



UNCOMMONLY INDEPENDENT

Stay connected

Teal
Compliance

Lockton Solicitors

Guide to Use of Precedents

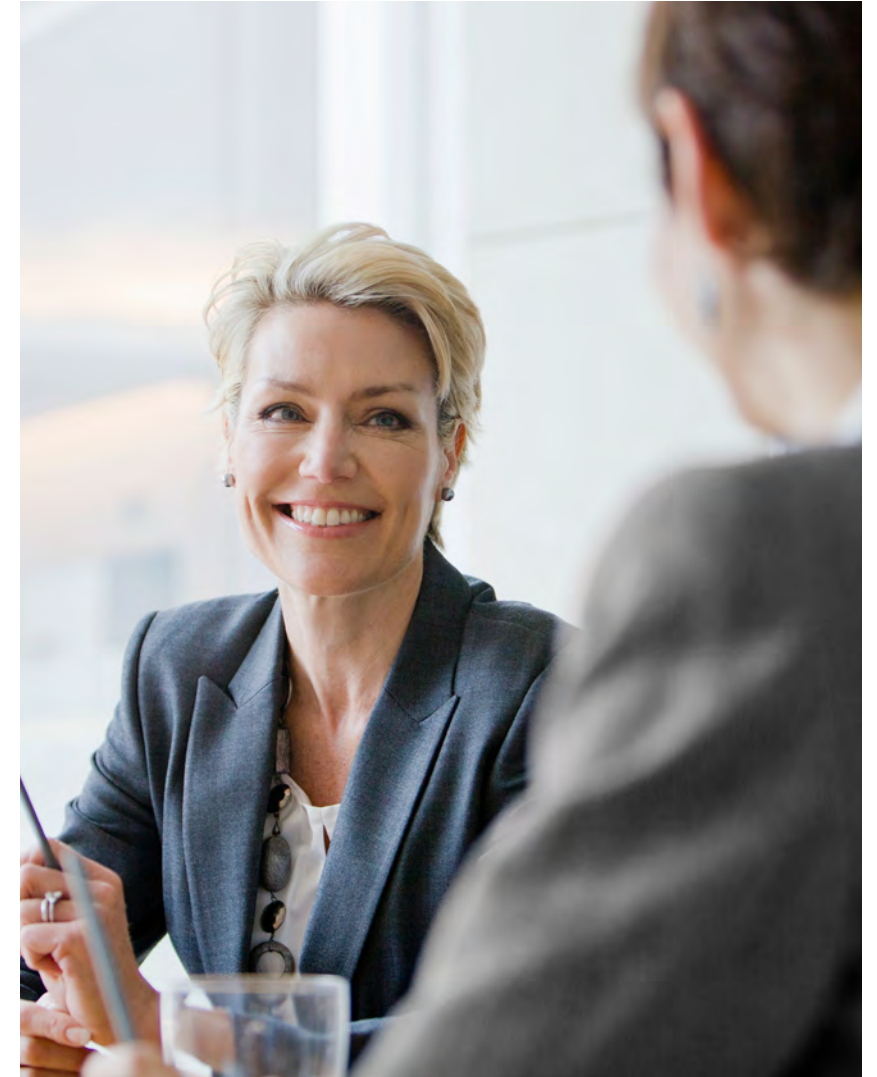
UNCOMMONLY INDEPENDENT

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 arising and as a consequence less fee earner time being spent having to deal with such matters, improved morale, 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but in the long-term may result in complaints or claims being made where those documents are inappropriate, contain out of date references or information from another client matter that has been left in a previously used document.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

It's important that we do this for 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 the document reflects the most recent case law made available to the firm, where this is relevant.
- To avoid the risk that information relevant to another client matter is left in an "old" document. This may also result in a data breach if the document contains personal data of another client.
- It also helps avoid a breach of client confidentiality if an old document contains information specific to another client matter.
- 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 Code of 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.

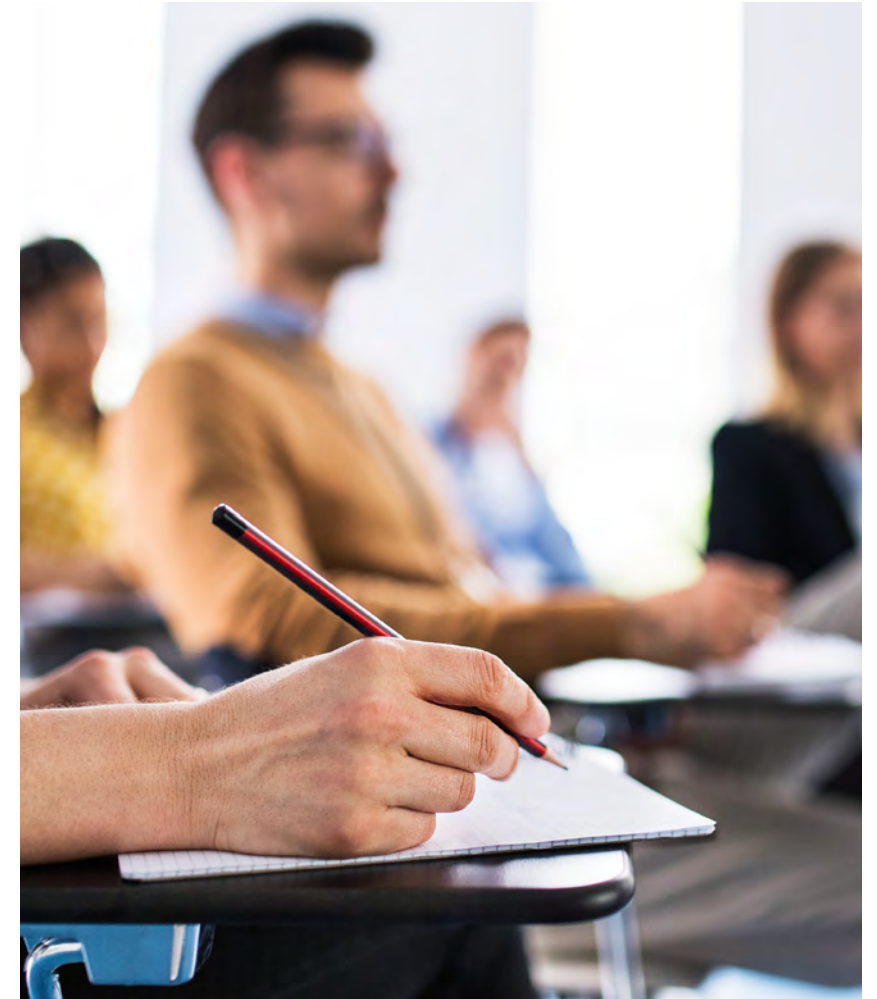
What to do Next

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 firm-wide basis, if not already appointed.
 - 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.
 - You should 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.

What to do Next

- 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.



locktonsolicitors.co.uk

Stay connected



UNCOMMONLY INDEPENDENT

Lockton Private Clients is a trading style of Lockton Companies LLP authorised and regulated by the Financial Conduct Authority.