

TO ALL MEMBERS

Ref: 2016/3

FEE ARRANGEMENTS WITH THIRD PARTY SUPPLIERS

The vast majority of costs incurred by the Association are in respect of the provision of legal services. The Managers have agreements with a number of Preferred Suppliers as to the fees to be charged for work undertaken for Members of the Association. Historically these fees have been charged on an hourly basis and ensuring value for money from those legal suppliers is a key requirement.

This hourly rate approach, albeit commonplace, provides no certainty to either the Member or the Association as to the actual ultimate cost of a case. The progress of litigation can, in some cases, be unpredictable. However the Association considers that greater certainty and transparency in the provision of legal and other services should be possible without compromising the quality of those services. The Association therefore considers that in each case where legal service providers and other service providers are instructed, consideration of alternative billing arrangements should be positively considered by the Member, legal or other service provider in conjunction with the Managers.

Alternative billing arrangements can include:

1. Capped fees

The arrangement anticipates hourly rates coupled with a maximum fee that will be charged for a particular task.

2. Fixed fees

Such fees are often agreed for specific tasks or sets of tasks.

3. Reduced hourly rates with success bonuses

This option includes reduced hourly rates but with an uplift in the event of “success”. It is important that there is a clear agreement as to what constitutes “success” sufficient to trigger the uplift.

4. Collar arrangements

This option commonly relies on a mutually agreed target band for fees for a specific task. If the recorded time comes within the agreed target band then the supplier will invoice for the recorded time. If the fee comes below the target band then there would be an agreed uplift. If the target band is breached then there would be a reduction in those recorded fees above the target band.

5. Conditional and contingency fee arrangements

With such arrangements the fees are linked to the outcome of the proceedings. The nature of “success” must be clearly defined. Also such fee arrangement must be permissible in the relevant jurisdiction where the fee is being agreed.

With such conditional and contingency fees each case will be considered on its own facts and merits but in general amounts payable under such fee arrangements are capable of being covered provided that:

- a) the case merits support in any event and the arrangement is not being used to fund speculative litigation; and
- b) the fees offer a cost-effective means of pursuing the case; and
- c) the maximum sum payable under the arrangement does not grossly exceed the fees that would have been charged had the case been billed on an hourly basis; and
- d) any such fee arrangement is referred to the Managers in advance for their prior approval.

The Association recognises that in some cases an hourly rate may be considered the most appropriate means of charging for a particular case. Nevertheless in considering any cases for support and determining the extent of support the Association will take in to account the nature of the fee arrangements that have been agreed with the service providers concerned. The Association would also expect to be consulted in advance of any fee agreements being reached.

Yours faithfully

THOMAS MILLER DEFENCE LTD
Managers