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Solicitors warned on how to protect themselves against barristers' terms

24 January 2013

The Law Society has warned solicitors that new terms of business introduced by the Bar Council for instructing barristers on cases will disadvantage them and has issued advice on how they can protect themselves.

The Law Society had been negotiating with the Bar Council on standard contractual terms for the supply of legal services by barristers to authorised persons.

It has now warned its members that several of the new clauses are couched in terms which favour the interests of the barrister over those of the instructing solicitor. The Society had hoped to reach a consensus with the Bar on new standard contractual terms. However the new terms were adopted unilaterally by the Bar Council after it broke off negotiations with the Law Society in 2008.

The new contractual terms come into effect on 31 January 2013. The Law Society has issued a practice note for solicitors to identify the new provisions, particularly those which may cause particular difficulties. The practice note includes a model letter, which solicitors will be able to send to barristers seeking changes to the contract terms and offering alternative and more equitable wording.

The new terms could inconvenience clients because they tighten barristers' intellectual property rights. As a result, solicitors will have to seek the barrister's permission should they wish to use any opinion he has produced for the client in any other context than the immediate case.

Lucy Scott Moncrieff, president of the Law Society, said:

'Of course there should be a contract to bring the commercial relationship between solicitors and barristers in line with standard practice rather than the previous outdated system. However, there must be a balance between the two interests and most importantly, that of the client. In our view, the Bar's proposal favours of the barrister and gives the solicitor (and therefore the client) insufficient control or effective remedy in the event of inadequate performance by the barrister.

'It is very disappointing that there could not have been agreement between the two professions on the content of the new standard contractual terms. In the absence of agreement, the Society has had no alternative but to issue guidance to solicitors, warning them of provisions which could be contrary to their interests in the relationship with a barrister and offering them alternative contract clauses. I hope that the profession will find this guidance helpful.'

Ends

Notes to editors

[Read the new contractual terms \(PDF 389kb\)](#)

[Read the practice note](#)

The Law Society is the independent professional body, established for solicitors in 1825, that works globally to support and represent its members, promoting the highest professional standards and the rule of law.

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