LEGAL OMBUDSMAN

An Ombudsman's View of Good Costs Service

Third edition

November 2023

Introduction

This guidance sets out the Legal Ombudsman's view of good costs service. Costs and cost information frequently feature in the complaints we receive.

We first published this guidance in 2014. In this third edition, we have acknowledged that, in the time that has passed since the second edition, a number of high-profile court cases have put a spotlight on the cost information lawyers give to their clients.

Our position on costs issues hasn't changed since the last edition of this guidance – a client should never be surprised by the bill they receive from their lawyer – but we have added information which we hope will help lawyers and clients understand what we consider to be reasonable service.

The quality of cost information is especially important, given that many people who engage with legal services are experiencing stressful and difficult situations. Their focus will often be on things other than how much they are paying for the work and our guidance is designed to help lawyers deliver a service that reflects the individual client's needs.

This guidance also includes a range of worked examples, which provide practical insight into how we resolve complaints. For further information, the following guidance is available:

- Guidance: Our approach to determining complaints
- Guidance: Our approach to putting things right

Pre-engagement

Providing Information (before a consumer becomes a client)

The root of a legal service starts before a consumer formally engages a lawyer. A lawyer's website and marketing material may provide information that leads to someone choosing to engage their services, so it's important that the information is clear and doesn't mislead consumers into paying for a different service to the one they need.

The transparency rules the legal sector introduced in 2018 require certain information to be provided up front in particular areas of law. We recognise that your website won't be able to cover all the different circumstances that could affect the cost of a piece of work, but you might want to make it clear what the expected costs would be for a typical instruction and some typical examples of things that would affect the price.

It will also be useful to keep a record of the information displayed on your website, and when and how it changes. If a client makes a complaint in the future about your initial costs information, this record will be useful to demonstrate what they would have seen at the time.

Was the general information/marketing material accurate and consistent with the service the lawyer provided?

Example

Mr B went onto firm N's website to get an online estimate for his house purchase. The website advertised a price match offer if another firm provided a lower quote. Mr B found a quote from another firm for £995. He sent this to firm N, expecting to benefit from their price match offer. Firm N completed his house purchase but sent him a bill for £1,500. When we looked into the case, we felt that the information on firm N's website had been misleading. The firm agreed to informally resolve the complaint and reduce the price to fulfil their price match offer.

Initial consultation meeting

Some firms offer free initial consultation meetings. It is reasonable for a lawyer to charge an initial consultation fee if they wish to, but they must make any charges and conditions clear to a consumer before the appointment is made. The consumer should know where

they stand when they walk through the door and not only be told about any charge, if there is one, for the first time at the consultation that is being charged for.

Similarly, if a firm offers a free one-hour consultation, it should be made clear if time over and above this is chargeable, and what the charge would be. Any charges must also be reasonable.

Did the lawyer make any charges or conditions for an initial consultation clear before the appointment was made?

Example

Mr G approached firm H for an initial consultation. At no time did the firm discuss costs with him, so he thought it was free. After the meeting, Mr G received an invoice for £400.

We investigated the complaint and firm H confirmed they had not told Mr G he would be charged for the consultation. They said they felt it was obvious, as Mr G was receiving a professional service.

However, we concluded that, as many service providers (including many lawyers) offer a free initial consultation, Mr G's assumption was reasonable. Even if it was obvious, there would be no way that he could have been properly informed about the actual charging rate if he wasn't told. Firm H agreed to informally resolve the complaint and waived their fees for the meeting.

Charging structure

A client should never be surprised by the bill they receive from a lawyer. However, it is clear that some people who come to us don't understand the basis on which they were billed. This is not helped by the different sorts of charging structures lawyers currently offer: fixed fee, hourly rate, damages-based agreement and so on. Each of these is different and each has advantages and disadvantages from the client's (and lawyer's) perspective.

Whatever charging structure a lawyer uses, we would expect them to explain how it works, and what it does and doesn't include. It must be crystal clear to that particular client.

Was the charging structure clear?

Example

Miss K instructed firm Y to represent her in a tribunal. The firm was instructed at the last minute and agreed to represent her for a fixed fee. However, the judge adjourned the tribunal hearing as the other side had not prepared the correct paperwork. When the case was concluded, the firm invoiced Miss K for the fixed fee plus a further cost for the later hearing. They felt the additional amount was necessary because they had turned up for the initial hearing. We decided firm Y should halve their fee for the final hearing. We accepted that they had carried out a substantial amount of work, but we felt they should have told Miss K they would need to charge an additional amount for their second attendance.

Possible future costs

We don't expect you to know how a case will play out, but we do expect you to help your clients understand how much they should expect to pay for the work to be completed. Clients must be able to make an informed decision about whether to go ahead with the work and whether they agree to the price being quoted.

At the start of a case, you should tell your clients of all costs that you intend to bill. You should also tell your clients of all likely third-party costs that will be incurred during the case, such as insurance premiums, barrister fees, surveyor costs and searches. You might not know the exact numbers, but the possibility or certainty of these fees, combined, where practicable, with a rough estimate, must be explained to the client.

For your own costs, we consider there is no obligation for you to tell your client about charges you do not intend to bill. This includes those which you can theoretically charge the client, but you aren't going to. If your attitude to these costs changes during the case, however, you must notify the client of this as soon as possible and, in any event, before the fees are billed.

Any change to charges needs to be justified, and we would expect you to ensure the client understands why they are being asked to pay more. The principle of costs being fair and reasonable in all the circumstances needs to be maintained.

Think of costs in three categories:

1. Things the client **WILL** have to pay.
2. Things the client **MIGHT** have to pay.

3. Things the client **WON'T** have to pay.

Our position is that lawyers should disclose 1 and 2 to clients, but there is no general requirement to disclose 3. It might make sense in individual cases to explain 3, and we will always look at each complaint on its merits, but this guidance should help you focus your cost information on what the client needs to know.

Best practice is to provide or confirm cost information in writing. It is better to ensure that clients understand at the outset how they will be charged than to have what was discussed disputed later on. If there is anything you think might be particularly expensive or important to a particular client, it is prudent to be able to show that they made an informed decision.

Example

Firm D was instructed to administer the estate of Mr J's late mother. Mr J was a beneficiary of the estate. The firm's terms of business explained they would be charging on a time-spent basis. They provided the hourly rate and an estimate of £4,000 + VAT and expenses. The terms also included details of possible charges, which might be triggered depending on the case, such as tax implications or the size and complexity of the estate. One of the possible charges was an additional cost based on the value of the estate.

The final bill included a charge of around £3,500 + VAT on top of the hourly rate charges.

We decided that, whilst the firm was entitled in theory to charge a value element, they had never made it clear that this would be charged, and how it would be calculated. We decided the estate was entitled to believe that they would only be charged the hourly rate charge. Including some other failings in cost information. We decided to reduce the firm's fees to the £4,000 + VAT estimate and endorsed the compensation offer the firm made to Mr J personally of £360, reflecting his own upset and inconvenience.

Recoverable costs and fixed costs

In cases where costs are recoverable from another party, it is important that clients understand how costs recovery works, and whether their liability to their lawyers can exceed the recovered costs. Will this mean that they will have to meet any shortfall?

This is particularly important in cases subject to fixed costs, where there might be a

significant difference between the costs that are incurred on a time-spent basis and the fixed costs that are recoverable from another party. Clients should be told how fixed costs operate, because they need to appreciate that there is a risk of their costs exceeding the sums that can be recovered, and they need to understand what this means for them.

One possible approach is capping your client's liability to a certain proportion of damages, such as by saying, 'You remain liable to pay any costs which we cannot recover from your opponent, but we will limit your liability to [x] per cent of the compensation you recover'. This can be an effective way of addressing the risk of shortfalls, so long as the capping arrangement is explained clearly at the outset.

The complaints we see on this topic typically come from when a lawyer has charged (or indeed already taken) more than the client expected to pay. When you know how you intend to charge your client, and you should ensure your client understands this. If your understanding changes, you should ensure the client's understanding changes with it. The same goes for anyone else's costs. Good practice is to record that you have done so, too.

The issue of shortfalls on costs recoveries also arises in connection with success fees in conditional fee agreement (CFA) cases, as success fees can no longer be recovered (except in mesothelioma cases). We address the issue of success fees separately below.

Example

Dr T instructed firm R to help her with a personal injury claim. The claim was successful and 70% of firm R's costs were recovered from the losing side. Firm R then tried to claim the 30% balance from Dr T.

We decided that, because firm R had explained to Dr T that she would be responsible for paying the shortfall of any costs that could not be recovered from the other side and because Dr T had signed to say she understood this, the firm was entitled to charge her.

We were satisfied on the facts that Dr T had made the informed decision to proceed with the work and reimburse her solicitors for any reasonable costs they could not recover from the opponent. The service was, therefore, reasonable.

Service and case options

There are various ways that a case can be progressed. Each of these ways has advantages and disadvantages, as well as potential cost implications. Lawyers have a responsibility to

give consumers the best possible information and advice, so the consumer can choose the way of dealing with their case that suits their needs.

We expect lawyers to advise consumers about their options, such as by providing a cost benefit analysis, so they understand the choices available to them and the implications. It will allow them to make informed decisions about whether it is in their best interest to continue with a case and, if so, how they should proceed. Although consumers are often making a guided choice, it is important they understand why the lawyer is recommending one particular course of action and what the costs implications are. This information should be provided before any work starts and it should be updated, when appropriate, as the case progresses.

Keeping a good record of what has been agreed often resolves disputes before they become a major disagreement. We will look at the information given about costs as part of our investigation, whenever that is in dispute. However, simply providing the information isn't always enough: it needs to be in a suitable format, presented in a way that enables the client to understand what it means for them.

Were all reasonable options given and properly explained? Was a comprehensive cost benefit analysis provided?

Example

Mr S used a solicitor to help his small business recover a debt. There were concerns from the start about the defendant's financial circumstances, so Mr S wanted to take action quickly.

The claim was successful six months later, but Mr S didn't recover any of the £10,000 he was awarded, because the defendant was unable to pay. Mr S had paid £8,000 to his solicitor.

We decided that the solicitor should have discussed the practical difficulties in recovering costs from a client that might not be willing or able to pay. Whilst the solicitor was entitled to carry out exploratory work early on to try to get a settlement, a conversation should then have happened to show Mr S that he might be throwing good money after bad. We reduced the costs to £4,000.

Reasonable estimates

Consumers will almost always want to know what the total cost of their case is likely to be.

A lawyer should use their best judgment to provide an estimate. We recognise that, in cases where litigation is likely, it might not be easy to give a precise answer. However, we believe it is important to manage consumers' expectations about the possible cost range. We will ask whether an estimate, however cautious, was given. We would expect that estimate to give the consumer the best information available and take into account information and conditions specific to the case.

It can help consumers if they understand what factors have gone into the estimate: why do you expect the costs to be around that figure? Are there different ranges, depending on a variable beyond your control (the attitude of the other side in a divorce, the willingness of the defendant company in a personal injury case to settle, the question of whether a court will dismiss significant parts of the claim against the client)? Highlighting relevant factors at an early stage will help you discuss any adjustments you need to make to the estimate, as the case progresses.

We know an estimate differs from a fixed fee, but not all clients understand this distinction. We therefore look for evidence that this has been explained. An estimate being exceeded would not automatically constitute poor service, but we would normally expect to see reasons for this and look for evidence that the client had been warned beforehand that this would happen. We would expect lawyers to know the estimate is being reached and to warn the client accordingly, as the client may want to change instructions on how to proceed, in light of this information.

Did the lawyer give a clear and reasonable estimate of the costs involved in a case? Was the status of this estimate explained?

Example

Miss F instructed firm E to help her with a leasehold property. The firm provided a client care letter and estimate of £700. The instruction later changed as Miss F wanted the firm to negotiate the sale of the freehold instead. The firm mentioned in an email that the new work would cost £1,750, but they did not specify what this would cover and did not issue an updated client care letter. The negotiations became protracted, and Miss F eventually decided to swap firms. Firm E sent her an invoice for £2,750.

We decided that although the firm had done substantial work, there was poor service, as they had not been clear what the estimate would cover. Firm E agreed to reduce their fees to £2,300.

VAT, disbursements and additional costs

Cost complaints sometimes involve disputes about whether VAT was included in the price. When you purchase goods, the VAT is included, so the amount you see is the amount you pay.

In legal services, we sometimes see client care letters which quote a number for "our fees", which then explain that VAT will be added to that. It would help clients if the total figure was confirmed at that point, so that a client who is told the estimate is £5,000 knows they should really prepare to pay around £6,000. If it wasn't clear, it is likely we will find fault and it is possible that we would hold the firm to the lower figure, as that was what the client was reasonably entitled to expect to pay for the service.

A major cause for complaint is the additional costs which are charged in connection with a case. These are usually referred to as 'disbursements' which means almost nothing to anyone other than lawyers. Clear, unambiguous language must be used, so the client knows what these items might be. The estimate given before a case begins should include all the costs which are likely to be incurred. If it does not, we will ask why. It will rarely be reasonable for a lawyer to set out a long list of possible expenses without helping the client understand which of these are likely to be payable.

Sometimes it is not a question of language, but how reasonable the additional costs are. We would not consider it sufficient to see an estimate which just said 'disbursements' with an overall cost against it, nor would we necessarily expect every individual disbursement to be itemised. What we would want to see is some meaningful breakdown. We would also expect some costs, such as routine photocopying, to form part of the usual service cost.

Did the lawyer explain what disbursements would be incurred as part of the case?

Example

Mr J instructed firm H to deal with the purchase of his house. He received an online estimate for £500 which included the firm's fees and disbursements such as land registry costs. When the sale completed, he received an invoice for £700. The extra £200 was for electronic transfer fees and some additional searches that had not been included in the original estimate.

While these fees were reasonable, we decided that the costs information was poor as there was no reason why the firm could not have made Mr J aware of these in the estimate. The firm agreed to pay £100 to informally resolve the complaint.

Case funding arrangements

Some clients will be able to fund their own cases. Others will require different funding arrangements. Many of the complaints we see arise out of difficulties clients have in meeting the cost of their service.

To avoid such difficulties, funding arrangements should be fully discussed before the service begins. We will look for evidence that the lawyer has discussed funding options such as insurance, unions and legal aid (even if in the latter case, the lawyer in question isn't registered to provide the service and by doing so they may potentially lose business). We will also want to know if any potential affordability issues have been identified and what options the lawyer has discussed to give the client greater control of their costs.

Example

Mrs O instructed firm P to help with a neighbour dispute. Firm P took on the case on a no-win-no-fee basis and took out an insurance policy to cover Mrs O's legal costs, should she lose the claim.

She was successful and the firm deducted £3,000 from the settlement she received, as per the terms of business signed and agreed at the outset. After receiving her settlement, Mrs O realised she had a pre-existing insurance policy which would have covered her for this type of work, meaning that she should never had had to pay anything from her settlement. There was no evidence the firm had ever mentioned to her that she should check whether she had cover.

We decided that the firm should pay her the £3,000 back, in order to put her in the position she should always have been in. We also decided that the firm should pay her £250 to recognise her shock at learning that the deduction needn't have been made.

It is important that lawyers consider the consumer's circumstances and follow the principle of acting in their best interests. In the context of service, this includes helping the consumer to make good decisions about how best to fund their case, which involves making them

aware of the options available to them.

If a lawyer has carried out work privately while a client's application for legal aid was going through, we would expect there to be good reasons why the lawyer didn't delay work until the results of the application were known. We would also look for evidence that the lawyer had consulted the client about proceeding with the service privately.

Engagement

Client care letter

Once a consumer has decided to engage a lawyer, both parties need to understand the terms of engagement – what will be provided and on what basis. In most cases, this will usually be in the form of a client care letter. This is one of the key pieces of evidence we rely on to make decisions, so it is important to get it right. The letter needs to be framed for the needs of the individual client, too.

To make the letter explicit about services offered and costs, it should include information on:

- why the client has decided to engage the lawyer;
- the course of action the client has chosen;
- what work will (and won't) be carried out;
- the standards and timescales for the work;
- the likely costs of the case based on the information within the letter; and
- where any of this differs from the information on the website or in other previously-shared materials, why this has happened.

If the type of work provided relates to a case where costs might be recovered from another party, the client care letter should also explain how costs recovery works, and the risk of any shortfalls, in accordance with the guidance we have given above.

If the type of work falls under the transparency rules, we would generally expect the cost information to include anything required under the relevant regulator's rules, as that would be our starting point. We would look at the facts of the case, though, to decide whether the service was reasonable and, if it wasn't, what detriment (if any) flowed from the shortcomings.

We will consider whether, after reading the client care letter, the client had a clear understanding of the likely course of their case, what service would be provided, and how much it would cost. We would be looking at this to ensure the information was appropriate for the particular client, rather than for an average client, as cost information – like any information – should be tailored to the needs of the client.

Example

Mrs P asked firm O to represent her in the sale of her home and the purchase of a new house. Firm O sent a client care letter for each instruction, setting out their fees and how much they would charge at each stage if the transaction did not complete, as well as explaining what disbursements she was likely to be charged. Mrs P paid a deposit which the firm said would be used to cover the disbursements. Unfortunately, the sale and purchase fell through, and the firm sent Mrs P invoices for the aborted transactions.

Mrs P complained because she thought that the deposit she had paid should have covered the majority of her costs. We felt, following our investigation, that the firm's letters had been reasonable, as they clearly outlined their fees and explained what her disbursements were. We could not have expected the firm to do more in this situation and explained to Mrs P why no remedy was required.

Terms and conditions

A lawyer may provide their terms and conditions as part of their client care letter or as a separate document. We would normally check that lawyers have drawn attention to any key issues clients need to be aware of that affect the service they are about to receive. In particular, we would want lawyers to be explicit about any conditions they are attaching to their service or any risk or liability for costs clients may incur in the future.

In our work, we have seen many examples of terms and conditions which are difficult to understand. Information should be presented in a clear way, using simple language, proportionate to the complexity of the case.

If a client might have difficulties understanding the technical detail, we would want to see evidence that the lawyer has taken the time to explain the document. If there's something in small print that should have been expressly covered but wasn't, we are likely to consider this unreasonable.

Were the terms expressed clearly?

Example

Mr T instructed a firm on a conditional fee agreement to obtain a work visa for the UK. The terms and conditions said that a fee of £750 would only be charged if the application was successful, unless inaccurate information had been provided.

Mr T could not complete the application and the firm used another part of the terms and conditions to say that, as he had withdrawn his application, he had to pay their fees.

We decided that the difference between the two terms was quite subtle, and it was not reasonable to expect Mr T to understand the distinction. The firm should have done more to ensure Mr T understood. We concluded that the firm should reduce their fees by £250, as we also felt that Mr T was aware of the risks with his application.

Success fees and Conditional Fee Agreements

The basis of the charges needs to be both reasonable and properly explained to the client. Without this, it is extremely difficult for a lawyer to argue that they have satisfied their obligations as part of a reasonable service.

Recent years have seen legal cases about the calculation of success fees.

Where a lawyer intends to charge a success fee that is calculated based on risk, the reasoning behind this calculation should be provided to the client. If not, we might decide that the client is not getting the information they should about how their costs are generated.

Where a lawyer intends to charge a success fee that is not based on risk, or which includes other elements alongside risk, this needs to be explained to the client clearly at the outset, and the overall costs charged must be seen to be reasonable.

If we investigate a complaint where a firm has a policy of charging a substantial success fee in every case, regardless of risk, we are likely to ask the firm to show us that the client has given informed consent to the arrangement. This would include the client being made aware that other lawyers might not adopt the same approach and that lower success fees might be available elsewhere.

We understand that both parties should be free to enter into contracts, including making a bad bargain, but we will want to satisfy ourselves, when asked, that the client understood what they were doing and that they made an informed choice to proceed.

If we investigate a complaint about this issue, the lawyer is likely to need to justify the arrangement in the context of providing a reasonable standard of service to that client.

Success fees are not recoverable from other parties (except in mesothelioma cases), so this also needs to be clearly explained to the client, as must any cap on the success fee. A failure to explain it is likely to mean that we find the service fell short of a reasonable standard. See the section above on recoverable costs for more detail on this.

Example

Mr L instructed firm M to help him with a personal injury claim. Firm M's terms of business recorded that the firm charges a 100% success fee, subject to a cap of 25% of what is recovered. This was despite the defendant having admitted fault straight away and being insured. The claim was settled quickly, Mr L recovered £20,000 in damages from the other side and firm M took £4,000 in settlement of its fees, including a £2,000 success fee.

We decided that the presentation of the 100% success fee was ambiguous, as it was not clear whether this was a figure routinely charged by the firm or one chosen specifically for this case with regard to risk.

The circumstances of the case made the risk element very small, and the firm had offered no information to the client that the basis of charging would leave the client paying more than they would do, under a traditional risk-based calculation.

We decided that the 100% success fee was not a fair charge in this case, but the firm was still entitled to some of the fee and the complaint resolved for a £1,000 refund.

Delivery of service

Managing cost changes

It is not enough for a lawyer to agree the possible cost of a service at the outset. Many complaints arise because lawyers have not updated the client about the cost of the case as it progresses and, all too often, lawyers fail to give clients the opportunity to try and control their costs during the lifetime of the service.

In these cases, we will look for evidence that the lawyer has kept the client informed about the cost of the case on a regular basis. We will also want to see evidence that lawyers have consulted their clients on how to manage potential cost increases or what course to take, if new options become available. We would expect the lawyer to explain the change clearly, as well as any service options, and provide (estimated or real) costs for them.

We would also want to see that the lawyer has asked for instructions on how to proceed. Even if the lawyer feels that there is only one reasonable option for the client to follow, they should not make that assumption on the client's behalf.

Did the lawyer consult the client on any changes to the case that might incur additional costs?

If a case becomes more complex and the costs are to increase as a result, this should be made clear to the client. For example, if the lawyer feels a barrister's advice is needed, the client should be told why this is, and how much that advice will cost.

If an offer has been made to settle a contested case, the lawyer should ensure the client is clear about what this offer entails, and how much they will actually receive if costs are to be deducted from this. The lawyer should also clearly explain what the cost implications would be if they decide to reject the offer and continue to fight the case.

Price caps and managing affordability

If a client and lawyer agree that, once the price reaches a certain amount, agreement needs to be sought to proceed further, we would expect this to be followed by the lawyer. We would also expect a lawyer to discuss cost control options if a client identifies difficulties in affording the cost of the case as it develops.

In terms of whether the service provided was reasonable, it isn't generally enough to say that the additional work done was for the client's benefit, though we will take the value of the work into account when deciding on the detriment (and, thus, the remedy).

Circumstances can easily change and cases can become more protracted and expensive than originally expected. In these situations, it is not unusual for a client to begin to struggle to pay the bills. If a client raises concerns, it is helpful to see if there are ways to manage the costs – is there a lower-level member of staff who can take on some work? Can payments be spread over a period of time? It may also be a good time to discuss how much more work needs to be done and what the exposure is for the client, if the case goes through to the end. A client struggling to find the money to pay the first half might need to reflect on whether they want to continue with the case.

Example

Mrs P instructed firm A to help with a claim for unfair dismissal. The claim had a high value, and the employer was high profile, so firm A agreed that the head of the employment department should act as the main solicitor for the case. His charging rate of £350+VAT per hour meant that the total costs of the work were over £30,000. Mrs P thought that this was too much.

On inspection, it was clear to us that the firm had charged the department head's rate for all the work. Although some of the work was undoubtedly highly technical, where the expertise and experience of that person were valuable, there was also a significant amount of work that could safely have been carried out by someone in the team at a much lower rate.

There was no evidence that the firm had discussed this possibility with Mrs P, so we decided that the service had fallen short. The bill was reduced by 25% to reflect the poor management of cost information.

If a price cap agreement was made, did the lawyer follow it?

If a fixed fee or price cap agreement is put in place, the lawyer needs to ensure that they tell the client what this will cover. If circumstances in the case change, the lawyer should tell the client, in good time, what has changed and why, and the impact that this has on the initial agreement.

Overall costs

One of the major areas for complaint is overall service cost. We don't do detailed cost analysis, so, if a complainant wants a detailed forensic bill analysis, we will usually signpost them to the Senior Courts Costs Office, if they are still in time to pursue that avenue.

If the complaint is about the level of the costs, though, we can judge whether, overall, those costs were reasonable. If something seems questionable, such as unrelated, duplicated or disproportionate costs, then we will ask the lawyer to explain. If a transfer fee in a house purchase is marked as a disbursement and that seems large for a bank's cost, we would ask the lawyer to show us that this fee didn't include the professional costs for carrying out the transfer, which should be captured elsewhere.

Commonly, when the complaint is that the bill was excessive, it is really a reflection that the client wasn't expecting the bill to be as high as it was. That's about the cost information, rather than the costs themselves, and we will be looking at what the client should reasonably have expected to pay, based on what information they had. We would also ask for an explanation if the estimate and overall costs were different, and question why they were allowed to increase without this being explained.

In some cases, we recognise that cost increases will be due to an unexpected development in the case or to the client's own behaviour (such as asking for more work to be done than predicted or increasing the scope of the work). Here too, we would look for evidence that the lawyer addressed these issues with the client during the case and, where possible, gave the client options to manage the costs.

Example

Firm B acted for Mr C in a litigation matter. The firm agreed a fee of £500+VAT (£600) to consider and prepare papers for Mr C's court appearance, based on the evidence and responses Mr C had already obtained in his correspondence with the other side.

The other side's lawyers wrote to firm B and provided more, significant information. This information raised questions about the claim itself and would warrant consideration, investigation and response by the firm. Firm B rightly explained this to Mr C, including that this was not work covered by the original agreement. As such, the firm was entitled to ask Mr C to pay a further £600 for this additional work and we decided that the service was reasonable as a result.

Was the overall cost fair and transparent for the service received?

Example

Mr W asked firm A to represent him to evict tenants from one of his properties. Mr W did not receive a client care letter or an initial estimate at the beginning of the case, although he was later told that his costs would be around £10,000. Shortly before the trial, he was told that the costs were likely to be £15,000 for the firm's fees and barrister's costs.

His final costs were £20,000, but he had never received anything in writing from the firm. The firm agreed that they had not provided Mr W with any clear information about the costs in his case and they offered to reduce their fees to their first estimate of £10,000 plus VAT. We agreed that this was a reasonable remedy.

Billing

One of the common reasons for complaint – and what an ombudsman finds fault with – is the transparency of costs, which could be avoided by better billing. If an ombudsman has difficulty understanding the basis and meaning of the eventual bill, it would not be surprising that this has been the case for the client as well, and that we may find this to be poor service.

In dealing with a complaint about billing, we will look for evidence that the costs identified on a bill were actually incurred during the lifetime of the case. We will want to know what the nature of the work was and will ask the lawyer to produce clear evidence to support the bill.

The explanation that work was done unbilled and unrecorded over evenings and weekends does not always convince us that the billing was fair. It is the lawyer's responsibility to account properly for items charged or set out in the bill.

Finally, we will look to relate the billing back to the terms and conditions identified at the beginning of the service. If the bill contains additional costs which were not identified before the service began, it may be that we would consider that it was unreasonable to charge them at the end of the case.

The simple test for billing is that the client should know what is coming. If you want to

charge your client for a piece of work, tell the client what you are going to do, tell them that you are going to charge them and tell them how much you intend to charge. If you do this and the bill reflects what you have told them to expect, you will be in a much stronger position when challenged.

Has the approach taken been reasonable and does the client know?

In assessing whether the service was reasonable, we will take into account the relevant codes of conduct that were in force at the time, and other important provisions like the SRA Accounts Rules. We won't determine whether there has been a breach of the rules, but it helps us to draw fair conclusions based on what is expected in a service.

Example

At the start of a retainer, firm J asked Mr K to send £500, which included £100 for a court fee and the rest on account to help towards the firm's costs, which it estimated at £1,000 + VAT (£1,200), if the case went all the way. The case was settled without the need for court, but the firm used the extra £100 towards its bill of £500, meaning there was nothing further to pay.

Mr K complained that the firm didn't tell him what would happen to the £100 for the court fee if the case didn't need to go to court. He referred our investigator to what was then Guidance Note 17(viii) of the Solicitors Accounts Rules in noting that the money had been "earmarked" for the payment of a court fee. He argued that he should have been told that the firm intended now to use it towards its fees and he should have been given the choice about what to do.

While there was no dispute over whether the firm had actually carried out £500 worth of work, we agreed that the firm should have spoken to Mr K in advance and agreed a sensible approach to using the £100 in the client account to pay the balance of the bill. Whilst there had been a failing in the service, there had been no detriment to Mr K, so no remedy was required.

Will the bill be clear and transparent?

If a lawyer produced a bill which says, 'work done between 24 July and 18 August' and doesn't provide any further detail, we would consider this too vague. We would want to

know what the nature of the work was and will ask the lawyer to produce the records as evidence that it had been done.

Payment

On occasion, disputes arise about payments made (or alleged to have been made) by the client to the lawyer. It is not unusual for us to be told that money had been paid in cash without a receipt or that money had been taken on account against the promise of later service.

In cases such as these, we usually consider that the onus is on lawyers to demonstrate that they have properly recorded any such transactions and have kept the appropriate records. In the absence of such records, lawyers may be in a vulnerable position when responding to our enquiries.

Was the client given confirmation of their payment? Were proper records kept of all relevant financial transactions?

Example

Firm B were acting for Mrs C in an immigration case. Mrs C was told that it would cost £1,000 and that a deposit of £400 had to be paid. Mrs C paid the deposit and got a receipt from the firm as confirmation. When the work was finished, Firm B asked Mrs C to pay a balance of £800 and insisted this was correct.

We found that the firm did not have a clear record of the fees that had been paid. On the evidence available, we concluded that receipt from the firm was correct and therefore the outstanding balance was £600.

Enforcement

We recognise that there are cases where it appears that the client is unreasonably seeking to delay paying the bill for the service they have received. In cases like this, a lawyer might want to move to enforce the bill rather than wait for the outcome of the ombudsman process.

We understand that a firm has the right to seek enforcement of an unpaid bill. However, if a bill remains unpaid, firms should give reasonable notice that they intend to seek enforcement and should make the client aware of the complaints process, so the client has an opportunity to raise any concerns.

The ombudsman cannot, and will not, interfere in a lawyer's decision to enforce a bill while a complaint is ongoing. However, where we consider that any action was unreasonable, it will be reflected in the decision we make and any remedy we order.

Were any actions the lawyer took to enforce payment of an unpaid bill reasonable?

Example

Mrs A had instructed a law firm. She told the firm that she had not received their client care letter, but they did not re-send it. They also did not send her regular bills during the course of the work.

The firm began proceedings against Mrs A. However, they only sent a final bill at the same time as the letter about court proceedings. The firm agreed to stop proceedings and give Mrs A time to pay the bill.

Summary

Good cost information will always be a central feature of a reasonable service. The lawyers providing the best service will not just ensure that their clients have a good understanding of what they should expect to pay for the work being done but will also keep good records of the communication.

We will always take each complaint we receive on its merits and, when we get a complaint about costs, we will ask the lawyer to show us what they told their client. To that end, we encourage lawyers to keep evidence of when they have discussed costs with their client and to satisfy themselves that their clients have fair expectations of the bill that will ultimately come.

There are three key principles that we believe lawyers should keep in mind:

- A client should never be surprised by the bill they receive from their lawyer;
- If you intend – now or in the future – to charge your client for something, tell the client clearly, as soon as you reasonably can; and
- Keep clear and accurate records of all the cost information you provide, including any confirmation from the client that they understand what they will be charged.