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LEGAL FINANCE PROFESSIONALS

Agreed Fees - Are you sitting on a ticking time bomb?

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Introduction

There has been much debate in the legal sector, during recent years, about the application of 'Fixed Fees' and with good reason as, when done correctly, the cash flow benefits to a firm can be significant. However, for those solicitors or firms that get it wrong the potential regulatory and disciplinary consequences can be very serious indeed. A recent reminder published by the Solicitors Regulation Authority (SRA) highlights the importance of correctly distinguishing between a genuine '*Agreed Fee*' as defined within Rule 17 of the SRA Accounts Rules 2011 and a 'Fixed Fee'.

The Issue

Unsurprisingly, 'Fixed Fees' are proving to be increasingly popular amongst today's cost conscious consumers of legal services who value the certainty of a known fee when instructing a solicitor. More and more firms are looking at how they can accommodate this demand and provide their services on a 'Fixed Fee' basis. It isn't just the client that benefits from legal services being provided in this way. A firm's cash flow may also be improved as a consequence of the provisions relating to '*Agreed Fees*' within the SRA Accounts Rules 2011.

Rule 17.5 of the SRA Accounts Rules 2011 requires that an '*Agreed Fee*' **MUST** be paid into an office bank account. But...and it's a big **BUT**... you need to exercise great care to ensure that the terms and conditions governing the nature of your firm's fee arrangements with the client are constructed in such a way as to be compliant with the definition of an '*Agreed Fee*' used within the SRA Accounts Rules 2011. All too frequently we come across instances where firms seek to improve their cash flow by taking advantage of the '*Agreed Fee*' provisions but simply expose themselves to the risk of regulatory action by the SRA as a result of failing to understand properly the requirements of the SRA Accounts Rules 2011.

What do the SRA Accounts Rules say?

An "*Agreed Fee*" is one that is fixed - not a fee that can be varied upwards, nor a fee that is dependent on the transaction being completed. An agreed fee must be evidenced in writing.

Critically, it must be understood that an '*Agreed Fee*' is one that is absolutely fixed in all possible eventualities. Not only is an '*Agreed Fee*' one that can't be varied upwards, equally, it is a fee that is not capable of being varied downwards. This can create confusion within firms causing them to incorrectly treat a 'Fixed Fee' as an '*Agreed Fee*'. Consequently, they may pay money received in advance from a client directly into their office bank account under the provisions of Rule 17.5 of the SRA Accounts Rules 2011 when, in fact, the proper course of action would have been to treat the receipt as a payment on account of costs. For example, a firm may have quoted a 'Fixed Fee' to act for a client on a matrimonial matter but what if the client changes their mind shortly after instructing the firm and before any real work has been undertaken? Would that firm really expect to keep the full amount of the 'Fixed Fee'? For most, the answer is almost certainly 'No'. If this is the case, it fails as an '*Agreed Fee*' and is, instead, simply a payment on account of costs of a 'Fixed Fee' received from the client. Under the SRA Accounts Rules 2011, a payment on account of costs is clients' money and should be paid into the firm's client bank account.

Conclusion

A firm needs to think very carefully about whether or not a 'Fixed Fee' is an '*Agreed Fee*' under the SRA Accounts Rules 2011. The regulatory consequences of getting it wrong can be very serious indeed. The SRA have exercised their power of intervention in some instances where firms have sought to utilise the provisions of Rule 17.5 of the SRA Accounts Rules 2011 improperly.

We would always advise firms to seek professional advice about how 'Fixed Fees' work, or could work, in their firm.

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