

Legal advice privilege

What is it?

Legal advice privilege is designed to protect the confidentiality of the lawyer/client relationship. It applies to:

- **confidential communications** (this includes phone calls, face-to-face discussions and emails as well as communications that form part of a continuum aimed to keep client and lawyer informed so that legal advice may be given as required);
- **between lawyer and client** (the definition of a lawyer includes all members of the legal profession including trainee solicitors, and non-lawyers advising on legal affairs in limited circumstances, a client is defined as the individual instructing the lawyer);
- **that are made for the sole or dominant purpose of seeking or giving legal advice** (this is not only confined to telling the client the law but includes advice as to what might be sensibly done in the relevant legal context).

Confidentiality

Privilege can only be claimed if the communication in question is confidential. Once it ceases to be confidential, it is no longer privileged.

So, someone who circulates privileged material must make sure legal privilege is not waived/lost by marking the document as 'confidential and privileged' and not for onward circulation, emphasizing to recipients the importance of treating the material as remaining confidential.

However, just because a document is confidential does not necessarily mean it is also privileged.

Waiving privilege

If you waive privilege this might mean that legal documents and advice can be viewed by other parties in proceedings in the future. The law in this area is particularly complex but in short sharing this information could mean that it could form part of the papers between parties in any future legal proceedings.