

Worked Examples - Providing a Costs Estimate for Costs Disclosure Obligations

The following examples were developed to demonstrate how the costs disclosure obligations operate in practice and are not part of the relevant Guidelines issued by the Legal Services Council or the Commissioner for Uniform Legal Services. The examples are not intended to be prescriptive and are offered as illustrations and for assistance only.

Worked example 1 – Debt recovery

Client approaches lawyer for advice in relation to recovery of a debt. Client believes debtor is stalling for time and will pay the debt on receipt of a lawyer's letter of demand. Lawyer explains the debt recovery process and possible scenarios (e.g. debtor pays, debtor negotiates, debtor denies debt, debtor does nothing), indicating the likely costs of each. Client instructs lawyer to issue a letter of demand. Lawyer provides a single figure estimate on the basis the debt is paid after receipt of the letter of demand.

Lawyer issues a letter of demand. Debtor does nothing. Lawyer contacts the client, explains their options (e.g. make a further demand, sue, write off debt) and likely costs of each. Client instructs lawyer to commence proceedings. Lawyer provides an updated, single figure estimate for recovery proceedings on the basis the claim is straightforward and undefended.

Lawyer prepares and files a Statement of Claim. The debtor/defendant files a defence and unexpectedly raises a cross claim. Lawyer contacts client to report developments and seek instructions on cross claim, outlines client's options (e.g. settle, pursue recovery action, discontinue proceedings) and indicates likely costs of each. Lawyer provides a single figure estimate for total legal costs to completion, based on client's instructions. However, as the matter is now defended and further work may be needed, lawyer indicates that the estimated figure might vary by +/- 10 per cent.*

Worked example 2 – Family law parenting orders

Client approaches lawyer for advice in relation to parenting arrangements. Client believes they and their spouse will be able to agree to a parenting plan. Lawyer explains the process and likely costs of obtaining consent orders if the parties agree but also explains what will happen if the parties are unable to agree, and likely costs if parenting orders have to be obtained from the Court. Lawyer provides a single figure estimate on the basis the parties are able to agree a parenting plan.

Parties are unable to agree. Lawyer explains process for obtaining parenting orders, steps involved, and the work that may be required for each step and likely costs of

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each step, and provides a single figure estimate on the basis the matter proceeds to a final, fully contested hearing. The lawyer indicates the estimated figure may vary by +/- 15 per cent*.

The parties participate in pre-action procedures, including a Family Dispute Resolution Conference but are unable to agree. Lawyer prepares and files Application and supporting Affidavits, and continues to monitor costs as the matter progresses, updating the estimate in line with developments as they occur.

Relations deteriorate as the family law proceedings continue to the point where the Police apply for an apprehended domestic violence order (ADVO) against the client. Lawyer acts for the client in the ADVO matter, and makes separate costs disclosure for that matter.

The matter proceeds to hearing, with final parenting orders made by the Court.

Worked example 3 – TPD claim

Client approaches lawyer for advice after their claim for total and permanent disablement (TPD) benefits is declined by their insurer. Lawyer explains client's options and steps required and, given the insurer's attitude to date, provides a single figure estimate on the basis that Supreme Court proceedings will be necessary. However, as this is an estimate, and the lawyer wants to be sure that the client understands that costs might increase; s/he indicates that this might vary by +/-15 per cent*.

As expected, further communications with the insurer prove fruitless. The lawyer obtains instructions to commence proceedings and explains to the client the steps that will be required, indicating the likely costs of each step. The lawyer confirms or revises the estimate previously given, and continues to monitor costs as the matter progresses, updating the estimate in line with developments as they occur.

The central issue in the proceedings is whether the client is totally and permanently disabled. The insurer serves medical evidence and surveillance reports that suggest s/he is not.

The hearing is estimated to run for three days but does not finish in the allotted time and the proceedings are adjourned. The client has been present at Court throughout, and understands the difficulties with their case and the reason why the hearing has not concluded. Nevertheless, the lawyer discloses a significant change to the previous estimate and provides a revised estimate based on the additional hearing days that will now be required. The hearing is completed when the matter next comes before the Court.

11 March 2016

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