

Solicitors Advisory Service News

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Welcome to our Spring 2009 edition. This edition Peter Lane takes an in-depth look at Best Value Tendering for Criminal Legal Aid work, the current consultation period for this closes on 19th June 2009. Mike Swift, our Director of Forensic Services considers the distinction between profit costs and disbursements particularly in connection with the type of work that he and his team do for litigation support. Stuart Littler reviews the practical implications for those wishing to take advantage of Legal Disciplinary Practices, we also have our usual tax updates and other sector news. I again urge you to let us have your e-mail addresses as this will enable us to reduce our carbon footprint as well as ensuring that you receive our regular e-mails detailing specific changes or opportunities relating to the legal sector.

Go to our website at www.servicesforsolicitors.co.uk and register with us today.

Yvonne Wood, Managing Director

CPD COURSES

The following CPD accredited courses will be held at our Bromborough office during May and June:

FOR PERSONAL INJURY STAFF

11 June Preparing schedules of Damages

FOR PRACTICE MANAGERS, CASHIERS & MANAGING PARTNERS

4 June Finance through the recession

25 June Better management information

For further details visit:
www.servicesforsolicitors.co.uk

SURVEY RESULTS

We have recently conducted an e-mail survey of our solicitor clients and contacts relating to their bankers and software providers. The results are shown in the table below.

Banking - Which bank do you use	
Nat West / RBS	58.8%
Barclays	20.6%
Lloyds TSB	8.9%
HSBC	5.9%
OTHER	5.8%

Banking - Satisfaction with bank	
Nat West / RBS	80%
Barclays	57%
Lloyds TSB	0%
HSBC	67%
OTHER	100%

62% of replies indicated that they would recommend their bank to another practice. 38% of replies indicated that their manager had relevant sector knowledge.

32% of replies indicated that they had to increase their facility as a result of the current economic climate.

82% of replies indicated that their bank had been supportive.

Software - Which software do you use	
TFB	18.20%
IRIS	12.20%
Law Fusion	12.10%
DPS	9.10%
Quill	9.10%
Lawbyte	6.10%
Other	33.20%

Satisfaction with software

All respondents indicated that they were completely satisfied with their accounting software.

All but one indicated that they would recommend their software to another practice.

18% indicated that they were looking to upgrade their software in the near future.

76% use case management software.

On average practices had been using their accounts package for 5½ years.

If you would like an electronic version of this newsletter, now or for future editions, please e-mail e-newsletters@bennettbrooks.co.uk

LDP'S ARE HERE!!... WHAT DOES IT MEAN TO YOUR LEGAL PRACTICE

WHAT'S NEW?

31st March saw the introduction of Legal Disciplinary Practices (LDP), those being firms which are regulated by the SRA which can now include 'other lawyers' and/or up to 25% 'non-lawyers'.

'Other Lawyers' being other types of lawyer not authorised by the SRA include:

- barristers,
- notaries,
- legal executives,
- licensed conveyancers,
- patent agents,
- trade mark agents,
- law costs draftsmen

An individual who is not legally qualified can be a manager in an LDP, provided they are approved by the SRA and provided there is not more than 25 per cent non-lawyer ownership and control of the firm. 'Manager' of a firm being a partner in a partnership, a member of an LLP, or a director of a company.

The restriction on the extent of non-lawyer ownership is by proportion rather than number. However, there is an additional restriction in relation to the number of managers, being that non-lawyers must not make up more than 25 per cent of the number of managers.

HOW DO YOU SEEK APPROVAL?

Non-Lawyer managers need approval from the SRA to satisfy them that the individual is fit and proper to take on that role. This is done via form NL1 which is available from the SRA website (<http://www.sra.org.uk/>

[sra/legal-services-act/lsa-applications.page](http://www.sra.org.uk/legal-services-act/lsa-applications.page)). The application for approval will cost £250 and a Criminal Records Bureau check is also required (the CRB form is also available as a download from the SRA website). There is no compulsory training for non-lawyer managers however it goes without saying that any firm would want their managers to be suitably trained for the role they will fulfil.

DO YOU NEED TO BE INTERESTED IN LDP'S

LDP's now provide an opportunity for valued employees within legal practices who want to contribute to the firm to participate in the equity of the firm. It provides a vehicle for partners to help to retain valued members of staff who can be rewarded for their contribution. Any business needs business minded people to assist in its successful running, so with LDP's there is the option to bring in those with specialisations that can add value to the services offered or the administrative running of the firm such as chartered accountants or practice managers. The 25% restrictions do limit the availability of appointing a non-lawyer manager to those firms who are currently 3 partners and above. Any sole trader or 2 partner firm would need to appoint a regulated lawyer first before they can appoint a non-lawyer manager in order to adhere to the restrictions.

The initial take up of LDP's was to some 'surprisingly underwhelming' with only 14 firms up and running as LDP's on 31st March when the regulations came into force. The reason for this could be due to several factors. Partners may be reluctant to relinquish equity shares in their firm, and given the current climate there is considerable pressure to tightly control firm's equity. Other suggested reasons are that there is a culture clash between

lawyers and non-lawyers and so the former are reluctant to relinquish the responsibility and power to those who are not solicitors. However, there is some scope for tax effective remuneration planning for limited companies or profit sharing in LLP's and partnership for those whose spouse is involved in the management of a practice. Please contact Stuart.Littler@bennettbrooks.co.uk for further information.

LDP's are the fore runner of Alternative Business Structures (ABS's) which are expected to come into force in the next 2 years. ABS's will allow lawyers to form multidisciplinary

practices offering legal services in conjunction with non-legal services. They will also allow non-lawyers, including commercial organisations, to own firms that provide legal services. Many believe that firms are not considering LDP's as ABS will offer them the more preferred vehicle in order for them to strive for future success. Although ABS's could potentially provide the biggest threat to the high street practice, with the introduction of the so-called 'Tesco-Law'.

Stuart Littler, Bennett Brooks
Associate Director

GRANT FUNDING FOR TRAINING/ CONSULTANCY PROJECTS

The Leadership and Management Training scheme operated by Business Link Northwest is now providing grant funding of up to £1,000 for training projects (or for the training element of consultancy projects), under the wider Train to Gain initiative.

Bennett Brooks has accessed such funding for the training element of consultancy projects, for example for a project to implement the Lexcel standard. The planned work was divided into two projects, namely a training project (which is to be grant funded), and a consultancy project (not grant funded). The training element relates to training the partner in the firm responsible for implementing and maintaining the Lexcel standard (the "quality partner") on:

- The requirements of the Lexcel standard and potential processes to comply with the requirements;
- How to introduce and operate the systems;
- How to operate file reviews/audits;
- What documents are required (e.g. review of risk management data), and how to produce them; and
- The assessment process.

The consultancy project (including producing all the documents and preparing for the assessment) is running alongside the training project.

For the training element, the Business Link contribute the first £500 plus half of the remainder up to a total of a further £500, per relevant person. Thus in the above example, there is one relevant person – the quality partner – and the training project is in the sum of £1,500; and the Business Link are to contribute £1,000; namely the first £500 plus half of the remaining £1,000.

There can be up to seven relevant people, but they must fall within the category of the senior management team – an owner, partner or director. Other conditions of the Leadership and Management Training scheme are:

- The organisation must comprise between 5 and 249 personnel.
- The training must relate to leadership and/or management.
- Training must be delivered to an individual (although others may sit in on the training).
- Funding is not available for statutory or mandatory training (e.g. CPD training).

Under the Train to Gain initiative there are other schemes for other categories of training and other categories of personnel. These are not covered in this article, but information is available on the Business Link web site – www.businesslink.gov.uk/northwest.

As regards accessing the Leadership and Management Training scheme funding (described above) and preparing appropriate terms of reference, contact Peter Lane or Yvonne Wood at Bennett Brooks.

Peter Lane, Solicitor,
Bennett Brooks, Director of Consultancy Services

BEHIND THE CLOUD...

With so many new technologies on the horizon, it is useful to know what is available for your organisation. Many are instantly discarded until they become mainstream, but if you can improve productivity, add value and make cost savings today then why not adopt early and get ahead of the competition?

One topic in the spotlight is "Integration". You can improve your productivity through the efficient use of data, via the integration of practice software with other applications used to carry out your daily business (eg communicating with clients, managing time, collaborating with others).

Before making a decision to take up any new technologies it is always worth making a thorough assessment of the practice's needs. Questions like "where do I want to work", "when do I want to work" and "what do I need to work on" may greatly assist when making the decision about which systems to deploy.

"Cloud technology" is also in the spotlight, where servers and services (such as e-mail, financial accounting and document management) are hosted offsite and accessed remotely as part of a subscription.

We list some of the pros and cons of "Cloud technology" opposite:

PROS

- Access your data at all times - not just whilst you are in the office (e.g. at clients and from home)
- Expensive servers may no longer be required onsite – a substantial cost saving
- Frees up your IT Professionals, allowing them to concentrate on harnessing the power of your practice (and other) software
- Easily scalable so practices can add or subtract storage and services based on their changing needs

CONS

- Some loss of control comes with handing over your data
- Depending on a third-party to ensure its security and confidentiality
- If your cloud host disappears, where does your information go?

Many of the risks identified can be mitigated and with solutions provided that will enable you to take advantage of the numerous benefits, safe in the knowledge that problems can be quickly resolved. You needn't "throw the baby out with the bath water", the trick is to ensure that any down sides are assessed upfront and contingencies provided for.

For over 20 years we have specialised in identifying the best integrated, collaborative and financial solutions for legal firms across the country. Why not drop us a line today?

Greg Stanton, Bennett Brooks

NEW STRATEGIES FOR TRUST PORTFOLIOS FOLLOWING BUDGET?

The chancellor's decision to levy a 50% income tax charge on Trusts will force many investment managers to alter their investment strategies and place more emphasis on growth to avoid being penalised on any income.

It will be very important for Solicitors and their Trustee clients to find out how this higher taxation might impact on investment portfolios. If the trustees have power to pass capital, then there may be a case to target growth if there appears to be reasonable prospects of a market recovery. If not, the whole question of maintaining a trust wrapper should be considered.

For trust investment and those on higher incomes, non-income producing investments such as Offshore bonds and Open Ended Investment Companies ("OEICs") may prove even more attractive under the new regime.

The thrust of legislation over the past two years has progressively pushed Trust clients towards a capital focus and with income tax at a punitive 50%, it is even more important to review strategy.

The flat rate of Capital Gains Tax in most cases is just 18% and whilst tax alone should not dictate Trustee decisions, beneficiaries will welcome a proactive approach to enhancing the Trust Fund by exploiting this "Tax Gap".

Alan McLaughlin,
Director of Bennett Brooks Financial Planning Ltd



COSTS OR DISBURSEMENTS?

I am frequently asked to assist instructing Solicitors to prepare Schedules of Damages on complex matters such as Fatal Accident Claims or where a complicated pay structure is involved or to prepare a critique of another experts report. The Solicitors who have instructed me seldom seem to have problems recovering the fees rendered for the work but there is an element of doubt amongst others so I thought I would do some research on the matter and include it in this article.

The traditional view of the distinction between profit costs and disbursements is that profit costs covers work done by a solicitor whereas disbursements are payments actually made by the solicitor in the conduct of litigation (court fees, expert fees etc.) The definition of profit costs was extended in *Re. Pomeroy & Tanner* (1897) to include work done by solicitor agents instructed by the principal solicitor but in *Re. Blair & Girling* (1906) the work of non-solicitor agents was held not to form part of profit costs but was properly to be considered as a disbursement.

Non-solicitor agents were considered further in the case of *Smith Graham v The Lord Chancellor* (1999). Solicitors had instructed an external agent, who was not a solicitor, to carry out investigative work. Hallett J held that this work was of a fee-earner nature and therefore the agent should be considered as being a temporary employee of the instructing solicitors with the consequence that his fees could be charged as profit costs, even if this meant the solicitor could recover more in costs than they had actually paid the agent.

However, the issue came before the courts again as part of the Claims Direct Test Cases (2002) and the senior costs judge did not agree with this view. He drew a distinction between work done by solicitor agents, which could be considered as profit costs, and non-solicitor agents, which should be classified as disbursements:

'In my view the solicitor can charge as profit costs only that work undertaken by him or a member of his firm in the capacity of solicitor. If a task is delegated to a solicitor agent that too is chargeable as part of the principal solicitor's profit costs. Where tasks are delegated to other non-solicitor bodies any charge which those bodies make must be treated as a disbursement incurred by the client through the agency of the solicitor' (at paragraph 80).

However, the distinction drawn by Master Hurst is not quite so simple as between solicitor and non-solicitor agents. Referring to *Smith Graham*, on which he sat as an assessor, he held that the agent in that case, although not a solicitor, was acting under the solicitor's control and supervision and therefore could be classified as a fee-earner with the consequence that his fees could form part of profit costs. The distinction is therefore dependent, not on the qualifications of the agent, but upon the relationship between the agent and principal solicitor. If, as Master Hurst held, the principal solicitor remains liable for the acts of his agent, then the fees of that agent can properly be considered as profit costs. However, where the solicitor is not so liable, as in the case of a medical agency, then the fees should be charged as a disbursement.

A recent case heard by the Court of Appeal on 19 December 2007, *Crane v Canons Leisure Centre*, held that when cost consultants were instructed by solicitors to conduct a detailed costs assessment under a conditional fee agreement, where solicitors remained responsible for the proper conduct of work, the satellite fees were base costs, not disbursements and a success fee was payable.

So what approach should be adopted if you are instructing an accountant to assist in preparing a complex schedule of damages? It would appear that providing the work performed is reasonably required to resolve proceedings then it will be allowed as a disbursement. Work reasonably required could be that performed at a cheaper rate than the instructing solicitor would charge, or of sufficient complexity to warrant expert help.

To be able to recover the work as a profit cost then any external work would have to be performed on the basis that the person used could all but be classed as an employee.

If you require any further information of the hourly rates we apply in the forensic department or have any queries as to how we might assist you please contact:

Michael Swift
FCA MAE QDR MCI Arb.
Bennett Brooks
Director of Forensic Services



BEST VALUE TENDERING FOR CRIMINAL LEGAL AID WORK

Greater Manchester and Avon & Somerset are the criminal justice areas covered by Phase 1 of the "pilot" for best value tendering (BVT) for criminal legal aid work; the bidding process commences in October 2009 and the contracts commence in July 2010. Last year the Legal Services Commission (LSC) held a series of roadshows inviting broad views as to the way forward for contracting for criminal and civil legal aid services. The present round of "regional briefing events" relates to criminal work only, and the LSC are inviting views as to the finer details of the BVT process.

Phases 2 and 3 of the BVT "pilot" are planned to occur three months and six months after Phase 1, and thus it appears that BVT will not be abandoned, although there might be some refinements after the experiences of the bidding process and early operation of Phase 1. The present consultation closes on 19 June 2009.

The indications are that the bidding process and contract terms will be as follows:

- Bids would be for "blocks" of police station rota "slots" in an area covered by a duty solicitor scheme.
- All police station coverage will be by way of rotas.
- Contracts would have a two year duration, with the LSC having the option to extend for a further two years (apparently with no provision for inflation) – the LSC invite views as to contract duration.
- Payment for police station attendances would be at the "urban" rate, namely inclusive of travelling and waiting, thus favouring firms who practise nearer to the relevant police station.
- Payment for Court Duty Solicitor, Magistrates Court and Crown Court work would continue on the present basis.
- Data has been obtained (and will be provided in the lead up to bidding) as to how many police station attendances derive (on average) from each police station slot, and how many Magistrates Court bills derive (again on average) from every ten police station attendances.
- Each block should lead on to sufficient work to occupy about half the time of one fee earner – thus two blocks of work should keep one fee earner occupied and billing an estimated £75,000 to £100,000 a year.
- The LSC invite views as to whether the minimum bid size should be one or two blocks.
- The LSC envisage (and invite views on) there being at least eight contractors in a metropolitan area and at least four contractors in a lower population area.
- To be granted a contract a successful bidder would have to have an "office" in the area covered by the duty solicitor scheme – complying with the Solicitors Regulation Authority criteria (including the presence of a "supervisor" - three years qualified and 12 hours post qualification management training).
- If a merger were planned to occur by the contract start date, any contract award would be conditional on the merger occurring by then, and the contract offer would be withdrawn if the merger did not materialise.
- No bids would be accepted from consortia.
- To be able to bid, a firm must not have scored below level 3 ("competence") under a Peer Review – the LSC hope to carry out Peer Reviews on all criminal contractors before a bidding process in any location.
- Additional "key performance indicators" would be introduced, including call acceptance rates and time taken (e.g. to reach the police station).

- Any supervisor would have to be Police Station AND Court Duty Solicitor qualified.
- A supervisor would supervise no more than four non supervisor fee earners.
- It may be that only the successful bidders/contractors would be entitled to claim payment for police station advice.
- Successful bidders/contractors could carry out and claim for own solicitor police station work at the contract rates.
- All bidding would be carried out on line.
- Providers could bid for work on any number of duty schemes in a Criminal Justice Service (CJS) area – although see above regarding the requirement to have an office in the area covered by the police station scheme.

There are two potential bidding systems – sealed bids and auction; and the LSC are inviting views as to preference.

Under a sealed bid, a firm would bid for a number of blocks at a stated rate per police station visit. Subject to the intention to have a minimum number of contractors, the lowest bids would be accepted until all the blocks have been allocated. As an example, in an area where at least four contractors are required, and where there are 60 blocks on offer, firm A would bid for (and be allocated) 25 blocks at £180 per police station visit, firm B – 25 blocks at £190, firm C – 20 blocks at £200, and firm D – the remaining 10 blocks (possibly having bid for 25 blocks) at £210. Any firm bidding over £210 would not be allocated a contract, and (unless they were successful in a bid in another area) they would have to shut down their criminal department. Also, different firms would be paid at different rates.

The auction system is more complicated, but a firm would be less likely to lose their criminal work through making one ill-judged bid. Blocks would be offered for all of the duty schemes in a CJS area; the opening offer would always be higher than the amount currently paid for police station attendances; prices would descend on individual schemes whilst there was an excess capacity offered; bidders could switch bids between schemes between bidding rounds; in any bidding round a firm could indicate an “exit bid” higher than the amount currently on offer; and bidding rounds would continue until the volume bid was equal or lower than that required for all the schemes. The LSC are inviting views as to the duration of each bidding round and the gap between each bidding round.

As an example, in a CJS area there are three schemes – schemes 1, 2 and 3; 40 blocks are offered on each scheme; and (as before) the LSC want at least four contractors for each scheme. The opening offer price is £400, and all three schemes are over-subscribed – 80, 60 and 50 blocks in schemes 1, 2 and 3 respectively. The second offer price is £350, and schemes 1 and 2 are over-subscribed – 60 and 50 respectively, but scheme 3

receives bids for 40 blocks. The third offer price is £300 (and at this point a firm might decide to switch part of its bid to scheme 3), and scheme 1 is over-subscribed at 50, scheme 2 receives bids for 40 blocks, and scheme 3 is now over-subscribed at 45. The fourth offer price is £250, and at this stage all schemes receive bids equal to or lower than what is offered; and thus the auction closes.

In the above example, in scheme 1, three firms each bid for 10 blocks at £250, a fourth firm bid for 10 blocks but indicated an exit bid of £270, and other bidders indicated higher exit bids. In this case each of the four successful firms would be awarded 10 blocks at £270, being the lowest exit bid in what transpired to be the final bidding round. Also in the example, in the final round in scheme 2, there were bids from only four firms for a total of only 36 blocks, with the lowest exit bid at £280 – in this case each of the four successful bidders would be offered one additional block (so as to take up all 40 blocks), and the contract price would be £280.

It is likely that the auction system will be adopted; but in either event a potential bidder would need to:

- Check their own data as to the number of police station attendances deriving (on average) from police station rota slots for the police stations that they serve, and the average conversion rate from police station attendance to Magistrates Court (and Crown Court) cases – to establish the likely fee income deriving from a block in the relevant police station scheme.
- Check their own data to establish the current incidence (or ratio) of own solicitor police station attendances – to establish the likely fee income deriving therefrom.
- Carry out an “expense of time” calculation to establish the likely cost to the firm of servicing a block (including allowing for inflation), so as to decide upon the appropriate sealed bid or exit bid (under an auction).
- Possibly investigate the cost of opening and running an “office” in an area covered by a separate police station scheme (in case there might be an under-supply, and thus higher rates on offer, under that scheme).

In short, this would be an accountant’s dream come true!

Peter Lane, Solicitor,

Bennett Brooks, Director of Consultancy Services

TAX UPDATE

TIME TO PAY ARRANGEMENT – AN UPDATE

Since the announcement in the pre budget report, some 110,000 time to pay arrangements have already been agreed with businesses, worth almost £2 billion in delayed tax payments.

As a result of the latest budget announcement for carrying back losses, HMRC have agreed to take the anticipated loss into account as part of any rescheduling of corporation tax or income tax payments. The measure, announced in the Budget, is designed to help viable businesses that are facing difficulties paying their tax bills.

It means that businesses will no longer have to wait for the end of their accounting period, which could be months in the future, to include the loss when working out what they have to pay.

The initiative is managed through HMRC's Business Payment Support Service (BPSS). HMRC pointed out that, to qualify for a rescheduling of tax payments, a business must be genuinely unable to pay immediately and must be heading for a trading loss in the current year.

In a separate measure to support businesses with cashflow problems, HMRC said that firms that want to reschedule VAT, PAYE and national insurance contributions, or that have already entered into a time to pay arrangement but have found their circumstances have changed for the worse, can also contact the BPSS for a new or revised time to pay arrangement, depending on their circumstances.

However, in practical terms we are finding the arrangement more difficult to agree, particularly where they represent a second visit to the scheme. HMRC have also announced that they are clamping

down on companies 'abusing' time to pay arrangements. They are advising that they are doing random checks whereby they will send out an Inspector to the business premises to check the financial position.

NAMING AND SHAMING TAX EVADERS

Legislation will be introduced in the Finance Bill 2009, enabling HMRC to publish the names and details of individuals and companies who are penalised for deliberate defaults leading to a loss of tax of more than £25,000.00.

TROUBLE WITH THE TAXMAN'S CD FOR EMPLOYERS

If you have recently received your free Employer CD-ROM 2009 from the taxman, we understand that many employers are having problems installing the disc due to technical difficulties.

If so the problem may be due to your firewall setting and fortunately the taxman has already worked out how to resolve the problem. All you need to do is to complete the contact form on the website at www.hmrc.gov.uk/employers/cdrom_questionnaire.htm. Once you have installed the settings you should immediately check the Taxman's website for updates to make sure you are using the current tax rates etc. Alternatively, if you do not want the headache of dealing with payroll then please contact us for a quote.

PAYE AND P11D DEADLINES

The deadline for submission of the 2008/09 Employers Annual Return (P35) was 19 May 2009 and P60's should be distributed to your employees by 31 May. The online filing incentive for 2008/09 is £75 and this is the last year that the online filing incentive is available. All employers should file their P35 online from 2009/10 and employers with 50 or more employees must submit P46's and P45's online from 6 April 2009.

The deadline for submission of the 2008/09 Returns of Expenses and Benefits (P11D) is 6 July, and any Class 1A National Insurance liability is due by 19 July.

2009-10 PAYSリップ ERRORS

We understand that some of the yellow PAYE payslip booklets recently issued by HMRC, which enable employers to make payments of PAYE and NIC, contain an error. The PAYE reference number printed on the main part of each payslip is not complete. Potentially this could cause a problem with HMRC allocating your payment to the wrong month or tax year. Despite the error the Revenue have stated that the payslips can still be used, as the codelines at the bottom of the payslips are correct. Remember to write your PAYE reference number on the cheque so that the payment does not get allocated to the wrong account.

TAX FREE STATUS OF MEDICAL CHECK-UPS

The cost of medical check-ups for directors and employees remains tax free. You will not need to report details on forms P11D for 2008-09.

CAPITAL GAINS TAX AND LETTING RELIEF

It is fairly well known that any profit(gain) made on the sale of your home is free from capital gains tax, and if you move out of the property up to three years before selling it the exemption still applies. This exemption is also available even if the property is rented out. What is not widely known is the lettings exemption, which is available for those properties which have been rented out for more than three years. The main condition for claiming this relief is that the property was your main home before or after the letting of the property. The tax relief available is worth a maximum of £40,000.