Fee disputes: how to avoid them and the impact of credit control

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Most practices will at some point find it difficult to secure payment from a client. We consider the steps you can take to avoid this, and the impact of credit control.

All professionals want happy clients who pay their fees on time, refer more work to them, and go on to refer them to other potential clients. Fee disputes cause significant problems, however. They disrupt the client relationship, putting the likelihood of future work at risk, as well as impacting the firm's cashflow and profits. Fee disputes can also lead to professional negligence claims via the 'back door', leading to significant cost to the firm. They are to be avoided if at all possible.

What are common causes of a fee dispute? The most common issues include:

- fee overruns, due either to poor time management or to additional work that was not included in the original fee quote or estimate;
- service issues, including errors and other problems;

- a difficult client; and
- clients who fail to pay or have cash flow issues of their own.

Fee overruns

To avoid challenges relating to fee overruns, we recommend that firms set fee alerts to warn them when work in progress is at 75% of the estimated or quoted fee. Firms should record the time spent on a case (whether it is on a fixed fee or not). In that way, they can identify whether the case is progressing as it should – or if there has been or is likely to be an overrun.

This tracking allows them to investigate the cause while there is time to resolve it. If there has been scope creep, the fee for any additional work can be agreed with the client. If the person working on the file is taking too long and making errors, this can be resolved before it is too late. Other issues with the client can hopefully also be resolved at this stage.

Service issues

Common causes of service errors made by tax advisers are:

- failure to respond;
- missing deadlines;
- failure to meet expectations; and
- making mistakes, such as getting the complexities of the tax law wrong.

You should have a clear policy within the firm that emails and phone calls will be responded to within a specific time period. Set up alerts on files to identify when they have been inactive for a specific period (perhaps a month). File reviews should also be undertaken to ensure that the policy is adhered to and regular team meetings held to discuss all files – not just those that are being actively progressed.

Having a clear process for recording deadlines on a firm-wide basis and advance noting significant deadlines will assist in ensuring that they are less likely to be overlooked. It is important to engineer a culture whereby deadlines are not the responsibility of any one individual but are the collective responsibility of the whole team.

Failure to meet expectations usually arises because of ambiguity within the engagement letter. Many of us are guilty of viewing the engagement letter as a ‘tick box’ exercise and do not pay sufficient attention to the scope of the retainer between the professional and client. Ask the important questions. What are you doing and why? Who are you doing it for? When does it have to be done by? See below for suggestions about how to draft your engagement letters more clearly.

Ambiguity can give rise to client expectations that are not met. Clients may be frustrated if the work takes longer than they expected. The scope of the work should be made clear at the outset. You must manage your client’s expectation of costs – even if the cost was always going to be the fee charged. Mismanagement of any of these issues can lead to a fee dispute. A friendly and informal relationship between the client and the advisor can be seen as a positive – but it can also lead to informal advice and unrealistic expectations. These ambiguities can also lead to fee disputes.

Finally, fee disputes can arise because the adviser has made an error in the advice given to the client, whether in relation to the tax law, the process or the client’s expectation as to the outcome of any transaction. The likelihood of such issues can be reduced by having good training programmes and proper processes in place. Advice should be peer reviewed when appropriate, and risk mitigated by obtaining second or expert opinions (counsel, for example) where required. Again, we recommend regular reviews to ensure that the processes are being followed.

Engagement letters

A crucial factor in avoiding fee disputes is to ensure that you have appropriate wording in your terms of business and engagement letters. We recommend including the following elements in the terms of business:

- a term that allows a client a limited period to dispute invoices (usually 14 or 21 days), otherwise they are deemed to be accepted;
- a term providing the adviser the right to charge interest on unpaid invoices from the date of issue if not paid; and
- a term providing that invoices are due on presentation (and include this term on the invoice too).

Engagement letters need to be properly drafted in terms of fees to be charged – all too often, they are silent about this, so it is hardly surprising that fee disputes arise. Other suggestions include discounts for early compliance with deadlines and penalty pricing for complying late.

The best cure for fee disputes is to have a clear engagement letter with clear terms as to the fee to be charged, a clear process for any additional work undertaken, and a clear process for checking what issues have arisen and why the fee hasn't been paid before launching straight into the credit control process. The adage 'a stitch in time saves nine' is very true in this case and leads to happier, healthier and more profitable client relationships.

Difficult clients

It is important in the first place to think about why a client is coming to your firm when you decide whether or not to take them on. Don't fall prey to the 'flattery' trap. Is this a client that you want to act for? Are they going to be more trouble than the fee is worth? Are they going to be a cost-effective client? Is being difficult their 'modus operandi'?

Think about the client's previous involvement with tax advisers. Have they had a difficult relationship with their previous advisers, and may they continue in that manner with you? But perhaps their problems may be because they have been badly let down by advisers in the past and are just wary? This might be a judgment call, but it is an important one to make.

Clients who won't or can't pay

When you are onboarding a new client, consider why they have changed firms to come to you. If their previous firm has refused to carry on acting because they weren't being paid, are you likely to end up in the same situation? If so, do you want to proceed?

If you know that the client has financial issues, then consider whether to obtain payment in advance. It isn't uncommon to ask for this for new clients – you are not there to be their funder.

Think also about the timing of billing. Many clients will not object to monthly billing, so why wait until the job is complete (and you have no leverage) to bill for the first time?

If appropriate, you may also decide to advise the client that you cannot incur further work in progress until the bill is paid.

The impact of credit control

Sadly, too many firms don't consider these issues. They may end up handing the pursuance of the outstanding fees over to a credit control team, whether that be internal or external, without considering the root cause of the fee dispute. This disconnect can have significant impacts:

- The client might pay up (in full or in part) but your relationship will probably be damaged and become hostile.
- If there isn't a resolution to the dispute, your client may decide to litigate. As well as the breakdown of the client relationship, this will result costing you time and money in getting a judgment. If you succeed in the litigation, you will still need to recover your fees. Even if the client has the money to pay the judgment, a second battle may be needed.
- If your client defends with a professional negligence counterclaim, you will become involved in a time consuming, costly process, with implications for your professional indemnity insurance.

The impact on your business

The obvious impact of fee disputes result in a breakdown in client relationship, and a reduction in the time that your firm could spend earning fees or on other productive issues. However, there are a wide range of other negative impacts that you should consider.

Reputational issues: An unhappy client is unlikely to recommend you to other potential new clients, meaning that you have lost out on potential new income streams.

Cashflow/income issues: Any forecasts based on assumed payment of fees will clearly be impacted, as will any budgets based on chargeable hours for those whose time is impacted by dealing with fee disputes and any prompted professional negligence claims as a result.

Prompted professional negligence issues: We often see clients defending fee disputes by alleging that the fee isn't due because the tax adviser was negligent. This results in a professional negligence claim that might otherwise have been dealt with outside the litigation process, being resolved more amicably and in a less time consuming manner.

Potential insurance issues: Tax advisers who have unpaid fees should consider the reason. Does an unhappy client have a valid reason not to pay? If so, does that claim or circumstance need to be notified to insurers? This is something that should be considered, as failure to notify can cause insurance issues in the future.

Further, if a decision is made to settle a fee dispute with a client on commercial grounds, and there is an underlying claim, then the agreement of insurers should be obtained before doing so. It is important to ensure that the client is advised of their right to take independent advice and the tax adviser should make it clear that the agreement is on commercial grounds only, and that they are not admitting any errors. (This step should mean that tax advisers willl avoid inadvertently becoming liable for unforeseen later errors.)

Points to consider

In our experience, tax advisers (and other professional firms) who consider the root cause of the failure to pay the fee before starting the credit control process have fewer issues with their clients. It is important to examine whether the client has a reasonable claim. Perhaps you truly haven't given good enough service, or have overcharged the client without keeping them advised. Look at the time records and narratives to see if there are any entries that give rise to concern.

If the client has reasonable concerns, can these be put right? If an apology is warranted, consider whether you should obtain your insurer's consent before making it.

We strongly advise that tax advisers looking to settle any fee dispute with their clients, where there is any doubt at all about the service provided to their clients, should take legal advice on how to draft the settlement. They should also agree the wording with their insurers if there is a circumstance that could give rise to a claim, even if the settlement is within the adviser’s excess.