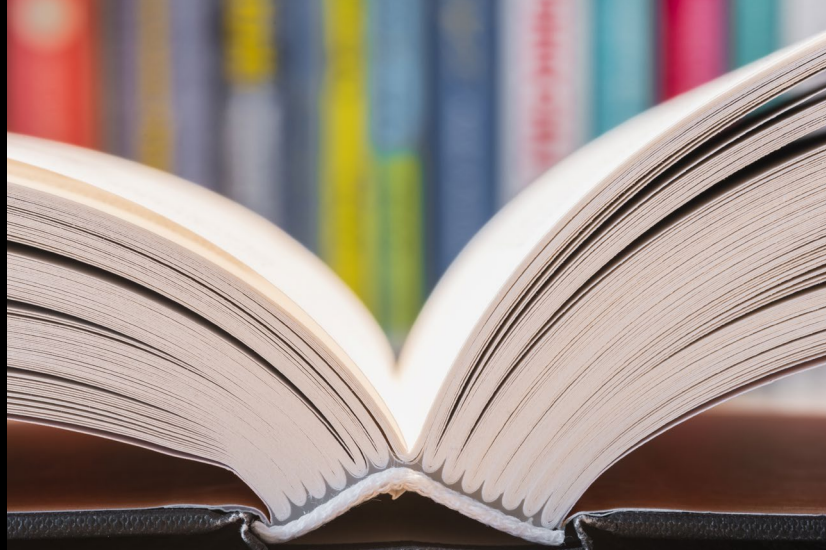


GUIDE TO USE OF PRECEDENTS



INTRODUCTION

A common cause of claims against law firms is a failure to use a firm's precedent documents. These may be documents that the firm has collated itself in a database of documents or alternatively precedents made available by the firm via an external provider. However, rather than use these documents, some fee earners instead choose to use their own 'favourite' precedents saved on their own PC.

As with most common causes of claims, simple steps can be put in place to help prevent claims of this type. This then helps to avoid complaints from clients and/or claims and as a consequence less fee earner or complaints partner time being spent having to deal with such matters, reduced risk of low morale, a reduced risk of lower fee income, a better claims experience for firms and less money being paid out on claims by insurers.




WHAT WE CAN DO TO HELP PREVENT COMPLAINTS AND CLAIMS

Firms should put in place a policy that requires fee earners to only use the firm's precedent documents/database or those of an approved provider.

If fee earners instead wish to use their own or other documents, this should require prior authorisation from an appropriate person, and allowing this should be the exception rather than the rule.

Cutting and pasting old or favourite documents may save a fee earner time in producing documents in the short-term, but in the long-term may result in complaints or claims being made where those documents are inappropriate, contain out of date references or information from another client matter that has been left in a previously used document.



WHY IS IT SO IMPORTANT TO USE THE FIRM'S PRECEDENT DOCUMENTS

There are a number of reasons:

- So that we know that the document contains all necessary provisions required to best achieve the client's aims and objectives.
- So that all statutory/regulatory references in the document are up to date.
- So that, where relevant/appropriate, the document reflects the most recent case law.
- To avoid the risk that information relevant to another client matter has been left in an "old" document is not erroneously included.
- To ensure any document version control processes can be effectively utilised.
- It helps avoid a breach of client confidentiality and/or a data breach if an old document contains information specific to another client matter and/or personal data of another client.
- It assists the firm to comply with the competency requirements set out in the Code of Conduct for Firms. In particular, rule 4.2, which states that firms must ensure that the service provided to clients is competent and delivered in a timely manner, and takes account of the client's attributes, needs and circumstances. Rules 3.2 and 3.4 of the Code of Conduct for Solicitors, RELs and REFs places a similar obligation on solicitors.
- Principle 7 of the SRA Standards and Regulations requires you to act in the best interests of your client. Using the firm's precedents will help to ensure that this is achieved and that fee earners avoid making mistakes.



WHAT TO DO NEXT

You should take the following steps (if you have not already done so). Please note that these steps are those that we consider to be good practice and that will assist firms to meet their regulatory obligations:

- Appoint an appropriate person to be responsible for producing your policy on Use of Precedents.
- Agree upon the precedents to be used. These may be internally produced precedents, or those produced by an external provider, or a combination of both.
- Appoint a person responsible for collating any internal precedents either on a departmental basis or on a firmwide basis.
- Appoint someone to be responsible for managing the precedent database – to include uploading new documents to the database and ensuring that internal precedents, where used, are kept up to date to reflect current legislation, regulation and case law.
- Appoint a different person to be responsible for dealing with document version control and the authorisation of any changes to internal precedents.
- Appoint a person within each department to be responsible for dealing with any precedent related queries.
- Appoint someone to be responsible for keeping a list of approved providers – this may be one of those appointed by you above.
- Prepare your policy. The policy should contain the following information:
 - A brief overview of the rationale for having to use firm precedents.
 - That staff must use the firm's precedent documents or those of an approved external provider (or a combination of both, where permitted) unless they receive prior written approval from a specified person to use their own or another document, and details of that person.
 - Where the precedent documents are to be found – this may be in the firm's own database of documents or precedents from a reputable provider, such as PLC, or a combination of both.
 - Details of the external providers that staff at the firm may use.
 - Details of how the precedents should be used. This may be in accordance with the notes of the provider or the firm's guidance notes, where using internal precedents.
 - Clear instructions on how to access the documents and where to obtain help in the event of difficulty in finding documents.
 - The policy should explain the importance of using precedents and the implications for both the firm and staff of not complying with the policy.
- Training:
 - Training should then take place for all relevant staff on the policy, ideally at the time of staff induction and then a regular refresher.
 - Training should cover the processes to be followed, explain the importance of following the policy, the potential risks to the firm of non-compliance and the implications of non-compliance for staff.
 - Alongside training on the policy, IT training could be offered to those who may not be confident in using the tools to access precedents at the Firm.
 - Ask for feedback from those using the system to ensure that it is user-friendly and everyone who needs to use it can do so efficiently.
- Policy review and monitoring:
 - Appoint an appropriate person to be responsible for reviewing and auditing the processes that are put in place, to ensure that they work effectively.
 - Any changes should be notified to the Risk and Compliance team.
 - The person appointed should keep appropriate records documenting the review and audit process.



Use of Precedents Policy

KEY FACTS

NOTE: Please note that this Policy uses the term “must” where the action referred to is a regulatory requirement or where we consider that the action stated is good practice and will assist the firm to meet its regulatory obligations.

This section provides a brief overview of the main points of this policy. It is not intended to be a substitute for reading its entire content, which all members of staff should do.

Main objectives

By implementing this policy, the Firm aims to ensure that the documents produced by fee earners are of a consistently good standard and that errors and mistakes in documents are avoided so far as possible. This in turn should help to keep the number of complaints and claims made as a result of such errors to a minimum. In addition, the Firm also aims to ensure that fee earners have access to good quality resources to assist them to produce documents.

Regulatory Obligations

Under the SRA Code of Conduct for Firms (COCF), the Firm has a responsibility to ensure that its managers and employees are competent to do their jobs. This includes keeping their professional knowledge and skills, and their understanding of their legal, ethical and regulatory obligations up to date.

SRA The Code of Conduct for Solicitors, RELs and RFLs (COCS) requires solicitors to ensure that the service they provide to clients is competent and delivered in a timely manner.

Providing good quality resources to assist staff in the preparation of documentation will help the Firm and its solicitors to discharge these obligations.

Using Precedents

This policy sets out the type of precedents available for use by staff. Staff may on occasion be permitted to use other documentation that do not form part of the Firm’s precedent database, but they must obtain prior written approval before doing so.

Training

Training will be provided on this policy for all fee earners and support staff who are involved in the preparation of legal documents. Training will include how to access our precedent databases.

Keeping Precedents Up to Date

The Firm has appointed an internal representative, [Please insert name] identified in this policy, to be responsible for ensuring that internal precedents are kept up-to-date and reflect current law, regulation and case law and include all necessary and usual legal provisions. The Firm encourages and welcomes feedback from staff on precedents.



1. Purpose

The purpose of this document is to set out [Insert firm's name]'s (the "Firm") policy for the use of precedents by staff, and the Firm's aims and objectives in implementing this policy.

2. Scope and Applicability

This policy applies to all fee earners and support staff who are involved in the preparation of legal documents.

3. Use of Precedents – Key Aims and Objectives

By requiring staff to use approved Precedents, the Firm aims to ensure:

- a. that all clients receive a consistently good standard of service.
- b. that the documents produced by fee earners correctly reflect current law, regulation and case law and include all necessary and usual legal provisions.
- c. that the documents produced by fee earners do not contain information relating to other clients.
- d. that fee earners receive the necessary support from the Firm to enable them to continue to develop their skills by having access to good quality resources.

4. Regulatory Obligations

4.1 Using precedent documents has several benefits to the Firm and its staff. Both the COCF and the COCS contain specific obligations as regards competency in respect of the service provided to clients and also to ensure that managers and employees are competent to carry out their jobs. Using documents that we can be confident contain all necessary legal provisions for a particular matter (insofar as they can), are of a standard approved by the Firm and that we know will also contain the most recent legislative and/or regulatory references and reflect current case law, can assist the Firm and staff to discharge these obligations.

In particular staff should note the following:

- a. Paragraph 4.2 of the COCF provides that firms must ensure that the service provided to clients is competent and delivered in a timely manner, and takes account of the client's attributes, needs and circumstances. Paragraph 4.3 of the COCF states that a firm must ensure that its managers and employees are competent to carry out their role, and keep their professional knowledge and skills, as well as understanding of their legal, ethical and regulatory obligations, up to date.
- b. Paragraphs 3.2 and 3.4 of the COCS place similar obligations on solicitors.
- c. Principle 7 of the SRA Standards and Regulations requires that you act in the best interests of your client. Using the precedents made available by the Firm (whether they are internally produced and approved precedents or those of an external provider), rather than documents that you may have had on your computer for months or even years, will help to ensure that this is achieved and that fee earners avoid making mistakes.

4.2 Paragraph 6.3 of both the COCF and the COCS requires that you keep the affairs of current and former clients confidential, and the Data Protection Act 2018 and UK GDPR impose obligations on how personal data is used by organisations and businesses including protecting against unlawful or unauthorised access. It is therefore important that we maintain client confidentiality and avoid data breaches. By using precedents correctly, we can be sure that a document does not contain information that may relate to another client matter and/or include personal data. Breach of confidentiality and/or data protection obligations may have serious implications (including regulatory, financial and reputational) for the Firm.

5. Using Precedents approved by the Firm

5.1 The Firm has established a precedent database that can be found [Please insert details].

5.2 The database is made up of the following [Please amend as necessary]:

- a. Internal precedents that have been approved for use by the Firm.
- b. Precedents provided by an external provider appointed by the Firm [insert name].

5.3 [All precedents are accompanied by user notes, providing guidance on use of the particular precedent. You should ensure that you read this guidance before finalising your drafting – please amend as appropriate].

5.4 All staff must use the Firm's precedent documents or those of any external provider approved by the Firm. We appreciate that many staff do keep previously used documents on their computer systems, but it is extremely important, for the reasons set out in this policy, that these documents are not re-used for new client matters.

5.5 If any person wishes to use one of their own documents, they must only do so with the prior written approval of [their supervisor/head of department – please amend as appropriate].

6. How to access Precedents

6.1 Staff can access the precedent database(s) as follows: [Please insert clear instructions on how precedents may be accessed at your Firm].

6.2 If you have difficulty accessing documents, you should contact [Please insert details] for assistance.

7. Working from Home

If you are working from home at any time and have difficulties accessing precedents, please contact the person detailed in paragraph 6 above. If you wish to use your own documents, please ensure that you obtain prior written approval before doing so.

8. Feedback on Precedents

The Firm welcomes feedback from staff who use the precedent database. We want to ensure that the system is user-friendly and that anyone who needs to use it can do so easily and efficiently. Any feedback should be sent to the person identified in paragraph 9 below.

9. Keeping Internal Precedents Updated

The Firm has appointed [please insert details] to be responsible for maintaining the Firm's internal precedents and ensuring that they correctly reflect current law, regulation and case law. If you have any queries or questions regarding any provision in a precedent, you should contact this person.

10. Training

The Firm will provide training for all relevant staff on this policy, including how to access precedents for use. Training will take place initially at the time of induction and refresher training will take place regularly in order to remind staff of the importance of, and rationale for, using the Firm's precedents rather than documents that they have used previously.

11. Consequences of non-compliance with this Policy

For the reasons set out above, it's important that staff only use precedents in accordance with the procedure set out in this policy. Staff who do not comply with this policy may be subject to disciplinary proceedings.

12. Review

This policy will be reviewed annually and the processes that we have put in place audited, to ensure that they work effectively.

13. Policy Owner

This policy is owned by the [Please insert as appropriate] who is responsible for implementing, maintaining and ensuring review of this Policy.

14. Document Control

[As per existing Lockton precedent]



Use of Precedents Checklist

NOTE: Please note that the actions listed in this Checklist are either regulatory requirements or we consider that the action stated is good practice and will assist the firm to meet its regulatory obligations.

Recommended Actions	Satisfied / Completed?	Reference / Details
1 Firm should have a written policy in place for the use of precedents.		
2 Firm should appoint a person to be responsible for preparing the written policy.		
3 Firm should discuss and decide on the precedents to be used, i.e. internally produced precedents, produced by an external provider, or both.		
4 Firm should appoint a person to be responsible for managing the precedent database (e.g. uploading new documents, ensuring internal precedents, where used, are kept up-to-date to reflect current legislation, regulation and case law, keeping list of any approved external precedent providers updated, collating any internal precedents either on a departmental basis or on a firm-wide basis, dealing with document version control and authorisation of any changes to internal precedents).		
5 The policy should include the following: <ul style="list-style-type: none"> • Rationale for only using precedents approved for use by the firm. • A statement that staff must only use precedents approved for use and that their own precedents may only be used with the prior written approval of an individual identified for that purpose in that policy. • Details of where approved precedents are stored, how they can be accessed and how they should be used. • Details of any external precedent providers that may be used. • Details of how any required changes to internally approved precedents need to be authorised. • Details of the person responsible for version control and the approval of any changes to internal precedents. • Details of the person responsible for maintaining the precedent database. • Details of where staff can get help if they experience problems accessing precedents. 		
6 Firm should appoint a person within each department or within the Firm (where preferable) to be responsible for dealing with any precedent related queries.		
7 Firm should provide training on policy to all relevant staff, including why the policy is important and the potential risks to the firm if it is not followed by staff. Training should take place when staff join the firm and regular update training should be provided.		
8 Firm should regularly review the policy to ensure it is being followed.		