

These guidelines are not intended to be prescriptive, nor to supersede or conflict with any legal or regulatory obligations. They seek to offer guidance to TSML Members on how claimant media litigation should be properly conducted, to ensure that clients' best interests are protected. Each matter will be fact specific, and the balance of rights and interests particular to the circumstances of any disputed publication, but we hope that these guidelines provide a framework for Members and practitioners specialising in this area of law.

1. Whilst recognising that the law is constantly developing, a member should not advance a case that has no arguable basis, whether in law or on the facts.
2. A member is entitled to rely on a client's instructions and should not decline to act on those instructions without good reason. However, members should satisfy themselves that they have taken sufficient instructions (allowing for circumstances) in order to be able to assert their client's position.
3. It is recognised that in urgent matters, it will not always be possible to obtain detailed instructions on every aspect of allegations that are put to a client.
4. It is perfectly reasonable to write in robust and critical terms, but correspondence should be free from abusive, intimidatory, unprofessional, or hyperbolic language.
5. Where any potential claim could be brought against a number of individuals and/or entities members should advise a client how suing a particular individual may be perceived.
6. Nothing prevents the parties from settling disputes on any lawful terms. However, members should not make threats to seek orders from the court, or suggest any criminal liability arises, where there is no legal basis.
7. When writing to an individual who is not a lawyer, members should normally recommend that the recipient seeks independent legal advice. Members should also remember that such individuals are likely to be relatively unfamiliar with law and procedure and therefore, so far as possible, correspondence should be written in plain English, without unnecessary legal jargon.
8. When writing to a media outlet, members should consider whether it would be appropriate to copy in the legal department and/or editor and/or any journalist connected to the story.

9. There is no general legal or regulatory prohibition on restrictive labelling. Often, it will be appropriate to use such labelling (e.g. when providing a detailed response/advancing a positive case on behalf of a client that contains sensitive information). Members should, however, satisfy themselves that such labelling is justified. If appropriate, particularly if writing to a lay person, they should consider explaining why restrictive labelling has been used and make it clear that any restriction does not prevent the recipient seeking legal advice.
10. The use of 'without prejudice' labelling can be a useful and sensible way of conveying further relevant information or making concessions in a way which ensures that the information or concessions will not be admissible in subsequent proceedings. This can help resolve reputation disputes expeditiously. However, the phrase is appropriate only where the communication includes a genuine attempt to settle a legal dispute or part thereof (this would normally be characterised by the making of a specific offer of compromise). Initial communications with an opponent will ordinarily be made on an open basis (though perhaps accompanied, or shortly followed, by WP/WPSATC correspondence), albeit there may exceptionally be circumstances where the urgency of a matter militates in favour of the initial complaint and without prejudice proposal being rolled into a single correspondence. Particular care should be used when adopting the phrase in respect of a legally unsophisticated recipient. Practitioners should recognise that the phrase is a piece of legal terminology which may be unfamiliar to many and it should never be used with the intention to confuse or intimidate.
11. Where a deadline is set in a letter, members should consider the basis for any short deadline. There will sometimes be compelling and legitimate reasons for a short deadline, but deadlines should not be short for no reason. The urgency of a matter should also be kept under review when considering any further steps (for example, if content is removed from the internet following a first letter, then the resolution of other matters may become less urgent).
12. This area of practice can be extremely fast-moving and it may be necessary for there to be a high volume of correspondence and/or the seeking of responses outside ordinary business hours. Unless justified, members should not 'bombard' opponents with correspondence. Nor should members expect opponents to respond outside of the recipient's working hours without good reason.
13. Members should avoid sending correspondence or taking steps which serve no substantive purpose beyond causing inconvenience to the opponent.
14. Members should be familiar with the Pre-Action Protocol for Media and Communications Claims and comply with it unless non-compliance can be justified (e.g. urgency).