

Lawyer and Client Assignment Brief

General Guidance

Where a question is in several parts and a words total is indicated, that is the total for the whole question, not for each part of it. Where a word limit is per part of a question, this will be clearly stated. You will not incur penalty for exceeding the word limit by up to 10% but excessively lengthy and prolix scripts will be penalised.

Whilst it is acceptable to use the internet for legal research, this means proper legal research on sites such as Westlaw, Lexis, Bailii, legislation.gov.uk etc; citing Google or Wikipedia and such as authority for any legal proposition is unacceptable.

Paper-based resources will include the materials given to you for this module but you are expected to read more widely and to locate relevant materials beyond the course materials.

Module Guidance

Module Title:	Lawyer and Client Costs
Module Code:	Module 3(b)
Assignment Number:	1
Assignment Type:	Letter
Date Set:	2 March 2020
Date Due:	29 March 2020

Module Learning Outcomes

1. Describe the regulatory framework of the legal service market

2. Demonstrate a sound understanding of the enforceability of retainers, including the creation and termination thereof

3. Distinguish between costs payable to a client's own lawyer and those payable between the parties

4. Explain the formalities that apply to a lawyer's bill

5. Apply knowledge of how a lawyer may recover costs with reference to liens

Required Task

Prepare a response to the problem question in the form of a letter of 1500 words. You must ensure you meet all requirements to achieve at least a pass on the assessment.

Please Note: All submissions must be made no later than midnight on 29 March 2020. Work MUST be submitted via the online learning environment.

Please also note: All submissions MUST be made in word.

Brief

You work as a trainee costs lawyer working for a costs firm, Nampara Costs, Nampara, Cornwall NA1 1NA.

You have recently been instructed by Mrs Louise Sinclair, a Senior Solicitor in a local firm, Sinclairs LLP, 19 Park Avenue, Nampara, Cornwall. Mrs Sinclair is having difficulties with a client, Mr George Smith, who has reacted angrily to an invoice that was recently sent to him. You are informed that Mr Smith' dissatisfaction stems from his belief that he was "completely misled" as to the amount of costs he would be liable to pay.

Mrs Sinclair informs you that whilst she only assumed conduct of the case two months ago, she understands that Mr Smith was informed at the outset that costs would be "in the region of £11,000.00".

When Mrs Sinclair assumed conduct, it became apparent to her that costs had already exceeded £11,000.00. After reviewing the file and considering the actions required to conclude the matter, Mrs Sinclair advised Mr Smith that the previous estimate was no longer accurate and that costs were likely to be in the region of £15,000.00 in total.

In fact, it transpired that a further conference with counsel was needed before the case was concluded two weeks later. The firm incurred a further £2,250.00 as a result.

Mr Smith was subsequently presented with a final invoice, taking the total charges to £17,250.00. It was at this stage that he made his complaint.

Mrs Sinclair isn't too concerned by the issue as she believes there's a case that provides for recovery of costs as long as they are within a 15% margin of the estimate. She suggests that the firm are considering not providing estimates of costs at all in future, so as to avoid the issue altogether.

Write a letter of advice to your solicitor client.

Requirements

You MUST complete all of the following requirements:

Requirement 1: Presentation and Academic Rigour (10% of the mark awarded)

- Produce a letter of 1500 words. The word count must be included on your submission.
- Your letter must be headed "Letter" and include the completed "Reference", "Date", "Address", "Salutations", matter details and "Signature" fields.
- Your letter must have at least 2 sub-headings (excluded from the prescribed word count).
- Your letter should include references to specific sections of relevant legislation, delegated legislation and other authorities.
- Your letter must include citations and a bibliography (both excluded from the prescribed word count).
- You must include your student number on your submission.
- You must not include your name anywhere on your submission.

Failure to comply with the general presentation requirements will impact upon the academic rigour mark.

Requirement 2: Case Authority – your letter must give:

- ☑ Consideration to the decision in *Wong v Vizards (a firm)* (1997) 2 Costs L.R. 46 QBD;
- ☑ Consideration to the decision in *Mastercigars Direct Ltd v Withers LLP* [2009] EWHC 651 (Ch);
- ☑ Consideration to the decisions in at least 2 other relevant case authorities;
An explanation of the relevance of these decisions to the implications of providing inaccurate costs estimates.

Requirement 3: Intro, purpose and objectives

- ☑ Your response must include a clear introduction.
- ☑ Your response must include advice on solicitors' obligations in relation to costs estimates and how these should be discharged.
- ☑ Your response must include the consideration of the difference between quotes and estimates with reference to the facts of the case.
- ☑ Your response must include the consideration of the relevant case law relating to costs estimates, application to the facts and further analysis.
- ☑ Your response must draw conclusions as to the likely outcome on assessment and recommendations relating to how the firm should approach costs estimates in the future.

Requirement 4: Your letter must include a discussion on the following points:

- ☑ The assertion that there is a 15% margin for error.
- ☑ The suggestion that the firm may not provide costs estimates in the future to avoid similar issues.

Guidance notes and considerations

You will be introduced to a range of resources available and will be given the opportunity to practice researching case authority.

Your work will be marked against the following criteria:

Depth of Knowledge (30%): How well do you show that you know the subject and in what depth and detail.

Application of Theory (30%): How well you can apply the content you have learnt during the course to the brief given.

Critical Analysis (30%): How well you show you have weighed up options, why you have come to the conclusions you have.

Presentation (10%): Your grammar, spelling, punctuation, referencing and following of academic writing criteria at undergraduate level (level 6) and professional level to reflect the standard that is expected by the court, government agencies and your client / office.

Full Marking Scheme: Costs Pleadings Assignment 2020

	Requirement 2: Depth Of Knowledge (30 marks or 30% of overall grade)	Requirement 1: Application Of Theory (30 marks or 30% of overall grade)	Requirement 2: Critical Analysis (30 marks or 30% of overall grade)	Requirement 3: Presentation (10 marks or 10% of overall grade)
Fail	Very superficial knowledge of subject matter shown. Fails to adequately demonstrate knowledge of the Learning Outcomes.	Very little evidence of application of theory to the question e.g. unable to explain relevance of case law or other authority.	Little real analysis of any value.	Some sense but difficult to follow.
Borderline Fail 12+ Marks	Largely superficial but with some areas of depth. Able to differentiate between quotes and estimates. Attempts to adequately demonstrate knowledge of the implications of providing inaccurate estimates.	Small amount of evidence of application. Attempts to apply knowledge of case law to the scenario.	Some analysis with reasonable depth of understanding. Tries to identify potential areas of weakness in assertions made.	Poor use of grammar and English leads to poor coherence. There will be spelling and grammatical mistakes and/or inappropriate use of verbs. Some attempt at structure of letter writing.
Pass 15+ Marks	Good knowledge demonstrated of most of the main areas. Able to differentiate between quotes and estimates, advise on implications of inaccurate estimates and refer to a variety of sources. Application of wider guidance to facts provided. Demonstrate an understanding of chronological progression of the law surrounding estimates.	Several good examples of evidence of application provided. Was able to identify the authorities relating to the solicitor's obligations to the client and to the provision of costs estimates. Was able to critically analyse the scenarios provided with thought given to the issue of reliance and key authorities.	Some solid and well-founded analysis e.g. grasped some elements of the deficiency in current law and the solicitor client's case. Able to identify potential weaknesses in the submissions made, for example regarding the 15% margin, attempt to correct the original estimate and proposal to avoid costs estimates in future.	Good grammar and letter structure. Some good paragraphs and sentence structure. There will be spelling and grammatical mistakes without detracting from overall meaning. Must have introduction, advice and conclusion.

<p>Merit 18+ Marks</p>	<p>Good analysis of knowledge gained to date viewed from some different perspectives. Able to advise properly on issues concerning reliance and obligations owed to the client re costs information. Very good discussion on the circumstances when an estimate may become a quotation and when an estimate has been reasonably relied upon.</p>	<p>Range of opinions /authority appropriately included and applied well. Conclusions drawn based on the facts provided as to the implications of the original inaccurate estimate, attempts to resolve and assertions made by the solicitor client. Evidence that there is an understanding of the applicable arguments to be raised. Some evidence that the student has read beyond the course materials.</p>	<p>+ synthesis of ideas and either learning or critical evaluation e.g. may make observations that the original estimate may have been qualified. Able to advise on further information required and/or potential findings.</p>	<p>Good grammar and letter writing skills. Good use of paragraphs, good sentence structure, grammar and spelling but some mistakes without detracting from overall understanding. Good letter writing skills and good use of language.</p>
<p>Distinction 21+ Marks</p>	<p>+ Awareness of areas of deep knowledge and weaker areas that require clarity or further instruction are clearly identified. This may be demonstrated by the observation certain areas are unsettled; may also take the form of commentary on the sources included in the submission.</p>	<p>Good range of authority considered with some evaluation/ justification for preferred outcome and the validity of any arguments that may be raised by either side. Strong evidence that the student has read beyond the course materials.</p>	<p>+ relevant reflections showing synthesis, learning AND critical evaluation. Able to advise on further information required, possible outcome and/or steps to avoid similar issues in the future.</p>	<p>Coherent and fluent letter writing throughout, but may have few very minor grammatical or spelling mistakes which does not detract from flow of the answer at all. Excellent letter writing structure, some area of weakness in one area only.</p>
<p>Distinction (Higher) 24+ Marks</p>	<p>+ Sources cited are considered. The source and origins of knowledge gained is critically evaluated.</p>	<p>Excellent range of sources and authority considered with full evaluation of facts and commentary of wider issues.</p>	<p>+Inspired development of highly original idea(s) and / or plans for reform to the process/internal procedures.</p>	<p>Coherent throughout and excellent letter writing skills. No spelling or grammatical mistakes. Excellent use of paragraphs and sentence structure. Excellent structure for answer.</p>