In the normal course of an accountant’s relationship with her or his client, the accountant will carry out the services that are requested of it by the client to the client’s satisfaction in exchange for their fees being discharged. This is the normal manner in which such relationships continue. In the vast majority of cases, there is never a difficulty or a problem. However, given the increased scrutiny that the accountancy profession is under (common to all professions) and the litigious environment that we all operate in, it is important to be aware of certain steps that are appropriate for accountants to take in managing or limiting their risk.

These are easily taken at the beginning of a relationship and do not take a huge amount of time, but can result in a huge potential saving in terms of management time and other resources. It also may have an effect in terms of the level of premium payable in respect of any professional indemnity insurance that a firm may hold.

Some practical points are set out below in this regard, which should assist you in managing any risk. Most of these derive from the types of claims made against accountants in the past. A properly-drafted engagement letter can serve as a helpful risk management tool in defining the scope of the retainer and the parameters of the responsibilities to the client. This is just as important with a new client as it is with a client with whom you have had a long-term relationship. Situations are frequently encountered where smaller firms have had very long relationships with clients on an ad hoc basis with no letter of engagement in place at any stage. Even if the relationship is going on for a long time, it is important to put in place an engagement letter at this late stage in order to assist with the management of any future query that might arise. Disputes can arise with any client, be they long-standing or new.

**ENGAGEMENT LETTER**

The engagement letter should be tailored to each individual situation and should be countersigned by the client. It should include the following:

- The client and main point of contact in the client’s organisation;
- The scope of the retainer. For example, for audit purposes or for the purpose of advising on a particular tax scheme;
- Duration and timing. How long is to last? A particular financial year, for example;
- Purpose of the work or the specific task to be undertaken;
- The client and main point of contact in the client’s organisation;
- The scope of the retainer. For example, for audit purposes or for the purpose of advising on a particular tax scheme;
- Duration and timing. How long is to last? A particular financial year, for example;
- Purpose of the work or the specific task to be undertaken;
• The staff that will be involved from the client’s organisation;
• Any confined limitations on the work. This is important when you are providing tax advice, for example;
• Fee arrangements. An hourly rate or a capped fee, for example;
• What is the client’s role? To collate information, for example. Any deadlines that are applicable together with the consequences of non-compliance should be highlighted;
• The intended users and recipients of the work product should be identified. The terms should include some wording prohibiting the client from distributing the work product to any third party other than the specified users. Additional wording should be included to the effect that the work is not intended for any other purpose or recipient other than the specific purpose and recipient for which it was prepared, as outlined in the letter. There should be a disclaimer of responsibility to others and state that if others rely on your work, they do so at their own risk. These are known as Bannerman clauses, from a decision of the English courts which found that a finding of liability would have been avoided had the auditors of a company disclaimed responsibility to the bank on learning that the bank wanted to look at the company’s accounts to establish the company’s creditworthiness;
• Termination rights. If the fees are not being paid, for example; and
• Limitations on liability. There should be an exclusion of liability for consequential loss or loss of profits, in particular, if your professional indemnity policy does not provide cover for those losses. There should also be a monetary cap on liability and an exclusion of liability where there is misrepresentation or concealment by the client.

**LIMITATION OF LIABILITY CLAUSES**

The limitation of liability clauses should be specifically highlighted in the covering letter, which should enclose the terms of business/engagement letter.

A firm should also recognise the limits of its expertise and know when specialist advice is required.

The UK courts have confirmed that there is no obligation on an accountant to go beyond the parameters of its advice. Just because a firm does not have particular expertise in a particular specialism, it does not mean that the firm has to refer a client to such a specialist if there is no other reason to do so or one has not come to their attention. It does, however, mean that a firm needs to be aware of any personal circumstances that might give rise to a referral to a specialist – the domicile of a client, for example.

It is important to remember that these are legal clauses and it would be prudent to obtain legal advice in relation to them. If there is a short timeline or turnaround time for particular advices, however, it is also advisable to outline the fact that the timeline is short and qualify that your advice could change.

**ACCEPTANCE OF TERMS**

The letter should be signed by the client and returned to you, as confirmation that they accept your terms of engagement.

One can only manage risk, not eliminate it totally. Sometimes these issues are simply the risk or cost of doing business. It is hoped that the recommendations outlined above will assist accountants in practice in this regard.

Sarah Conroy is a Partner at Beale & Company, a commercial law firm.

**10 WAYS TO PROTECT YOUR FIRM**

The following are some dos and don’ts in a situation where a query is raised and you have a concern that it might mature into something more. These are practical points and while some will seem obvious, they are worth remembering.

• Don’t ignore a complaint in the hope that it will go away;
• It is not always necessary to create a document. Consider making a telephone call instead;
• Consider speaking to somebody more senior in your organisation if a complaint is received;
• Consider asking the person to call or contact you. It is not always necessary to outline in writing what has been said, the complaint that has been made or the dispute that has arisen;
• If it is necessary to outline a complaint in writing, it should be recited in bald factual terms – the fact that a complaint has been made and what that complaint is;
• Refrain from expressing an opinion in relation to what has happened in writing, in particular in relation to who is at fault. Keep the comment factual;
• If it is necessary to log something in writing, consider heading the document “legally privileged and confidential”;
• Always consider who will see the document – the client, for example;
• The determination as to whether you are obliged to disclose something at a later date will not be your determination solely – it will be a legal determination. Marking something “private” or “not for dissemination” will not mean you might not be obliged to disclose it. Always act on the basis that such a document will have to be disclosed;
• All documents created in relation to a matter should be filed. This includes ‘Post It’ notes, electronic records, notes, pages and diary entries. If a document has been created which relates to a dispute, it should relate to that dispute only and not to other matters. An email is an informal way of communicating but it must be treated like any other document.