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GETTING THE BILLING PROCESS RIGHT

The process by which solicitors raise bills and recover their fees is complex, especially when a client indicates that they wish to challenge an invoice. Failing to observe the requisite processes can lead to the very considerable frustration of non-recovery, and quite possibly a costs award against the practice in the courts, or a similar order from the Legal Ombudsman if the client has chosen to go down that route.

At one stage a bill from a solicitor had to be signed by them, but this rule was relaxed in changes made to the Solicitors Act 1974 by the Courts and Legal Services Act 2007. It is now provided that a bill may be sent out electronically if the client consents to this method of delivery. If you wish to deliver bills in this way your terms of business should record that you propose to do so and, ideally, this document or your retainer letter should be signed to show the client's acceptance of this point. A bill might also not be signed if it is accompanied by a letter signed by *'the solicitor'* (in effect, a partner), or someone authorised to do so on their behalf, which refers to the bill. In practice most firms would be best advised to continue to have all bills signed by a partner if this is the process that is currently in place.

A bill may be stated to be payable on demand (usually for the purposes of calculating interest should this become relevant at a later stage) but the usual rule is that you must allow the period of one month before taking any action to recover your fees. This is to be found at section 69 of the Solicitors Act 1974, (*'the Act'*) but this does allow for exceptions to be drawn where the party *'is about to quit England and Wales, to become bankrupt or to compound with his creditors, or is about to do any other act which would tend to prevent or delay the solicitor obtaining payment'*. In these circumstances an order could be made that the solicitor be at liberty to commence an action to recover their costs forthwith and for these to be assessed.

The Assessment Process

The process by which a client can query a bill at court is set out in sections 70-72 of the Act and should be highlighted to clients in the engagement process. This is now explained rather obliquely

at outcome 1.14 of the Code of Conduct which states that clients must be informed of their *'right to challenge or complain about your bill and circumstances in which they may be liable to pay interest on an unpaid bill'*. The assessment process also continues to cause confusion in that, being a court process, it sounds as if it is likely to be limited to contentious work, but this is not in fact the case.

Finally, the Legal Ombudsman also has wide powers to rule on bills and could be seen to be the *'joker'* in the client's hands, though it should be borne in mind that the Ombudsman does not have jurisdiction with larger organisational clients. Law firms are required to notify clients of their right to complain to the Ombudsman *'both at the time of engagement and at the conclusion of your complaints procedure'* (Outcome 1.10). Where he does have jurisdiction the Ombudsman has the right to examine any bill and make such order as he sees fit.

Without denigrating the incidence of problems fairly referred to the Ombudsman, the risk of a client putting in a complaint on the bill simply to delay payment or to try to obtain an unwarranted discount is readily apparent, and has been acknowledged by that office. There seems to be no great disadvantage in commencing an action against a non-paying client who has indicated that they wish to refer the matter to the Ombudsman, but it is likely that the court will stay any action while the claim is pending with them. Even if they do not do so, the Ombudsman has the right to vary any award subsequently and order a repayment if he feels that this is merited.

In conclusion, all firms should ensure that their billing process is fully compliant with the applicable legal provisions and the requirements of the Code of Conduct. This clearly puts the firm in the best position to be able to recover what is due to them. The frustration of not being paid – in full or in part – on grounds of a technicality is clearly to be avoided wherever possible.

In next month's article we will continue this theme by examining the process of interim billing. ■