

SEAFARER SUBJECT GUIDE

USING LAWYERS IN ENGLAND AND WALES

This Guide deals in general terms with using lawyers in England and Wales. It aims to help a seafarer understand the legal profession in England and Wales, and how to select, engage, and if need be, change his lawyer. This Guide does not, however, constitute specific legal advice in relation to the use of any particular lawyer. If a seafarer is dissatisfied with his lawyer, he is strongly advised to consult another lawyer qualified to practise in England and Wales.

1. What is the structure of the legal profession?

- 1.1 In England and Wales, the legal profession is split between solicitors and barristers, and most lawyers hold only one of these titles. Solicitors usually work as part of a firm, either as partners or employees, although there are a relatively small number who work as sole practitioners. Barristers work as individuals (although usually as part of a set, known as 'chambers,' and are self-employed.
- 1.2 Seafarers may engage a solicitor to handle their legal affairs. Solicitors can deal with any legal matter, including advising on criminal and civil matters. They can also appear as advocates in the Magistrates' Courts (where minor criminal cases are tried and all serious criminal cases start) and in the County Courts (where lower value civil cases are tried). Serious criminal cases and higher value or more complex civil cases are tried in the senior courts (the Crown Court in criminal cases and the High Court in civil cases), where solicitors generally cannot appear as advocates.
- 1.3 Barristers are specialists in court procedures and evidence, and in conducting advocacy in court. Barristers can appear as advocates in all levels of court, including the Court of Appeal and the Supreme Court. They are usually engaged on behalf of a seafarer by his solicitor to present the seafarer's case and to appear as advocates in the senior courts.
- 1.4 In recent years, the distinction between a solicitor and a barrister has become less clear. Since the coming into force of the Courts and Legal Services Act 1990, solicitors with appropriate training and experience in advocacy have been entitled to appear in the Crown Court and High Court as 'solicitor advocates'. The involvement of a solicitor in any legal matter used to be compulsory and only a solicitor could instruct a barrister. This prohibition was removed in 2004 and in certain areas of law (crime being an important exception), barristers may now accept instructions directly from a

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seafarer without the involvement of a solicitor, subject to certain restrictions. However, a solicitor must be appointed in any matter that requires money to be held on a seafarer's behalf.

- 1.5 In practice, most seafarers requiring legal advice or assistance are likely to find that their needs are best served by engaging a solicitor who, in turn, will instruct a barrister on their behalf where necessary or appropriate.

2. How is the legal profession regulated?

- 2.1 Solicitors are regulated by the Solicitors Regulation Authority ('SRA') (www.sra.org.uk) (website in English), an independent regulatory body. Every solicitor in private practice must hold a valid practicing certificate issued by the SRA. All firms of solicitors, and individual solicitors within a firm or practising on their own, must comply with a detailed Code of Conduct issued by the SRA for the protection of seafarers and for the protection of money held by solicitors on behalf of seafarers. Failure to comply with these rules may result in disciplinary proceedings against the firm and/or the solicitor concerned.
- 2.2 Barristers are regulated by the Bar Standards Board (www.barstandardsboard.org.uk) (website in English) and must comply with a detailed Code of Conduct issued by the Bar Standards Board.

3. How can a seafarer find a lawyer?

- 3.1 General advice on appointing a solicitor is available from the Law Society, the professional body for solicitors in England and Wales. Their website is www.lawsociety.org.uk/choosingandusing/findasolicitor.law (website in English).
- 3.2 The following publications are useful guides to appointing lawyers to conduct criminal or civil matters:
 - .1 A Client's Guide to the UK Legal Profession, published by Chambers & Partners (or visit www.chambersandpartners.com) (website in English) which lists and ranks solicitors in over 70 specialist areas of law;
 - .2 The Legal 500: United Kingdom, published by Legalease (or visit www.legal500.com) (website in English). This is a similar guide.

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- 3.3 If a seafarer has a claim or a problem arising from his employment on board the ship, or against his employer for unpaid wages, he should consider appointing a specialist maritime law firm. Details of specialist maritime firms are available on the website of the Admiralty Solicitors Group (www.admiraltysolicitorsgroup.com) (website in English). Some of these firms may act for ship owners only.
- 3.4 If the seafarer faces an investigation by the police, or United Kingdom Maritime Coastguard Agency ('UKMCA') or the Maritime Accident Investigation Board concerning a marine accident or incident, he should appoint a criminal lawyer (see paragraph 3.2 above for listings of lawyers).
- 3.5 In relation to personal injury and death claims, the Association of Personal Injury Lawyers (APIL) provides advice on appointing a specialist personal injury lawyer on its website (www.apil.org.uk) (website in English) and operates an accreditation scheme for quality assurance.
- 3.6 A seafarer's trade union may be able to recommend a suitable solicitor, or the union may appoint a lawyer on behalf of the seafarer. If the incident concerns the operation of the ship, the ship owner's solicitor may be able to represent the seafarer provided there is no conflict between the interests of the seafarer and the ship owner.

4. On what terms can a seafarer engage a lawyer?

- 4.1 When accepting instructions from every client, solicitors must set out their terms of engagement in a formal letter, commonly known as a "Client Care Letter", which may be accompanied by a set of standard conditions.
- 4.2 The Client Care Letter and standard conditions will together form the terms of business and should include the following important information:
- .1 details of the agreed scope of the work to be undertaken and the procedures for keeping the seafarer informed of progress;
 - .2 the name(s) and status (e.g. a partner in the firm or an associate) of the solicitor(s) assigned to the case;
 - .3 quality assurance and the procedures for handling any complaints should the seafarer be dissatisfied with the standard of service provided;
 - .4 the basis on which the seafarer will be charged for the work to be undertaken and (where practicable) an estimate of the overall cost of the matter;

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- .5 details of any advance payment required from the seafarer, arrangements for rendering bills and payment terms; and
- .6 the firm's responsibility and professional liability to the seafarer.

5. How will a seafarer be charged fees by his lawyer?

- 5.1 Usually solicitors charge by the hour for the time they spend on a case at the rates specified in the terms of business. The rates charged will depend on a number of factors, such as the seniority of the solicitor(s) working for the seafarer, the type and location of the law firm, and the complexity and value of the dispute or claim. In addition, solicitors will charge for any disbursements they incur on behalf of the seafarer, such as barristers' fees, court fees and the fees of any other professional advisors they may instruct such as medical experts in personal injury claims.
- 5.2 Unlike in some countries (such as the United States), solicitors are not allowed to charge on a contingency fee basis (that is, where they take a percentage of any settlement or money awarded to the seafarer at the end of the case). However, in some types of cases (particularly personal injury claims), many solicitors will work under a Conditional Fee Agreement ('CFA'). A CFA is a 'no win, no fee' arrangement whereby fees and disbursements are deferred until the end of the case. If the claim has been successful, the solicitor's fees and expenses will be paid by the losing party. The client does not have to pay his solicitor's fees and expenses if the claim is unsuccessful. Almost all personal injury claims in England and Wales are conducted under a CFA.
- 5.3 The solicitor may offer the seafarer a fixed fee arrangement. This is generally offered if the matter is relatively simple or routine.

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6. Can a seafarer get legal aid in a criminal case?

- 6.1 Every seafarer has the right to free independent legal advice (legal aid), regardless of his financial circumstances, if he is questioned by the UKMCA in connection with a suspected breach of the law, or if he is questioned or arrested by the police in connection with a suspected offence on board ship or ashore.
- 6.2 If a seafarer is subsequently charged with an offence, he may be entitled to help with the costs of his defence and representation at court, including applications for bail (that is, release before trial). However, legal aid for representation is not automatically available. First, the case must meet what is called the 'interests of justice' test: a seafarer is likely to pass this test if, as a result of a conviction, the seafarer could go to prison, lose his job or have his reputation damaged, or if the seafarer would find it difficult to follow court proceedings because of language difficulties or mental illness. Secondly, the seafarer must pass a 'means test'. Only applicants with an income below a certain level will qualify.

7. Can a seafarer get legal aid in a civil case?

- 7.1 Legal aid is available for certain types of civil disputes with an individual person, a company or a government department or agency. To receive civil legal aid, a seafarer must be 'financially eligible'. A seafarer's disposable income (money left after paying allowable living expenses) and disposable capital (money, investments or property that could be used or sold to pay for legal advice) will be taken into account when assessing whether they are eligible for legal aid.
- 7.2 Legal aid is not available for representation at certain tribunals, including the Employment Tribunal. However, legal aid may pay for initial advice from a solicitor where a seafarer has a dispute with his employer.
- 7.3 Civil legal aid is not available for certain types of case, including personal injury claims. As mentioned above, almost all personal injury claims are conducted under a CFA.
- 7.4 Detailed information about the availability of legal aid can be found on the UK Government's public services website: www.direct.gov.uk (website in English).

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8. Can a seafarer get any other free legal advice?

- 8.1 If a seafarer does not qualify for legal aid, the seafarer still may be able to receive free legal advice at a UK Government sponsored Legal Advice Centre or Law Centre: see www.communitylegaladvice.org.uk (website in English).
- 8.2 In addition, many solicitors carry out a limited amount of work on a 'pro bono' (free of charge) basis. This is generally restricted to particularly meritorious cases where vulnerable or disadvantaged seafarers may be at risk or would otherwise be unable to obtain access to justice.
- 8.3 The seafarer could also try the following sites for help with finding pro bono legal representation:
- .1 LawWorks (www.lawworks.org.uk) (website in English). This is a charity representing the solicitors' pro bono group which aims to provide free legal help to those who cannot afford to pay for it and who are unable to access legal aid.
 - .2 The Bar Pro Bono Unit (www.barprobono.org.uk) (website in English). This is a charity which helps to find free legal assistance from volunteer barristers.

9. Can a seafarer sue his lawyer?

- 9.1 A seafarer is at liberty to make a complaint to the law firm about the service or a bill/invoice that he has received. If the seafarer's complaint is not remedied by the law firm, he can contact the Legal Ombudsman, which provides a free service for resolving complaints against lawyers.
- 9.2 In addition, a seafarer can sue his solicitor at any point, whether during the engagement or after the engagement has come to an end, if the seafarer considers that he has suffered a loss as a result of negligence in the handling of his case. Solicitors are obliged to have adequate insurance to cover negligence claims. If a seafarer sues his lawyer and obtain judgment in his favour, he may expect the sum awarded to be paid by the solicitors' insurers.

10. How can a seafarer complain about his lawyer?

- 10.1 The Solicitor's Terms of Business will provide details of what the seafarer should do if he is dissatisfied with the progress of his case or with the service he is receiving from

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his solicitor. The Code of Conduct for Solicitors requires all solicitors' firms to have a procedure for dealing with complaints promptly, fairly, openly and effectively.

- 10.2 If the seafarer remains dissatisfied after going through the solicitor's complaints procedure, the seafarer may refer his complaint to the Legal Ombudsman which provides a free service for resolving complaints.
- 10.3 The Bar Standards Board deals with complaints from seafarers about the behaviour and adequacy of representation by barristers. It conducts disciplinary proceedings in respect of non-compliance with the Board's own Code of Conduct. If the barrister is acting for a seafarer who is not satisfied with the service of his barrister, the seafarer should contact the Legal Ombudsman. If the barrister is not acting for the seafarer, the seafarer should complain to the Bar Standards Board.

11. How can a seafarer change his lawyer?

- 11.1 A seafarer may terminate the contract with his solicitor at any time and appoint another solicitor in his place. However, the seafarer's previous solicitor will be entitled to keep all the papers and documents while there is still money owing to him for fees and disbursements.
- 11.2 A seafarer may terminate the services of his barrister at any time by instructing his solicitor to do so.
- 11.3 The seafarer should bear in mind that changing lawyers could involve delay and additional expense, particularly if the seafarer's case is at an advanced stage, as the new lawyers will need time to read the documents and familiarise themselves with the case.

12. Is a foreign seafarer treated differently?

- 12.1 Foreign nationals who pursue claims in the English Courts are treated no differently to UK nationals.
- 12.2 However, a foreign claimant who is not resident in the UK or in another European Union or European Free Trade Association state may, in certain circumstances, have to provide security for the other side's costs of defending a claim.

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- 12.3 In relation to legal aid for foreign nationals, legal aid is, as mentioned above, available in criminal and civil matters to any seafarer who qualifies, provided his case concerns the courts of England and Wales and the case is within the scope of the legal aid scheme. Applications for funding are considered without reference to the seafarer's nationality, residency or citizenship.

01 October 2012