

The importance of an estimate

Jack Ridgway offers advice on every solicitor's bugbear, the estimate of costs



IN BRIEF

► The SRA code of conduct requires all solicitors, from initial instructions, to provide an estimate of costs.

► There is a move towards clients giving informed consent to their costs. The costs information must be understood by the client, rather than merely provided by the solicitor.

A solicitor's estimate should be based on the assumed work, be clear as to what is and is not covered, and leave the client in a position to make an informed decision. Just like a recent estimate to renovate my kitchen, many solicitors' estimates fail to accomplish those simple goals.

An accurate estimate is an area which continues to plague the profession.

No matter the area in which a solicitor practises, unless all their work is covered by a fixed fee, the Solicitors Regulation Authority (SRA) code of conduct requires them, from initial instructions: to provide an estimate of costs and to regularly update the client as to their costs incurred; and, where appropriate, to provide an updated estimate.

Scope of requirement

The solicitor does have latitude within these rules, for example they may provide an estimate to a certain point, for example a letter of response or to issuing the claim; and where the scope or complexity has changed, an updated estimate may be provided.

The fact an estimate has been exceeded does not mean a solicitor is automatically limited to the estimate. As per the decision in *Mastercigars Direct Ltd v Withers LLP* [2007] EWHC 2733 (Ch), it is one factor in determining whether the costs are reasonable.

Two key factors identified in the case law are whether there is a satisfactory explanation for exceeding the estimate, as per *Wong v Vizards* [1997] 2 Costs LR 46; and whether the estimate has been relied upon, as per *Leigh v Michelin Tyre Plc* [2003] EWCA Civ 176.

Reliance

The importance of reliance on the estimate is a key theme through the myriad of case law. A client must be able to rely on an estimate, subject to the above caveats. The regulator and courts do not wish a client

to realise that their estimate is woefully inadequate only once they are too invested in the matter to turn back.

A recent example of this can be found in the decision of Senior Costs Judge Gordon-Saker, in *Kenton v Slee Blackwell PLC* [2023] EWHC 2613 (SCCO). The underlying claim was for professional negligence by former solicitors, ABC, which settled for £295,000 plus costs of £138,000. It is not without irony that the professional negligence claim incorporated in part the failure to provide adequate costs information.

Slee Blackwell's costs totalled £342,738, leaving a shortfall of £93,126. A shortfall in itself is not unusual, in particular given the costs paid by ABC appear to have been on the standard basis. Kenton sought a solicitor and client assessment where she placed reliance on the estimates provided by the solicitors.

Rather than set out the judgment at length, it is best summarised by the Senior Costs Judge at [62].

'In circumstances where the client was given a *hopelessly inaccurate estimate*, *relied on the estimate* by entering into a conditional fee agreement, lost the opportunity of doing something different, *was not given proper costs information*, *was billed a sum several times the amount of the estimate*, and where *the solicitor failed properly to explain the difference* between the estimate and the costs incurred, the amount that the client should reasonably be expected to pay must be a figure close to the estimate upon which she relied.' [Emphasis added.]

The decision is a simple yet clear reminder of the importance of not only providing an accurate estimate at the onset, but of the importance of updating that advice as the claim progresses.

Modest sums

Following the judgment of Sir Geoffrey Vos MR in *Belsner v Cam Legal Services* [2022] EWCA Civ 1387, [2023] 3 All ER 109 solicitor and client disputes over more modest sums will be expected to be addressed by the Legal Ombudsman. This is likely to explain why, in this year's edition of the *Legal Ombudsman's guide to good costs service*, there is now a section entitled 'Possible future costs,' (see bit.ly/3U1am5j).

Interestingly, the Legal Ombudsman expects solicitors to advise clients of all costs they will have to pay and may have

to pay, but not costs they won't have to pay. However, if a cost they won't have to pay becomes a cost they will have to pay, then the solicitor should inform the client promptly.

This may indicate the start of a divergence in how estimates are treated based on whether the sums in issue are modest or not.

Respect the ombudsman

The role of the ombudsman was recently explored by Costs Judge Leonard in *Olukoya v Riverbrooke Solicitors Ltd* [2023] EWHC 2771 (SCCO). The underlying dispute was an employment claim for which solicitors provided an initial estimate of up to £10,000 in fees to take the claim to a contested hearing. On the first day of the remedy hearing, Olukoya was advised that the total costs were in the region of £85,000.

Unsurprisingly, she raised a complaint and later terminated the retainer. The dispute ended up before the Legal Ombudsman, where the parties came to an agreed outcome, or informal resolution, brokered by the Legal Ombudsman. It is important to note that such a resolution is not the same as a decision by the ombudsman, which if accepted by a client is then binding on the solicitor. The agreed outcome was that Olukoya would pay fees limited to the original estimate plus VAT and disbursements, bringing the total to £13,000.

Nearly three years later, after learning that the ombudsman had referred the matter to the SRA, the solicitor issued a revised final invoice for £158,000 with credit given for the £13,000 previously paid.

Unsurprisingly, Costs Judge Leonard found that the informal resolution brokered by the ombudsman was contractually binding and that allowing a solicitor to escape that resolution would be contrary to public policy.

It is clear there is a move towards clients giving informed consent to their costs. It is not enough for a solicitor to provide information, that information must also be understood by the client.

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