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INTERIM BILLING

Last month we examined some of the basic requirements of the all-important billing process. We continue with this theme by looking at the processes involved in raising interim invoices, including details of what should appear in your terms of business to support your claims for payment.

Originally the retainer that a solicitor had with a client was regarded as an entire contract that had to be performed in full before any right to payment arose, but over time it became accepted practice that certain interim claims would be valid.

There are two methods for securing interim payment of costs - either by section 65(2) of the Solicitors Act 1974 for contentious business or by a specific agreement with the client contained in the terms of business both for contentious and non contentious business.

Section 65(2) applies to contentious costs only and permits a solicitor retained to conduct contentious business to request a reasonable sum on account of costs and to withdraw from the retainer if payment is not forthcoming. A bill of account submitted in this way is nothing more than a request for payment on account, and if the request is not met the solicitor's only sanction is to withdraw. The interim bill on account cannot be sued upon by the solicitor, the client cannot apply to have it assessed and the time limits for applying for assessment do not apply.

However there is an advantage to this type of interim bill in that the solicitor is not limited to the amount of the bill on account. When he ultimately prepares his final bill, he may revisit the amount charged and may be able to charge more for the period if it is fair to do so for example in the light of the result achieved in the litigation.

To achieve the reverse of this – i.e. to be able to sue on the interim bill but be unable to revisit those charges at a later stage – it must be stated to be an interim statute bill.

Interim statute bills are complete self-contained bills of costs to date. They are final bills in respect of the work covered by them, and they cannot be subsequently adjusted in the light of the outcome of the work covered by the retainer. A solicitor may deliver an interim statute bill at a natural break in litigation or by agreement at regular intervals such as monthly.

The main points to note about interim statute bills are that it will be assumed that any interim invoice will be an interim bill on account of costs unless specifically stated to the contrary, and that merely stating the dates that an invoice relates to will not, as such, make it an interim statute bill. If adopting this format of billing the wording in the terms of business and/or retainer letter must leave the client with no doubt at all as to the nature of what will be submitted to them.

A suggested form of wording for the client care letter for interim statute bills is as follows:

To enable you to budget we will normally send our interim invoices from time to time before the conclusion of your matter. We will then send out a final bill on the completion of the work. Unless it is expressly stated to the contrary any interim bill will be the only and final bill for the charges and expenses incurred for the period for which the bill relates.

My own preference is very much in favour of the interim statute bills process which is transparent and enables the client for example with monthly billing to keep track of the charges throughout the life of the case. With computerised time recording it is a quick and easy process which has much to commend it. ■

