

PRACTICE NOTE

Disbursements and Profit Costs

The CLC's Estimates and Terms of Engagement Code requires you to state the fees and disbursements (plus any VAT) you propose to charge to your client and how fees for abortive work will be calculated. The purpose is to avoid any misunderstanding about the level of costs which will need to be paid and how they are made up.

Disbursements are any payment made, or for which a liability to pay has been incurred, by a CLC regulated individual or body to a third party on behalf of a Client; disbursements are deemed to include: stamp duty land tax; Land Registry fees; Local Authority and any other applicable search fees.

Any expenses incurred by you which are not charged to the client at cost must be billed as fees, rather than disbursements. One example is a telegraphic transfer fee where the sum charged to the client is more than the direct cost charged by the bank to the practice. These are described as 'profit costs'.

The CLC has recently received questions about the treatment of two types of costs. Our view on these is set out below.

Lender Panel Management Fees – a profit cost

A number of lenders now charge an annual panel management fee to practices to offset the cost of managing those panels. The CLC considers that those charges are an overhead for the practice. Some panels are now introducing a fee per transaction. Provided the client has been advised as soon as it becomes apparent that the charge is to be incurred, it is acceptable for that charge to be passed on to the client as an expense (and therefore charged as part of the profit costs due to the practice). However, the CLC's view is that this charge is not a liability incurred to a third party on behalf of a Client and therefore should not be charged to the client as a disbursement.

Identity Checks – a disbursement

Conveyancers are required by their regulators and legislation to carry out identity checks on their clients. The fee incurred with a third party provider in carrying out a search is properly chargeable to the client as a disbursement and therefore that cost can be passed onto the client as a disbursement (and not a profit cost) in an invoice submitted by the practice to the client. These costs cannot be billed as a disbursement if there is any element of uplift in the charge made to the client. We would also expect the client to be advised of this cost when the estimate of costs is sent to the client. We believe that this approach ensures that clients are made aware in as clear way as possible of all the costs they are likely to be asked to pay at as early a stage as possible in the transaction.