is standard information which allows clients to make informed decisions about the services they need, how their matter will be handled and the options available to them. It was worrying that all of this information was only provided on 18 out of 50 files (conducted by 11 firms). We expect firms to give clients all of this information on every matter, in a way clients can understand.

It was positive that some firms gave clients information in a variety of consumer-friendly forms, such as FAQ documents, booklets, audio and video recordings. Many firms communicated with clients through phone calls, text messages and WhatsApp, mindful that they might struggle to fully understand written information. On all files we reviewed involving clients with specific vulnerabilities (three), firms took appropriate steps to tailor their communication.

Referral arrangements

We were very concerned about the lack of information that firms were giving to clients about referral arrangements. It appears likely that this is linked to poor awareness of regulatory obligations around referral arrangements.

Firms must inform the client of any financial interest they or any third party receive as a result of the client's referral. Failure to do so is a breach of our Standards and Regulations. In 30 of the 50 files we reviewed, clients were referred to the firm by a third party. On 12 of these files, clients were not informed of the financial interest received by the referrers or firms as a result of the referral arrangements. On two files, clients were told that there was no financial interest received by the referrer or firm, when this was untrue.

As a result of these findings, we have opened investigations into eight firms.

Ombudsman, public compensation and redress schemes

So clients can make informed decisions about the services they want, firms should explain to them the options for progressing their claim. Firms could do more to comply with this obligation.

Most of the firms we visited (19 out of 25) were conducting claims where there was an established industry ombudsman, public compensation or redress scheme that clients could approach directly without incurring the costs of legal representation. 14 of those firms said that they advise clients of this option in writing. However, of the 33 files we reviewed where there was a relevant scheme, clients were informed that they could pursue the claim themselves at no cost on only 12 files, handled by seven firms.

We were concerned by this. We expect firms to make sure clients understand the potential routes they can use to obtain compensation or redress. They should inform clients before they formally enter into any retainer with the firm or funding arrangements. This is crucial to safeguarding their best interests and enabling them to make informed decisions.

However, we did see some examples of good practice. Some firms provided this information to clients in a letter of engagement and discussed it with them in an initial phone call. They ensured that clients were aware that they could pursue redress themselves for free, even if they ultimately decided to instruct the firm. This is good practice which we expect from all firms.

Costs information

We reviewed the written costs information that firms gave clients on 50 files.

On three files (conducted by two firms), the firm gave no costs information to clients at all. This is a breach of our requirement to give the best possible costs information to clients (SRA Code of Conduct for Solicitors, Paragraph 8.7 [/solicitors/standards-regulations/code-conduct-solicitors/]).

All of the information above was provided to clients on only 20 files (conducted by 12 firms). Clients should receive the best possible information about the overall costs of their matter, and it was clear from our file reviews that many firms are failing to meet this requirement.

Additional costs may also be relevant to matters in the volume consumer claims sector. Firms informed clients of the following costs where they were applicable.

Again, we would expect firms to provide all of this information wherever it applies, to comply with our Standards and Regulations.

Many (15 out of 25) firms told us they took steps to ensure clients understood the costs information they received and to address any client queries. This included making initial phone calls to clients, having a designated team to deal with client queries, and sending guides and resources about costs.

However, it is clear that firms must do more to provide clients with the best possible information about the costs of their matter. Costs and charging arrangements (such as 'no win, no fee' agreements) can be complex and confusing to consumers. Firms must ensure that clients understand how fee arrangements operate so they can make informed decisions. This involves communicating costs information in an accessible and straightforward way. Providing proper information can also help to manage client expectations throughout the claim process, potentially avoiding complaints or dissatisfaction.

Where firms are using template documents, they must check that they contain sufficient, accurate, and clear information. Firms must ensure that documents are applicable to each client and compliant with regulatory requirements. An error on one template document could affect tens of thousands of clients who are sent the same document. Please see the case study below on 'Inaccurate and misleading template documents – poor practice' for an example of this. Firms must be mindful of this risk and take steps to avoid it.

Costs information includes details of any ATE insurance policy. We have addressed this in detail in the section on 'ATE insurance'.

Litigation funding

We reviewed 28 files where the firm had secured litigation funding for the claim. On 21 of these files, the terms of the litigation funding agreement impacted the level of damages/compensation the client received, the client’s obligations, and risks of the claim, such as withdrawal of litigation funding in certain circumstances. In these cases, we would expect firms to inform clients of the relevant terms of the litigation funding agreement in a clear and readily understandable manner. We were worried by how few firms did this.

On 10 of these 21 files, clients were not given any information at all about the litigation funding agreements in place. We did not see any files in which clients were given all of the information referred to below.

This falls short of our requirement to ensure clients can make informed decisions about how their matter will be handled and the options available to them. Firms should fully inform clients about litigation funding agreements that impact on their matters.

Case studies

Client care and costs information – good practice

At the start of the instruction, Firm I gives clients a letter of engagement, terms of business, and conditional fee agreement. These contain details about costs and how their matter will be handled. To enable clients to understand this information, the firm also provides clients with a:

- form that clients can complete to indicate what method of communication they prefer and whether they need any reasonable adjustments
- link to a video recording with an overview of the documents
- booklet about costs and funding arrangements, written in layperson's language
- checklist of documents that clients need to review and sign
- checklist of next steps that clients need to take
- list of firm contacts if they have any queries.

Advising clients of free ombudsman schemes – good practice

Firm J explains in their letter of engagement that clients can pursue a claim themselves directly through a free ombudsman scheme, in clear language which is easy to understand:

> 'You can choose to handle your claim on your own at no cost, or you can seek help from a legal professional if you prefer. While solicitors cannot recommend their services over doing it yourself, some people find it helpful to have professional assistance to save time and effort. Ultimately, the choice is yours, and both options are valid.'

Inaccurate and misleading template documents – poor practice

Firm K uses a case management system to generate template letters of engagement at the point of instruction. We reviewed two files where these letters contained inaccurate information that was in breach of our Standards and Regulations.

One client was sourced through a referral arrangement, whereby the firm received a financial benefit. In the letter of engagement, the firm said that it received no commission as part of the referral arrangement. This

was untrue.

On the other file, the letter of engagement contained details on how to raise a complaint with the Legal Ombudsman. However, the address for the Legal Ombudsman was incorrect and out of date. The firm had not contacted clients with the correct information.

At the time of our visit, Firm K had approximately 35,000 cases. These clients could potentially have received template documents containing inaccurate and misleading information.

We have opened an investigation into this firm.

Checklist for firms/solicitors

- Inform clients in writing how their matter will be handled and the options available to them. This will typically include:
  - the person with conduct of and responsibility for the matter
  - scope of the work to be done
  - likely timescales for progression
  - how the firm and client can communicate
  - complaints handling information
  - any ombudsman, public compensation or redress scheme that the client can approach directly themselves at no cost
  - any financial interest received by a third party referrer or the firm as a result of the client's instruction
  - any fee sharing arrangements relevant to their matter.
- Give clients the best possible information about the costs of their matter and how it will be funded. As a minimum, this should be in writing and include:
  - how costs are calculated
  - how costs will be paid (for example, through a conditional fee agreement or damages based agreement)
  - an estimate of costs
  - consequences if the client discontinues or withdraws the claim
  - deductions to be made at settlement or on receipt of damages/compensation
  - likely disbursements
  - any success fee payable to the firm on receipt of damages/compensation, and how that success fee is calculated
  - potential adverse costs and how they will be addressed (ego by putting ATE insurance in place)
  - details of any litigation funding agreement which impacts on the level of damages/compensation, conduct of the claim, and/or obligations on the client.
- Make sure that the information you give clients is accessible and readily understandable. It should be clear, fair and not misleading. Consider using client-friendly resources such as FAQ booklets/guides, booklets, audio and video recordings. Communicate with clients as appropriate to their circumstances and needs.
- If you are using templates and standardised documents, make sure they are accurate, up to date, and relevant to each client before you send them out. Have systems in place to review and update templates regularly, to reflect sector, legal and regulatory developments.

Progressing claims

Why this is important

Where firms are acting for large numbers of clients, it is vital that they have robust systems in place to deal with each case effectively. Where technology is used to help manage high- volumes of clients, firms must ensure that it is effectively monitored and supervised by staff.

Every client is entitled to a proper standard of service. If firms are not able to provide this, they should not accept the instruction.

What we expect

Solicitors must ensure that they deliver services in a timely manner (SRA Code of Conduct for Solicitors, Paragraph 3.2 [/solicitors/standards-regulations/code-conduct-solicitors/]). Firms must have arrangements in place to ensure solicitors are doing so (SRA Code of Conduct for Firms, Paragraph 4.2 [/solicitors/standards-regulations/code-conduct-firms/]).

Solicitors must only act on instructions from the client or someone authorised to provide instructions on the client's behalf (SRA Code of Conduct for Solicitors, Paragraph 3.1 [/solicitors/standards-regulations/code-conduct-solicitors/]).

What we found

Progressing claims in a timely manner

The firms we visited had good systems to ensure key dates were met and cases were being progressed in a timely way. Most firms used case management systems and management reporting. Supervisory oversight of case lists and tasks was common, with many firms having regular meetings with fee earners and using a central team or key dates diary. A few firms carried out file reviews and audits.

These systems also allowed firms to keep track of when actions or client contact were overdue. Many firms told us that they used regular management reporting to alert them to cases where client communication had not taken place for the last 28 days. This would prompt supervisors and fee earners to review the files and take the necessary actions. This is a proactive and effective tool.

Where firms use technology to manage high-volumes of cases and clients, it is important to ensure ongoing monitoring and supervision of the system. Firms should also have a contingency plan to make sure they are able to access and progress files in the event of errors or failures in the system. To mitigate this risk, some firms had specifically trained staff dedicated to ensuring their case management system was working, troubleshooting errors, and continuous improvement.

Where case management systems are used to generate template letters or documents, firms must check that they are accurate and tailored to each client.

Client updates and instructions

We asked firms how often they contacted clients with updates or to request instructions. Many (14) firms did so monthly. Some (nine) only did so after significant events and two did so every three months. We found that firms' approaches were appropriate to the circumstances of the cases, and mindful not to incur unnecessary costs.

Firms took appropriate steps to deal with cases where they struggled to obtain instructions from clients. Most firms used different methods of communication to follow up with clients, including email, phone, post, and text. Many firms had a set procedure to follow, whereby if the client failed to respond to a certain number of communication attempts, they would be advised that the firm would terminate the retainer unless the client contacted it with instructions. We consider this to be a measured and proportionate approach.

Case study

Progressing cases – good practice

Firm L uses a range of measures to make sure it is progressing cases in a timely manner. It uses a case management system and management reporting to prompt fee earners about outstanding tasks and key deadlines. Every month, managers generate a list of cases where no action has been taken and clients have not been contacted for 28 days. They alert the supervisors and fee earners with responsibility of those cases to make sure that all necessary steps have been taken. This ensures that clients are contacted monthly with updates on the status of their case, and to request instructions if needed. Supervisors and fee earners must feed back to managers on whether actions have been completed.

The firm has a team diary which is accessed and updated by all staff working on consumer claims. This ensures that important deadlines and tasks are not missed. Supervisors regularly review files and meet with fee earners to discuss cases and learning and development needs. This enables them to identify and resolve issues promptly.

Firm L has a set procedure that staff follow where client instructions cannot be obtained. This includes contacting clients by phone, email, and text/WhatsApp a certain number of times. If the client continues not to respond, the firm will consider other means of tracing the client – for example, carrying out checks to ascertain whether there has been a change of address. The firm will then inform the client that, in the absence of instructions, it will terminate the retainer.

Checklist for firms/solicitors

- Put effective processes in place to ensure you are progressing cases and contacting clients for updates and instructions in a timely manner. This may include case management systems, management reporting, supervision, and file reviews.
- Take appropriate and proportionate steps to obtain clients' instructions. Staff should be aware of what to do if clients do not respond to firm communications.
- Monitor and supervise any technology you use to help manage cases. This includes checking the documents that it produces, as well as making sure the system is working effectively on an ongoing basis.
- Have a contingency plan in the event of any failures or errors in technology, to ensure that you can always access client files and information.

Using experts

Why this is important

Firms must assess the prospects of success of each claim, so that they can properly advise their clients. This might include instructing a subject matter expert for their opinion.

Firms that instruct experts to carry out work on their behalf are accountable for the experts' compliance with our Standards and Regulations. It is therefore important that firms have effective systems and controls in place to make sure the experts they instruct are producing reports properly and lawfully.

What we expect

Firms must:

- have effective governance structures, arrangements, systems and controls in place that ensure that those they contract with do not cause or substantially contribute to a breach of the SRA's regulatory arrangements (SRA Code of Conduct for Firms, Paragraph 2.1(c) [/solicitors/standards-regulations/code-conduct-firms/])
- remain accountable for compliance with the SRA's regulatory arrangements where their work is carried out through others, including those they contract with (SRA Code of Conduct for Firms, Paragraph 2.3 [/solicitors/standards-regulations/code-conduct-firms/])
- identify, monitor and manage all material risks to their business (SRA Code of Conduct for Firms, Paragraph 2.5 [/solicitors/standards-regulations/code-conduct-firms/])
- not act if there is a conflict of interest or significant risk of it arising (SRA Code of Conduct for Firms, Paragraph 6.1 [/solicitors/standards-regulations/code-conduct-firms/])
- ensure that clients receive the best possible information about costs, both at the time of engagement and when appropriate as their matter progresses (SRA Code of Conduct for Solicitors, Paragraph 8.7 [/solicitors/standards-regulations/code-conduct-solicitors/]).

What we found

Due diligence

We spoke to 14 firms that routinely instruct experts. None of the firms received commission or a financial benefit for instructing them. All firms said they carried out some form of due diligence on experts before instructing them.

While almost all firms checked experts' CVs, qualifications and accreditations, fewer firms carried out other useful checks, such as references, example reports, and reported cases. Firms must take the necessary steps to ensure that the experts they instruct are competent and qualified to provide the service required. Carrying out thorough due diligence and a range of checks is an effective way of doing this.

It is good practice for firms to do conflict of interest checks on experts. The Civil Justice Council's Guidance for the instruction of experts in civil claims [https://www.judiciary.uk/wp-content/uploads/2014/08/experts-guidance-cjc-aug-2014-amended-dec-8.pdf] makes clear the need to establish that an expert has no potential conflict of interest before they are instructed or before the court's permission to appoint is requested. Experts with conflicts of interest are at risk of providing reports that are not independent or impartial. If their judgment is compromised by their personal interests, this could jeopardise the best interests of the client. It could undermine the ability of the firm to act for and advise the client competently, with honesty and integrity.

At every stage of the claim, firms must be able to satisfy themselves that there is no conflict of interest or significant risk of it arising. Carrying out conflict checks on experts before instructing them is a good way of mitigating this risk. This usually includes checking whether experts have connections with other clients and parties to litigation, as well as asking them to confirm that they do not have a conflict of interest.

Independence

If an expert relies on a firm exclusively or mostly for their work, there is a risk that their desire to prolong the business relationship will override their professional obligations. For example, they may produce reports that are unjustifiably favourable to the firm's client, or express opinions that are driven by the firm's views and arguments, rather than their own assessment of the evidence.

We asked firms how they ensured that the independence of the expert they instructed was not compromised. Most firms were mindful of this risk, but few took active steps to mitigate it. Some firms always instructed experts via an agency rather than contacting individuals, and others made sure they used a range of experts. Only one firm set a limit on the number of instructions each expert had. Most firms relied on experts or expert agencies to confirm their availability and manage their workload.

There were some types of claims where external measures were in place to maintain experts' independence. In housing disrepair claims, claimants and defendants commonly instructed a joint expert, and in cases under Group Litigation Orders, the instruction of experts was authorised and overseen by the Court. Where these safeguards are not in place, however, firms must make sure they are taking the necessary steps to protect experts' independence.

One firm we visited shared a common owner with the agency it used to instruct experts. However, it disclosed this clearly to all clients in writing. It also made sure that it carried out due diligence checks on the experts it instructed, and obtained declarations from experts that they would comply with their duties to the Court.

Information given to clients

We reviewed 11 files where firms instructed experts. Experts were predominantly instructed on housing disrepair claims, to identify and evaluate the extent of disrepair. They were also instructed on Japanese knotweed, data breach, and diesel emissions claims.

We expect firms to explain to clients why experts are being instructed, and advise them on completed expert reports. This is a fundamental part of making sure clients are properly informed about their matter and the options open to them. On all files, firms told clients why the experts were being instructed. However, on one file, the firm did not advise the client of the outcome of the expert report.

Firms gave clients information about the costs of the expert reports on only two files. On nine files, firms failed to meet the requirement to give clients the best possible information about costs, so that they could make informed decisions about their case. The cost of expert reports is a disbursement which firms should make clients aware of. It is good practice for firms to give clients an estimate of the cost of an expert report before it is incurred, and to update the client when this cost is charged. This can also help to avoid misunderstandings and complaints, which are commonly about the costs incurred on a matter (see section on 'Complaints handling' for more details).

Case study

Instructing experts – good practice

Firm M regularly instructs experts. To make sure an expert is competent and suitable to carry out the instruction, the firm carries out conflict of interest and due diligence checks. It reviews the expert's:

- CV
- references
- qualifications and accreditations
- reputation in the sector
- reported cases
- sample reports
- adverse media.

The firm also considers its previous experiences of instructing specific experts. It maintains a list of experts which is available to all staff. This list includes the details of any experts the firm has instructed, with feedback from staff on their conduct, performance and reports. A nominated staff member is responsible for updating and reviewing this list on a regular basis.

Checklist for firms/solicitors

- Make sure the experts you instruct are competent and qualified to perform the service required. It is good practice to carry out thorough due diligence checks before instructing them.
- Take steps to ensure any experts you instruct are and remain independent. This may include carrying out conflict of interest checks at the outset, using an expert agency, and limiting the number of instructions you give to any one expert.

Advise clients on the instruction of any experts and the costs involved.

Advising clients

Why this is important

Every client must be properly advised about the merits of their claim and the options available to them. Clients must give full and informed consent to the conduct of the case, including settlement decisions.

Firms must meet these fundamental obligations regardless of the volume of cases they are managing. Failing to do so could undermine the proper administration of justice and public trust in the legal profession.

What we expect

Solicitors must comply with the SRA Code of Conduct for Solicitors [/solicitors/standards-regulations/code-conduct-solicitors/] :

- only make assertions or put forward statements, representations or submissions to the court or others which are properly arguable (Paragraph 2.4 [/solicitors/standards-regulations/code-conduct-solicitors/])
- only act for clients on instructions from the client, or from someone properly authorised to provide instructions on their behalf (Paragraph 3.1 [/solicitors/standards-regulations/code-conduct-solicitors/])

- give clients information in a way they can understand, ensuring they are in a position to make informed decisions about how their matter will be handled and the options available to them (Paragraph 8.6 [/solicitors/standards-regulations/code-conduct-solicitors/]).

What we found

Prospects of success

Firms told us that they assessed the prospects of success of claims in a variety of ways. Firms gathered and reviewed evidence, had discussions with clients, obtained expert and Counsel advice, and considered case law and other guidance. To ensure that all fee earners were assessing the prospects of success accurately, firms used supervision, training, standardised checklists and guidance. Many firms had criteria that each case had to meet for the firm to accept the instruction. This ensured that firms did not advance meritless claims.

Firms assessed prospects of success on an ongoing basis, and at key stages/milestones of a claim. Most did so:

- on receipt of initial instructions and evidence from the client
- on receipt of evidence or responses from the defendant
- after receiving expert evidence
- and when settlement offers were made or received.

We were concerned, however, that firms did not always advise clients on their claim's prospects of success. Firms gave clients substantive advice on the merits of their claim at the outset of the matter on only 68% of the files we reviewed (34 out of 50 files). They kept clients updated on prospects of success as the claim progressed on 60% of the files (30 out of 50 files). On two of the files where firms did advise clients on prospect of success, the advice was not accessible or easy to understand.

We expect every client to be fully advised on their claim's prospects of success and the options available to them. This is a fundamental part of acting in the client's best interests and ensuring they can make informed decisions on their claim. Firms should make sure they are complying with this obligation.

Settlement offers

We reviewed 23 files where settlement offers were accepted. We were disappointed that clients were not always informed of or advised on settlement offers. Nor did they always receive a breakdown of the deductions to be made from their damages/compensation in the event of settlement.

Furthermore, on five files, there was no evidence of the client consenting to the settlement offer before the firms told the defendant it was accepted. Of the three firms that handled these files:

- one firm had terms of business which allowed the firm to make decisions without client consent, but the terms of business were not readily available to clients. We have opened an investigation into this firm.
- one firm said that client consent was part of the agreement between its third party referrer and clients, but was not able to show us this agreement. We are investigating this firm.
- one firm informed and advised the client of the settlement offer, and the client subsequently raised a complaint relating to the deductions from the damages. Though the firm agreed the settlement figure with the defendant and made plans to transfer the amount to the client, there was no clear record on the file whether the client consented to the settlement or received the settlement monies. It was also unclear whether the complaint had been resolved. Our investigations team sought more information from the firm and gave feedback on how to improve its practices.

Firms should not make settlement decisions without informed consent from their clients. To do so is a breach of the requirement to act only on client instructions (SRA Code of Conduct for Solicitors, Paragraph 3.1 [/solicitors/standards-regulations/code-conduct-solicitors/]). To enable clients to make a fully informed decision, they should be advised of the terms of any settlement offer. It is good practice for firms to advise clients on the following issues:

- merits of the claim and prospects of success
- client's own costs
- level of damages/compensation
- deductions to be made from damages/compensation
- risk of adverse costs.

We reviewed two settled files where firms were acting under a Group Litigation Order. In these cases, the clients consented to a committee of representatives receiving advice on settlement offers and making settlement decisions on their behalf. Firms informed clients of the outcome of settlement discussions once agreed by the committee. We consider these practices to be compliant with our Standards and Regulations.

Case studies

Assessing prospects of success – good practice

Firm N uses a case management system. Each matter is divided into seven stages, reflecting the key milestones of a claim. At each of the seven stages, the fee earner and their supervisor receive an alert to carry out a detailed assessment of the claim's prospects of success. This alert cannot be bypassed or ignored.

When the fee earner completes this assessment, the supervisor must review and approve it. This is an opportunity for discussion between the fee earner and their supervisor, to ensure the case is being conducted appropriately.

This system ensures that the firm is regularly assessing the prospects of success of each claim. These assessments are retained on the file and used as the basis of advice to clients.

Advising on settlement offers -- good practice

Firm O acts for clients on housing disrepair claims. It has template letters for advice on settlement offers made and received. These templates include:

- a full breakdown of the settlement amount, including the client's costs and the deductions that would be made
- the circumstances and merits of the claim
- the risks and benefits of accepting the settlement offer
- the consequences of accepting or rejecting the settlement offer
- what the client needs to do next
- a form of authority for the client to sign.

Fee earners complete these templates, amending and tailoring them to the circumstances of the case. Because many of their clients have difficulties understanding formal written communication, the firm follows all letters up with phone calls. Fee earners make detailed attendance notes of these calls, showing how they update and advise clients in accessible, layperson's language. Clients' verbal instructions are clearly recorded.

The firm will not agree to a settlement offer without a signed form of authority from the client. The form of authority clearly states that the client has considered the firm's advice and consents to the settlement offer.

Checklist for firms/solicitors

- Assess the merits and prospects of success of each claim. This assessment should be reviewed on an ongoing basis and updated to reflect developments in the case.
- Advise clients on the prospects of success of their claim, in accessible language and in a way that is appropriate to their circumstances. This includes updating them if there are any material changes in the prospects of success.
- Advise clients of settlement offers made and received. Full settlement advice should include:
  - merits of the claim and prospects of success
  - client's costs
  - level of damages/compensation
  - deductions to be made from damages/compensation
  - any risks of adverse costs.
- Make sure you clearly document any assessments done, advice given and client consents received. This promotes clarity and avoids misunderstandings.
- Put the necessary systems in place to ensure that the above steps are taken for each case, and to identify where any actions are outstanding. For more details, see the section on 'Progressing claims'.

Supervision

Why this is important

Effective supervision is crucial to ensure that every client receives a competent service. It is especially important for firms dealing with large volumes of cases, which often employ large numbers of non-legally qualified staff. Supervision is an important way of making sure that matters are progressed appropriately, and concerns are promptly addressed. It also allows firms to identify any learning and development needs staff may have, and to make sure they remain competent.

What we expect

Firms must maintain effective systems to supervise client matters (SRA Code of Conduct for Firms, Paragraph 4.4 [/solicitors/standards-regulations/code-conduct-firms/]). They must ensure that managers and employees are competent to carry out their roles (Paragraph 4.3 [/solicitors/standards-regulations/code-conduct-firms/]).

Solicitors must ensure that the individuals they manage are competent to carry out their role (SRA Code of Conduct for Solicitors, Paragraph 3.6 [/solicitors/standards-regulations/code-conduct-solicitors/]). Where solicitors supervise or manage others, they remain accountable for the work carried out through them (Paragraph 3.5 [/solicitors/standards-regulations/code-conduct-solicitors/]).

Where an unqualified employee is working on claims, they must be supervised by an appropriatley qualified lawyer who has practised for at least three years (SRA Authorisation of Firms Rules, Rule 9.4 [/solicitors/standards-regulations/authorisation-firms-rules/]). Unqualified employees can only carry out claims management work without

supervision from an appropriatley qualified lawyer if the firm is regulated by the Financial Conduct Authority (FCA) for claims management activity. Details of this can be found in Article 89N of The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

More details are set out in our Effective supervision [/solicitors/guidance/effective-supervision-guidance/] guidance.

What we found

Types of supervision

It was common practice for large numbers of unqualified staff to work on claims under the supervision of qualified staff. Ensuring that supervisors have the necessary experience and skills to provide supervision is vital in maintaining the competence of all staff, thereby ensuring that clients receive the appropriate advice and level of service. Firms must also comply with the specific requirements for the supervision of unqualified staff.

All fee earners told us they received some form of supervision.

Many of the fee earners we spoke to had worked in consumer claims for less than six years. For some, this was a relatively new area of practice, which they had moved into after working in another area of law. Furthermore, few fee earners had received any training on regulatory guidance, case law, decisions, notices and outcomes published by relevant alternative dispute resolution schemes. (More details can be found in the section on 'Maintaining continuing competence'). Effective supervision was therefore crucial to ensure matters were being handled competently.

In light of these factors, we were concerned that none of the firms implemented all of the supervision measures listed in the chart above.

Though most fee earners told us that their supervision was adequate and effective, three fee earners felt that it could be improved. Suggestions included having a better approvals system and more regular, face to face, or structured supervision. Firms should regularly review their supervision arrangements to ensure that they are fit for purpose and helping fee earners maintain their continuing competence.

Firms considered a range of factors when determining the level of supervision each fee earner received.

Given the demands and risks in this sector, it is good practice for firms to consider all the factors above when providing supervision to fee earners.

Though almost all heads of department and all fee earners told us that they made records of supervision, we saw evidence of it on only 15 of 50 files we reviewed. To demonstrate compliance and maintain clarity, firms should carefully document any supervision of client matters.

Workloads

Many fee earners we spoke to did not have an individual caseload. Instead, they shared tasks from a central list. Those who did have their own caseload had up to three hundred cases. Not all fee earners dealt with all parts of a claim from start to finish. In these circumstances, there is a risk that conduct of a case may become fragmented, with fee earners having limited understanding of the different stages and aspects of the claim. It is crucial that firms have supervision structures in place to mitigate these risks.

We asked firms how they ensure that fee earners have a reasonable and sustainable workload. Most (23) firms relied on management reporting to notify them of fee earners' capacity and performance. It was also common for supervisors to regularly check in with fee earners (21 firms). However, it was worrying that many firms did not make sure they had streamlined and standardised processes to make work more efficient (13 firms), or adequate staffing levels to manage the work (14 firms). Few firms set limits on the cases/tasks per fee earner or instructions they accepted.

Firms must carefully consider what supervision arrangements are appropriate and necessary to ensure that all staff are competent and compliant with their regulatory obligations. Given the high-volumes of cases, profile of fee earners, and potential detriment to clients, it is not acceptable to do nothing.

Case study

Supervision arrangements – good practice

Firm P has a system of ongoing supervision and monitoring. Every day, supervisors phone the fee earners they support to check their progress and welfare. They send fee earners daily task lists which are generated using the firm's case management system. Management reporting enables supervisors to identify any outstanding tasks or concerns that need to be addressed by each fee earner. Supervisors provide feedback to fee earners and check that they have taken the necessary actions. They also carry out weekly file audits to ensure matters are being properly managed. The results of these file audits are kept in a central log for future reference.

Fee earners are made aware that they can contact their supervisor at any time if they have any queries or concerns. They have monthly one to ones and regular appraisals where they can discuss their learning and development.

Team meetings take place twice a week to discuss key developments, support individuals with any difficulties or concerns, and share relevant resources and guidance. Where staff raise any queries about litigation, the contents of the discussion are recorded in a document which is available to the team.

Checklist for firms/solicitors

- Maintain adequate and effective systems of supervision. This includes:
  - taking into account individuals' specific needs and circumstances
  - tailoring supervision to the requirements of individuals' roles
  - tailoring supervision to the inherent risks involved in the work being supervised, and the circumstances of clients (including vulnerabilities)
  - making sure that individuals have a reasonable and sustainable workload.
- Ensure supervisors have clear oversight of work on relevant client matters, are readily available to provide support and are able to provide assurance that legal and regulatory requirements are being met.
- Ensure supervisors have knowledge of each matter being progressed or monitor a meaningful sample of that work.
- Supervision should always include an element of direct discussion as well as reviews of documents, other work done and of case files.
- Make sure supervision is appropriately documented.
- If unqualified staff are working on claims, make sure that the firm is complying with the requirements of the Authorisation of Firms Rules and the Financial Services and Markets Act 2000. Unqualified staff must be supervised by appropriatley qualified lawyer who has practised for at least three years. Otherwise, the firm must be authorised by the FCA to carry out claims management activity.

Maintaining competence

Why this is important

Firms handling high-volumes of consumer claims necessarily have a significant impact on large numbers of clients. The impact of any inadequacies in template documents, failures to effectively manage cohorts of cases, ignorance of regulatory obligations and a lack of competence, is amplified by the sheer volumes of claims firms are dealing with. Many of their clients are not familiar with legal services and may have additional vulnerabilities.

To safeguard clients' best interests, firms must have systems in place to ensure that all individuals working on client matters are competent and complying with their regulatory obligations. Without them, there would be a risk of widespread detriment to consumers, undermining public trust in the legal profession.

What we expect

Solicitors must comply with the SRA Code of Conduct for Solicitors [/solicitors/standards-regulations/code-conduct-solicitors/] :

- maintain their competence to carry out their role and keep their professional knowledge and skills up to date (Paragraph 3.3 [/solicitors/standards-regulations/code-conduct-solicitors/])
- keep up to date with and follow the law and regulation governing the way they work (Paragraph 7.1 [/solicitors/standards-regulations/code-conduct-solicitors/])
- understand the Statement of Solicitor Competence [/solicitors/resources/continuing-competence/competence-statement/] and our continuing competence guidance [/solicitors/resources/continuing-competence/understanding-continuing-competence/] , including the requirements to:
  - reflect on their practice
  - identify their learning and development needs
  - plan and complete learning and development to address those needs
  - record their learning and development activity
  - evaluate the effectiveness of their learning and development
- maintain a learning and development record [/solicitors/resources/continuing-competence/templates/]
- ensure the competence of those they supervise (Paragraph 3.6 [/solicitors/standards-regulations/code-conduct-solicitors/]).

Firms must have systems in place to make sure that managers and employees are competent to carry out their roles (SRA Code of Conduct for Firms, Paragraph 4.3 [/solicitors/standards-regulations/code-conduct-firms/]).

What we found

Awareness of our guidance

Many of the heads of department and fee earners we spoke to had worked in consumer claims for less than six years. For many firms and individuals, this was a relatively new area of practice. It was common for large

numbers of unqualified staff to work on matters under the supervision of qualified staff. Around half of the fee earners we spoke to were not legally qualified.

We asked heads of department and fee earners whether they had read any of the following SRA guidance relevant to volume consumer claims:

- Guidance on representing clients during claims for financial services or products [/solicitors/guidance/representing-clients-during-claims-for-financial-services-or-products/]
- Guidance on claims management activity [/solicitors/guidance/claims-management-activity/]
- Warning notice on high-volume financial services claims [/solicitors/guidance/high-volume-financial-service-claims/] .

Many fee earners (14 out of 25) and some heads of department (five out of 25) had not read any of our guidance.

It was concerning that not many of the individuals who had read our guidance could recall the key messages.

Furthermore, some heads of department and fee earners had a poor understanding of the relevance of our guidance to their work. They mistakenly believed that they did not do 'claims management activity', or that our guidance did not apply to them because they did not do financial services claims. We emphasised that this guidance is relevant to all firms and solicitors carrying out volume consumer claims work, and encouraged them to reflect on it and share it with their staff

About half of the firms (13) did nothing to ensure fee earners were aware of our guidance. Only a small number of firms circulated our guidance to fee earners by email (eight), added it to a central knowledge bank (three), referred to it in team meetings (five) or training (three). This falls well short of the standards we expect from firms in maintaining the competence of their staff.

A helpful way of keeping up to date with our guidance is to subscribe to and read our monthly SRA Update emails. More information on how to subscribe [/news/sra-update/unsubscribe/] .

Firms were doing more to ensure that fee earners were aware of any case law, decisions, notices and outcomes published by relevant alternative dispute resolution schemes. Most fee earners told us that firms circulated these to them (18) or discussed them with the team (19). A few firms added them to a central knowledge bank (five). Many heads of department (12) updated template documents as necessary following relevant developments. However, all firms should be taking these measures.

Maintaining competence is not just about legal and technical knowledge. It also involves understanding regulatory obligations. Staff working in this area must understand our Standards and Regulations and guidance in order to comply with them. However, simply sharing our guidance is not enough if staff cannot understand or recall it. Firms must make sure that staff are applying the guidance to their practice. This is essential to ensuring that the firm is providing a competent service to clients and maintaining public trust in the legal profession.

Almost all of the fee earners from the firms we are investigating had failed to read our guidance. Those who had could not recall any of the key messages.

Awareness of continuing competence requirements

We spoke to 23 heads of department and 13 fee earners who were qualified solicitors. All heads of department understood their basic obligation to make sure they are competent to carry out their work. However, one fee earner did not understand this basic obligation.

Only seven heads of department and six fee earners referred to the Statement of Solicitor Competence when explaining their continuing competence obligations. This is the key framework which details the different requirements of continuing competence. Solicitors must understand this in order to consistently comply with it. We emphasised this to individuals and directed them to our guidance and resources on continuing competence.

Systems to maintain continuing competence

Firms must have systems in place to make sure that managers and employees are competent to carry out their roles. This includes promoting, assessing and monitoring the competence of staff. All fee earners said their firms took steps to help them maintain their competence.

Firms should carefully consider and implement processes which are appropriate to their circumstances, work types and employees. It can be helpful for firms to have a written policy about maintaining continuing competence. Many (11 out of 25) firms did not have this. A written policy can promote clarity and consistency, helping solicitors understand their obligations and how to meet them. However, firms must take steps to make sure that staff understand and comply with any written policies that they issue.

Learning and development activity

All but one of the individuals we spoke to carried out learning and development activity. This included webinars/seminars, conferences, team meetings and discussions. Most individuals did learning and development activities every month, with some doing so every six months. Only two individuals did this less often.

However, most of these learning and development activities were focused on the legal and technical aspects of consumer claims. Firms must ensure that solicitors are engaging in learning and development that reflects their needs across all aspects of their role, as set out in the Statement of Solicitor Competence. This includes:

- ethics, professionalism and judgment
- technical legal practice
- working with other people, and
- managing themselves and their own work.

We felt that firms could do more to make sure that solicitors are aware of and complying with all of their competence obligations.

Learning and development records

All fee earners (including those who were not qualified solicitors) and all but one heads of department were able to show us their learning and development records.

Many heads of department used the SRA's template learning and development record [/solicitors/resources/continuing-competence/templates/] . This enabled them to demonstrate that they had reflected on and identified their learning and development needs, planned how to address them, carried out activities to address them, and evaluated the effectiveness of these activities.

This was more variable with the solicitors we spoke to. All of them recorded how they were addressing their learning and development needs, but only some of them could show that they were reflecting on, identifying, planning, and evaluating their learning and development activity. It is crucial that all of these aspects are completed to comply with our continuing competence requirements. We explained this to individuals and referred them to our guidance, including our template learning and development record.

Case study

Maintaining continuing competence – good practice

Fee earner X is a qualified solicitor who works at Firm Q. Firm Q circulates relevant guidance, case law, notices and decisions to staff working on volume consumer claims by email. It also adds them to a central knowledge bank. The firm discusses relevant guidance and important developments at regular team meetings. The firm provides staff with training where necessary, and shares feedback and learnings from complaints it receives.

Fee earner X had read our warning notice on high-volume financial services claims, guidance on representing clients during claims for financial services or products, and guidance on claims management activity. They were able to explain many of the key messages of our guidance.

Fee earner X had a good understanding of their obligations to maintain continuing competence. They were able to explain the requirements of Statement of Solicitor Competence. They maintained a learning and development record, which showed that they engaged in learning and development activity every month. Fee earner X said that had enough time to do this in their working hours.

Firm Q reviews Fee earner X's learning and development record every year. It has regular appraisals with Fee earner X to discuss their learning and development needs. Fee earner X was happy with the support they received from the firm, and did not suggest any changes to improve the arrangements in place.

Checklist for firms/solicitors

- Ensure that all managers and employees are competent to carry out their work and have an up-to-date understanding of relevant law, policy and practice. This includes SRA guidance relevant to volume consumer claims, which you can find in 'Further information and resources'.
- Check that solicitors understand and comply with our continuing competence requirements. This includes the Statement of Solicitor Competence [/solicitors/resources/continuing-competence/cpd/competence-statement] .
- Keep a learning and development record to show that you have:
  - reflected on your practice
  - identified your learning and development needs
  - planned and completed learning and development to address those needs
  - recorded your learning and development activity
  - evaluated the effectiveness of your learning and development.

You may wish to refer to our template [/solicitors/resources/continuing-competence/cpd/continuing-competence/templates] as a guide.

- Make sure solicitors' learning and development activity reflects their needs across all aspects of their role, including:
  - ethics, professionalism and judgment
  - technical legal practice
  - working with other people
  - managing themselves and their own work.
- Ensure that all relevant staff, but particularly managers, heads of department and relevant compliance officers, receive the monthly SRA Update emails. This contains important news and guidance which can be disseminated throughout the firm. More information on how to subscribe [/news/sra-update/sra-update-issue-137-march-2025/] .

Compliance officers for legal practice must ensure they are taking all reasonable steps to ensure all managers and employees are complying with our regulatory requirements that apply to them in relation to maintaining competence.

Complaints handling

Why this is important

Handling complaints effectively is crucial. Firms must make sure clients know how to raise any expressions of dissatisfaction. They must have procedures in place to deal with each complaint fairly and appropriately.

To ensure they are providing a proper standard of service, firms should learn from mistakes and feedback from clients.

What we expect

Firms and solicitors must operate an effective complaints procedure (SRA Code of Conduct for Solicitors, Paragraphs 8.2 to 8.5 [/solicitors/standards-regulations/code-conduct-solicitors/] , SRA Code of Conduct for Firms, Paragraph 7(c) [/solicitors/standards-regulations/code-conduct-firms/]). Firms must also publish information about their complaints handling procedure on their websites, including how and when a complaint can be made to the Legal Ombudsman and to the SRA (SRA Transparency Rules, Rule 2 [/solicitors/standards-regulations/transparency-rules/]).

What we found

Complaints received

Firms we visited reported low numbers of complaints compared to the high numbers of clients. We saw examples of good client care and communication and we know these factors are likely to contribute to higher levels of client satisfaction. However, we also saw firms which did not provide clients with complaints handling information, and where not all staff understood the complaints handling procedure. Additionally, we had concerns that some clients may not know they had entered into a retainer with the firm, and would therefore not make complaints about them (please see the section on 'Onboarding clients' for more).

Firms said their most common complaints were about delays in case progression or firm updates, case outcomes, costs, and withdrawal or discontinuance of claims on the basis that they had no prospects of success. These trends reflect our findings that some clients received a lack of costs information and advice on their claim’s prospects of success (please see the sections on 'Client care and costs information' and 'Advising clients' for more details). Providing clients with the required costs information and advice on their claim's merits can reduce the likelihood of related complaints.

Firms should be mindful of the stages of a claim where complaints are most likely to arise, such as discontinuation and settlement. Firms should take a proactive approach to client communication and managing client expectations, which can help to prevent client dissatisfaction and complaints.

There were complaints on two of the fifty files we reviewed. One of these complaints was dealt with in accordance with the firm’s complaints procedure and resolved appropriately.

On the other file, the client was dissatisfied about deductions from the settlement amount and raised a complaint. There was evidence of discussions with the client. However, it was not clear the firm had properly addressed these issues under its complaints handling procedure or resolved the matter to the client’s satisfaction. If the matter had not been resolved to the client’s satisfaction, the firm should have given the client information about their right to complain to the Legal Ombudsman and the time limits for doing so. We gave feedback to the firm about how to improve its practices.

Complaints handling procedures

All firms could show us their complaints handling procedure. Most heads of departments and fee earners had a good understanding of it and could explain it well. However, two heads of department and three fee earners could not. It is essential that all staff understand how to deal with complaints if they arise. Staff must understand their complaints handling obligations in order to comply with them.

Almost all (23 out of 25) firms kept a central complaints log, which was generally reviewed by the Compliance Officer for Legal Practice (COLP), head of department, compliance team or senior management. The purpose of this review was to ensure that complaints had been dealt with in accordance with the firm's procedure. Few firms took further steps to learn from complaints. Only eight reviewed the complaints log for trends and patterns, and five gave training to staff based on lessons learned from complaints. Some fee earners (10) said they were given feedback when the firm received complaints.

Firms in this sector are dealing with large numbers of clients and cases. We felt that more firms could take these steps to proactively learn from complaints and make improvements to their processes. This could help to prevent any further errors, breaches or complaints in future.

Complaints handling information

We were concerned that not all clients were informed in writing of how complaints would be dealt with. Written complaints handling information was not given to clients on 13 of the 50 files we reviewed. As a result of these findings, we have opened investigations into five firms.

Where complaints handling information was provided, this was not always accurate. Firms informed all clients of their right to complain to the Legal Ombudsman on all 37 files. However, on 16 files, clients were not informed of their right to make reports to the SRA.

Similarly, all firms published their complaints handling procedure on their websites, but some of this information was not compliant with our Standards and Regulations. 12 firms did not include details of how to make reports to the SRA, and one firm provided the wrong address for the Legal Ombudsman. We gave all of these firms feedback on the changes they needed to make.

Firms must ensure that the complaints handling information they give to clients is accurate, up to date, and meets SRA requirements. This is part of making sure that clients fully understand their rights and the options available to them.

Case study

Learning from complaints – good practice

Firm R maintains a central complaints log. The firm's COLP reviews this on a monthly basis and discusses complaints in quarterly business review meetings.

Reviewing complaints ensures that they have been handled in accordance with the firm's procedures and regulatory obligations. It also helps the firm to identify any patterns of complaints and address them appropriately. The firm explained that when it receives complaints, it considers whether the issue is systemic, mindful of the potential impact on its large case volumes. It gave examples of lessons it has learned and improvements it has made as a result of client complaints:

- A large number of clients who received low settlement amounts complained about having to pay bank transfer fees. The firm refunded these fees to the clients, and waived its success fees on each of these files.
- Some clients pass away before their claim is concluded. In these circumstances, the firm writes to the deceased's personal representative, which is often their partner. Some of the personal representatives were distressed to receive legal communications while they were grieving. The firm has personalised its approach to be more sensitive – for example, by phoning the personal representative, rather than just writing them formal letters, or pausing communication for a length of time to allow them to grieve.
- Many clients were unhappy about the length of time that cases took to resolve and asked to withdraw their claims. They subsequently complained about the consequences of withdrawal. The firm added more detailed and accessible explanations about the withdrawal process to the information given to clients at the outset of the cases. Complaints related to this issue subsequently decreased.

Checklist for firms/solicitors

- Make sure your complaints handling procedure complies with paragraphs 8.2 to 8.5 of the Code of Conduct for Solicitors, RELs and RFLs.
- Publish your complaints handling procedure on your website. Make sure you include how and when a complaint can be made to the Legal Ombudsman and to the SRA. It may be helpful to refer to our guidance [/solicitors/guidance/publishing-complaints-procedure/] .
- Give clients written information about how the firm handles complaints. This information must be accurate, up to date and compliant with your regulatory obligations.
- Check that all staff understand how to deal with complaints appropriately, and make sure that any steps taken are clearly documented.
- Take steps to learn from complaints and improve your processes and practice. This might include:
  - identifying patterns of complaints
  - maintaining good channels of communication with your clients
  - being aware of the stages of a claim when complaints are most likely to arise
  - providing feedback and training to staff to avoid issues recurring.

Further information and resources

Solicitors Regulation Authority

We have provided some helpful information, guidance and resources for firms and solicitors who do volume consumer claims work.

SRA Standards and Regulations

- Principles [/solicitors/standards-regulations/principles/]
- Code of Conduct for Solicitors, RELs and RFLs [/solicitors/standards-regulations/code-conduct-solicitors/]
- Code of Conduct for Firms [/solicitors/standards-regulations/code-conduct-firms/]
- Financial Services (Conduct of Business) Rules [/solicitors/standards-regulations/financial-services-conduct-business-rules/]
- Financial Services (Scope) Rules [/solicitors/standards-regulations/financial-services-scope-rules/]
- Claims Management Fees Rules [/solicitors/standards-regulations/claims-management-fees-rules/]
- Transparency Rules [/solicitors/standards-regulations/transparency-rules/]

SRA Guidance and Warning Notices

- Claims management activity [/solicitors/guidance/claims-management-activity/]
- Representing clients during claims for financial services or products [/solicitors/guidance/representing-clients-during-claims-for-financial-services-or-products/#:~:text=A%20reasonable%20charge%20in%20a,clients%20during%20any%20legal%20service.]
- High-volume financial service claims [/solicitors/guidance/high-volume-financial-service-claims/#:~:text=If%20you%20undertake%20high%2Dvolume,can%20meet%20your%20professional%20duties.]
- Marketing your services to members of the public [/solicitors/guidance/marketing-public/]
- Law firms carrying on insurance distribution activities [/solicitors/guidance/law-firms-carrying-insurance-distribution-activities/]
- Publishing complaints procedure [/solicitors/guidance/publishing-complaints-procedure/]
- Effective supervision [/solicitors/guidance/effective-supervision-guidance/]
- Conduct in disputes [/solicitors/guidance/conduct-disputes/]

Continuing Competence

- Continuing competence [/solicitors/resources/continuing-competence/cpd/continuing-competence/templates/]
- Statement of Solicitor Competence [/solicitors/resources/continuing-competence/cpd/competence-statement/]
- Template learning and development record [/solicitors/resources/continuing-competence/cpd/continuing-competence/templates/] .

Other resources

- Association of Litigation Funders – membership directory [https://associationoflitigationfunders.com/membership/membership-directory/]
- Legal Ombudsman guidance on good costs service [https://www.legalombudsman.org.uk/for-legal-service-providers/learning-resources/preventing-complaints/an-ombudsmans-view-of-good-costs-service/]

Reporting an individual or firm

Solicitors and firms have a duty to report any facts or matters capable of amounting to a serious breach of our Standards and Regulations. We have provided resources to help individuals make a report [/consumers/problems/report-solicitor/] .

If solicitors/firms need any help in deciding whether to make a report, they can contact:

- our Professional Ethics helpline [/contactus]
- our Red Alert line [/solicitors/resources/reporting-misconduct/fraud-dishonesty/] to make a confidential report.