

Legal Cases - Legal Fees Approval and Tracking

(updated Jan 2020)

General

Legal fees are a very significant expenditure item for the Law Society (€250 - €500k per annum). It is, therefore, important that they are accounted for in a timely and accurate manner in order to ensure the interim management accounts and final audited financial statements are correct.

Legal costs are variable costs i.e. they can vary significantly from period to period and from year to year and is therefore an area that is closely monitored by the Finance Committee.

The key elements to proper financial control of legal costs are accurate estimation of costs likely to be incurred (ideally, by agreement of fees in advance), accurate and timely recording of costs incurred and paid and accurate estimation of costs incurred but not yet billed (accruals / provisions).

The objective of these procedures is to ensure:

- all costs are identified and allocated to the correct financial year
- invoices are not 'missed'
- proper estimates (accruals) are made at year end
- third party liabilities (i.e. plaintiff costs) are estimated and notified immediately
- duplicate approval/payment of fee notes is avoided
- cases/matters are easily distinguishable ensuring correct allocation of costs
- case managers can follow counsel etc. up in relation to fees
- give Auditors confidence in our systems.

Broadly, we categorise the cost of cases or matters into two categories:

- Minor cases/matters: Relatively small and often recurring costs associated with cases/matters which are unlikely to incur significant overall costs i.e. <€10k
- Major cases/matters: Fees and expenses associated with cases/matters which are likely to be ongoing and to incur significant overall costs i.e. >€10k.

Controlling costs

a) Solicitors

The basis of calculation of fees payable to external solicitors should be agreed in advance except in situations of urgency when the basis of calculation of fees should be agreed as soon as practicable.

When an external solicitor is instructed a section 150 Notice should be issued by that solicitor setting out the basis of calculating fees agreed with the Society. Normally that basis of calculation will include one or more agreed hourly rates.

b) Barristers

When instructing Counsel, a written estimate of fees payable should be agreed in advance in all non-routine cases except in situations of urgency when the basis of calculation of fees should be agreed as soon as practicable.

Pursuant to Rule 1(6)(b) of the Code of Conduct for the General Council of the Bar, the Bar Council have put in place arrangements whereby it is the obligation of every Barrister to furnish an estimate of fees in writing prior to undertaking work.

Notification of liability for Third Party costs

If the Society loses or settles a case/matter and is liable for third party costs this must be notified to the Finance Section immediately giving a best estimate of the liability. The Finance Section must be kept up to date as the liability is firmed up. This is essential for financial planning and to enable the Finance Committee give a reliable year-end forecast to Council. (see Appendix D, legal costs).

Processing of legal fee notes, invoices etc.

(a) If a new case/matter arises which is likely to incur significant costs ie 'major', then the attached form (Appendix B) should be completed in so far as is possible. This should be forwarded to the Finance Section and a case code will be allocated to the matter. This is not required for Compensation Fund cases.

(b) When fee notes / invoices are received these should be approved and coded (Appendix A) by the case manager as follows:

	a/c Code	Activity	Case
(i) Regulatory Cases			
Regulation	30420	REGUL	LC019 etc
Complaints	30420	COMPL	LC105 etc
Comp Fund (paid by Society)	30420	ZZZZZ	No coding
(ii) Disciplinary Tribunal	30420	DISCT	LC009 etc
(iii) Law Society			
	30420	SOCTY	LC050 etc
(iv) Education	30420	GENED	LC012 etc

You should also include a narrative eg. "ALG 21/9/2014 Re....."

You should then:

Record on Database

Retain copy for case file. Send original to Finance Section

Send copy to the appropriate approver as below

All minor cases/matters should be allocated to case code LC001.

In routine cases/matters all invoices issued by counsel should be reviewed by the Society's case manager who should certify that the fee is in order. Any cases where the case manager is unable to advise should be referred to a legal cost accountant for advice.

Where a case / stage in a case has been concluded it significantly improves control and overall cost awareness if all relevant fee notes (i.e. Senior, Junior Counsel and Solicitors) are presented for approval / processing at the same time. This should be the norm, with exceptions being highlighted by the case manager.

Approval process

a) Contentious Matters

ALL payments for Solicitors and Barristers in relation to all **litigation** matters must be approved as below:

Regulation matters: to be approved by Director of Regulation

Disciplinary Tribunal matters: to be approved by Chairman of the Disciplinary Tribunal

Education Regulation Matters: to be approved by the Director of Education

All other contentious matters: to be approved by Co-ordination Committee

A copy of the fee note must be sent to the above, with an accompanying memo which should:

- outline what was involved in the matter.
- what the external solicitor/counsel did to justify the sought fee.
- indicate if fee is based on an agreed hourly rate (or attach the relevant Section 150 Notice or written estimation from Counsel).
- If cost accountant view obtained, this should be attached.

All original fee notes should be sent to the Finance Section at the same time.

b) Non-Contentious Matters

The Co-ordination Committee must approve all payments to solicitors and barristers in relation to all non-contentious matters eg. opinions, advices, policy matters etc. Copy of fee notes should be sent to Mary Keane as appropriate, at least 8 days prior to a Co-ordination Committee meeting so that they can be circulated. Fee notes must be sent with an accompanying memo which should:

- outline what was involved in the case/matter.
- what the external solicitor/counsel did to justify the fee sought.
- indicate if fee is based on an agreed hourly rate (or attach the relevant Section 150 notice or written estimation from Counsel).
- If cost accountant view obtained, this should be attached.

All original fee notes should be sent to the Finance Section at the same time.

Exception - Fee notes for stenographer fees, court costs and legal cost accountants can be approved by the case manager and should be sent directly to the Finance Section for payment. These fee invoices are to be coded as above.

Payment

Finance Section will only pay a fee note when it is approved as above and certified by the Director of Finance & Administration.

Payments are made directly to the supplier, unless otherwise indicated, within 14 days of approval and receipt by Finance Section.

Exceptionally, cheques can be returned to the case manager for dispatch.

Year-end confirmation process

The process for dealing with outstanding fee notes and accruals is:

November / December: if a matter has concluded during the year you should push counsel etc. to provide fee notes so that these can be paid by year end. If a matter has not been concluded and is ongoing you should advise counsel etc. that you will require an interim fee note up to the year end of the reporting year.

January: you should ensure that originals of all fee notes received are forwarded to Finance Section without delay and where they have not been received you should chase counsel etc. to submit same. The final date for receipt of these is **15th January**. You should review all matters / cases in hand to ensure that no matters are missed. Where a fee note has not been issued a written estimate of costs incurred to year end should be obtained from counsel etc.

Finance Section will issue a report in relation to fees and accruals* to 31st December. This should be reviewed by you and confirmed as correct by **fourth week in January**.

* What is an accrual? It is a provision made in our accounts for the cost of work done by 31st December but not billed/invoiced as of that date. Ideally, we should not make accruals and all solicitors/counsel should be encouraged to submit fee notes up to 31st December each year. Where an accrual must be made then it is an auditor requirement that the basis of this accrual/estimate is provided in writing by an external person (solicitors/counsel/cost accountant). An accrual applies to all cases regardless of whether they are major or minor.

Year end details of external lawyers

This listing is required by our auditors in order to send out the standard lawyer estimate letters. Each Section must provide a listing of the name and address of all external solicitors and barristers as per Appendix C

Used on a regular basis

Used during the previous year

Used in earlier years but matters are on going or there are fees outstanding.

This list must be sent to the Finance and Administration Department by the **15th January**.

Please see Appendix A, B C & D on intranet site under Popular Forms for further information:

Appendix A List of case codes

Appendix B Litigation cost estimate and case code request

Appendix C List of External Solicitors & Barristers

Appendix D Finance Committee legal costs report (*note: this is currently awaiting update*)