

3.2.3 Evidence of engagement letters

As mentioned earlier in the book, the best engagement letter in the world will not assist if you can't prove that it has been sent to the client and that the terms have been agreed by the client.

You need to be able to identify when an engagement letter is necessary. Obviously, an engagement letter is necessary when you have a new client. However, an engagement letter is also necessary when you act on a new *matter*. So, when you act for an existing client, an engagement letter will be required, but the client may instruct you on one matter, and subsequently on another. You will need to be able to identify when a new engagement letter is required.

It may be that having a system whereby you are required to review engagement letters on a regular (perhaps six-monthly) basis, will give you time just to think whether the work that you are doing for the client falls within the scope of the existing retainer, and that may cause you to issue a new engagement letter for the additional work. If you are also able to have alerts on your files, so that when the work in progress exceeds 75% of the fee estimate (see **3.2.1** above) you can consider whether there has been "mission creep", that will again enable you to consider whether a new engagement letter is required.

Obviously, every time a new formal instruction to do new work is required, a new engagement letter will be needed, but those are the easier cases to identify.

You need to have a system for ensuring that engagement letters are issued. Each time a new matter number is issued, an engagement letter will need to be issued. Each time there is a new transaction or a new file opened, a new engagement letter is required.

You need to have a system to ensure that the engagement letter is generated, that the scope of retainer is properly drafted, that the engagement letter is sent to the client, that there is evidence that it is sent, and that it is returned.

Each time an engagement letter is generated on your system, generate tasks for the issuing and sending of the engagement letter, but also generate tasks to check that it has been returned by the

client, otherwise the engagement letter that is never sent to the client will never get chased up.

If the client doesn't return the engagement letter, what evidence do you have on file that the client has received it? As mentioned at **2.2.4**, my recommendation is that, when you send the engagement letter to the client, you send it with a covering letter or email, asking the client to do something else. That way, when the client does that other action (whether that is sending you other documentation or fees on account) you have evidence that the client has received the engagement letter. Whilst the best evidence is the signed engagement letter, if the client does not return the engagement letter, but takes the other action referred to in the covering letter, you have some audit trail to indicate that the client received the engagement letter, and did not object to its terms.

Merely sending an engagement letter to a client, even if you send it in an email with a read receipt, is not, in my view, sufficient evidence (although it is *some* evidence) that he or she has received the engagement letter and agreed to its terms. This is an important point – without *evidence* that the client has agreed the engagement letter, the protections in the letter may not be available to you.

As mentioned elsewhere in this book, the engagement letter should make clear what attachments are included within the engagement letter and what terms of business are included (including the date of those terms of business) (see **3.2.1**). If the client is a consumer and the appropriate cancellation notice needs to be sent, then again that should be clearly identified (see **2.2.6**).

Proper systems need to be in place for the issuing of engagement letters and obtaining the appropriate evidence of the issuing of the same, and of the client's receipt and agreement thereto.