



Aston University

TEMPLATE FOR VIDCAST: INSTRUCTING SOLICITORS

INTRODUCTION

I am Diane Gilhooley, Partner and Head of the Education team at Eversheds LLP. The topic I am considering today is how to instruct solicitors effectively.

TOPIC

The aim of this vidcast is to provide a greater understanding of how solicitors operate, when you should use solicitors, and what solicitors require of you.

At the outset I would like to remind you that before consulting with solicitors, you should always refer to Aston University's Purchasing Team for advice in advance. This vidcast is intended to be a good practice guide once you have had the go ahead to liaise directly with the University's legal providers.

Do's

- Do identify what kind of solicitor(s) you need and why they are needed. For example, tendering out a cleaning contract – what implications will this have and what kind of solicitor(s) will be able to help you with this project? In that situation, you may benefit from the advice of commercial solicitors in relation to the drafting of an agreement and negotiating terms with the outsourced cleaning contract provider, procurement solicitors who can advise you on the tendering process and employment specialists who can advise you on any associated redundancies or the implications of the Transfer of Undertakings (Protection of Employment) Regulations.
- Do identify the most relevant solicitor for the job early on in the project as this will prevent you from incurring unnecessary legal fees with someone who does not specialise in the field and/or can only provide limited expertise and not see the full project through.
- Do consider how much (if any) of this work can be carried out internally before consulting with a solicitor – is this something that requires a solicitor's input from the word go and if so will it be needed intermittently throughout the project? In the event that you consider that you will need support throughout the process, identify when you consider input will be required and to what extent.
- Do consider your budget. Initially, review how much money has been set aside for the purpose of seeking legal assistance in relation to the particular matter or project at hand. Always make clear what your budget is to your solicitor(s) and what you think will need to be done from the outset – your solicitor(s) will be well placed to advise you whether the budget and/or timescale you have set out is realistic or whether it needs reconsideration. Talking about fees at the outset will prevent any nasty surprises at the end and enable your solicitors to provide you with the best advice they can within your designated budget.

- Do give your legal provider notice of what you are likely to need and by when. By giving advance notice you will enable your solicitor to assemble a team and manage their workload to achieve a satisfactory outcome for you within the designated time frame.
- Do be organised. Once you have indentified that you need solicitors input ensure that you have all the necessary documentation in place and easily accessible in order for them to be fully briefed and up to speed with the matters at hand.

Don'ts

- Don't wait until the mole hill has become a mountain. It is often the case that solicitors are relied upon as trouble shooters in that their advice is sought only at a late stage to try and fix a problem which could and should have been resolved much earlier, in an easier and less costly manner.
- Don't tell your solicitor what you think they want to hear. If you give your solicitors limited information, instead of the full facts and circumstances of the issues on which you require advice, this may prevent them from giving you the best advice in the circumstances.
- Don't forget to tie up loose ends. You will get the most cost efficient results from your solicitor if you concentrate your efforts on the project or problem at hand and follow through. For example if you have taken initial advice from your solicitor on putting in place a performance management plan with a struggling employee, don't then sit on it and fail to carry out the agreed steps in the process.
- And finally don't think that if you've agreed a fee with the solicitors for a price, but not provided all the information that the fee cannot be increased. A solicitor can only quote their fees for a particular matter based on the information that you give them. Also if you give your solicitors limited information and then subsequently further issues come to light which could have been indentified earlier, your solicitor may be unable to stay within their budget and this might have the knock on effect of incurring costs and delays in the resolution of the matter.

Case

In the case of **Mastercigars Direct Limited v Withers LLP (2007)** a Costs Judge held that Withers (a firm of solicitors) had to honour an estimate of the amount of their fees which had been rendered to a client, even though they actually undertook a lot more work and incurred more time. However, an appeal by Withers against this decision was successful. It was held that it will not always be the case that where costs subsequently claimed by a solicitor exceed an estimate given by them the solicitor will only be able to recover fees equivalent to the amount of their original estimate. The basis for this was that solicitors are entitled to reasonable fees for their retainer- hence it is important to provide as much information as possible from the outset to enable your solicitor to provide a realistic costs estimate and stay within your designated budget.