

Legal Bulletin

Welcome to the latest issue of the Rickard Luckin Legal Bulletin, which brings you news and information on the financial matters facing law firms.

We hope you enjoy reading our Legal Bulletin and that you find it useful. We would welcome your feedback on the content, or ideas for topics that you would like to see featured in future issues.

If you would like to comment, please contact Joanna Southon on 01245 254208 / joanna.southon@rickardluckin.co.uk or Kate Bell on 01268 983904 / kate.bell@rickardluckin.co.uk

■ It's not just about the money – how to attract and retain a strong multi-generational team

Attracting and retaining the very best fee earners, admin support and, as importantly, future partners is always a challenge for any legal firm. We have all heard the simple expression "money talks", which could be viewed as particularly relevant when we consider that Rickard Luckin is in the business of accounting!

However, money is of course only part of the discussion for any member of our professional teams. Choosing and defining a career path means making many important decisions, which is a process each generation tends to approach in different ways.

Research has consistently shown, throughout the generations, that each has different motivators. We can identify and define some of these as follows:

The silent generation

This generation consists of our retired colleagues, which were primarily motivated by job security. Their main drivers were of securing a good, dependable income for their families which is not really surprising considering the massive impact that two world wars had on their lives.

Many of this generation were our former partners and helped to shape our firms of today – they started many of the traditions that are still there to see. They took pride in ensuring they ran a stable firm with a strong reputation resulting in a loyal client base.

Baby boomers

Baby boomers are the generation now heading towards semi-retirement, or the "next chapter" of their working lives. This generation are more likely to be driven by status and achievement, with a strong desire to be recognised in their workplace and in turn gain financial reward.

Formal recognition and titles that reflected high status became key drivers for career happiness, so it makes perfect sense that organised staff appraisals and hierarchical structures became more common during our firms in the baby boomers' employment lifetime.

For these baby boomers having worked hard in our firms for so many years, it is not always easy for them to "let go" and go straight into full-time retirement. So it is this generation that we may currently be transitioning to "consultants" or helping them to "wind down".

Generation X

This generation who are now aged between mid 30s to early 50s, began to question the extreme 'work-hard' ethic in force within the workplace, challenging whether the amount of time served was the right reason for promotion. Instead, Generation X wanted their wider contribution and value to the organisation to be recognised. It was this generation that introduced the concept of 'work-life balance' to the business world

and were prepared to move around in the employment market in order to reach their aspirations.

Flexible working practices and the wider employment benefits are therefore important to Generation X, along with the freedom to manage their workload in the manner they feel is most suited to their individual way of working.

Generation X make up the current and next generation of leaders at our firms and will be motivated for as long as they feel "looked after" and valued within them. The firms that have embraced the values of this generation will have worked out the individual roles and responsibilities that each person brings to the firm (and celebrates the differences); will be allowing their leaders to regularly work from home to focus on their development and offering additional holiday entitlement and other benefits with salary sacrifice options.

Millennials

Of course, the latest Millennial generation have been brought up in a 24-hour world, complete with the ability to shop, arrange finances, book holidays, view properties and even socialise via smartphone.

It is no wonder, perhaps, that this generation are currently challenging



the way many firms continue to organise their mostly nine-to-five approach from outdated offices. They will be eating their breakfast in the office, have a constant connection with their phones, will have a very different definition of “dress down day” and will probably wonder why the Generation X and Baby Boomers don’t take time out to lunch or relax and re-charge.

I have heard many times that Millennials are a risk-averse generation; the precious ‘snowflake generation’; the ones that don’t want to take on unnecessary challenges, or become the next partner or business owner. However, with so much information and opportunity readily available at their fingertips, it possibly makes sense that Millennials are more discerning about the roles on offer to them!

So I would challenge us as business owners and future leaders that we need to make the opportunities for this generation to be modern, transparent, innovative and inviting to ensure these Millennials want to join

and stay within our firms.

“People do business with people.....”

This is the lifeblood of all of our firms so we have to get the best people in-house to attract and retain the best client base. Therefore it should be the purpose of us as all to create an attractive environment, with plenty of built-in flexibility and opportunity, that will make people of any generation feel they would want to be part of our business journey – whether as a member of our team, our clients or our professional contacts.

Introducing the Rickard Luckin Development Academy

It is for this reason that we at Rickard Luckin have created our Development Academy. Our Academy focuses on working alongside our team, learning more about what motivates them, and what really interests and inspires each one.

We are proud of our transparent career pathway, from student to shareholder, which is built upon our

core values of Passionate, Personal and Professional. This is a system which allows everybody to develop and flourish in the areas that suit their individual experience and personal skills. We match each individual with an appropriate mentor, who helps to add a rounded perspective from a different generation or viewpoint.

Though our Academy is a recent development within our firm, it is clear to see very quickly that by engaging with all of the different generations in our business, and by showcasing a flexible system that suits individual needs and drivers, there can be genuine passion shown across all of the generations in our businesses today.... the key is simply in learning how to unlock it!

Whichever generation or industry you happen to be from, we can help you with accounting services and advice that is tailored to your individual needs. Simply contact us for further information.

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■ Update: does your practice provide banking facilities through client accounts under Lasting Power of Attorney appointments?

Back in December 2014, the Solicitors Regulation Authority (SRA) released a warning notice regarding the provision of banking facilities through a client account. However, there is still confusion surrounding the rules, and the notice generated many enquiries from legal Compliance Officers for Finance and Administration (COFAs).

The requirement that legal firms do not provide banking facilities through client bank accounts was in fact stated in the 2011 SRA Accounts Rules 14.5 (Provision of Banking Facilities). This rule clarifies that: “payments into, and transfers or withdrawals from, a client account must be in respect of instructions relating to an underlying transaction (and the funds arising therefrom) or to a service forming part of your normal regulated activities”.

Frequent enquiries have since arisen from firms in which a solicitor has been appointed under a Lasting Power of Attorney (LPA), or directly appointed as a deputy under a Court

of Protection. In cases where the client has become mentally incapacitated, one of the recognised duties under such appointments is that the client’s financial affairs are managed, such as arranging payment for household bills.

The issue has created a great deal of debate, with a view that it could be justified that in appointments such as these, there is an underlying legal transaction. There would perhaps be a reasonable assumption that the solicitor, appointed due to their professional status, would hold the client’s funds in the firm’s client bank account.

The Office of the Public Guardian practice notice 02/2016 sought to respond to the confusion, and guided that in situations such as these, performing the financial duties for an incapacitated client does not constitute an underlying legal transaction connected with the practice.

Therefore, in accordance with the SRA warning notice, the solicitor should either manage the funds from the client’s own bank account, open a joint bank account with the client, or use a specific deputyship account.

It should be noted however, that funds can be held in a firm’s client bank account where there is an underlying legal transaction connected with an appointment as attorney or deputy, such as sale or purchase of property on behalf of the client. This is in accordance with the SRA Accounts Rules 2011.

COFAs should review internal procedures, and it is recommended that immediate guidance is sought if your practice has provided banking facilities in these situations.

For further enquiries, please contact our specialist legal team at Rickard Luckin.

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■ Searches & VAT

A recent VAT Tribunal has ruled that search fees incurred by a solicitor as part of their conveyancing services do not qualify as disbursements for VAT.

The result of this ruling was that an assessment in excess of £66,000 was payable by the law firm appellant.

The issue of whether a cost is a disbursement for VAT purposes or not has been a thorny one for a long time. It's important to note the phrase is "disbursement for VAT purposes". It's long been a point of mis-understanding between VAT and legal professionals as to what is a disbursement. From a VAT point of view it's a cost for a supply made to and for the benefit of the client; paid for on the client's behalf. The client knows that the cost is being met by the law firm and the law firm separately itemises the cost in recharging it and only passes on the cost. As such it does not form part of the supply by the law firm, so the recharge appears after the net and VAT figures on an invoice.

As such a cost such as a train fare for a solicitor to travel to see a client is not a disbursement for VAT purposes as solicitor "enjoys" the train travel.

However, the costs of local authority searches have often been referred to as an example of a disbursement for VAT purposes. This recent VAT case now throws doubt on this view, especially for historical transactions.

The specifics of the case were that the legal firm involved appointed a third party search agency to make on-line searches (referred to imaginatively as "electronic services"). The agency did not, until early 2017, charge VAT on their services. Whilst this may have reflected the VAT treatment of search fees from a local authority (again until early 2017) the basis for the agency to not charge VAT is debateable.

The Tribunal Judge heard arguments from both appellant (with support arguments from the Law Society) and HM Revenue & Customs. He made reference to HMRC's internal guidance

(although it is just that, guidance, not legislation) which allowed for search fees to be treated as disbursements if they were (our emphasis) "passed on by the agency *without analysis or comment*".

The appellant's general terms of business stated:

"Payments on your behalf.

We may make specific payments on your behalf. These will be charged separately and may be payable in advance. Unless you instruct us to the contrary, you authorise us to incur as your agent such expenses and disbursements. These might include items such as:-

Search fees and Land Registry fees. . . "

Despite this, the Tribunal Judge declared that his view was "fortified" as the general terms of business:

"does not say (words to the effect of) 'We will get the searches, but then what you do with them is down to you - you are on your own' "

He then went further (and confusingly) to say that he "was of the same conclusion" when the law firm does not prepare a separate report on the searches, i.e. you are "on your own". This was, according to the Judge, "the law of the paperclip" where, "the VAT treatment comes to depend on whether the solicitors happen to send the original searches or a copy to the client or not. That is arbitrary and it cannot be determinative."

This may be a mis-interpretation of what was said but our view of the "law of the paper clip" would not be whether the documents sent are original or not, but whether there was a report, based on those documents, attached or not.

The Law Society's view was that there was no distinction between a postal search (where a postal application was made to the local authority who responded in turn by sending the required documents in the post) and an electronic search, and

as postal searches are treated as a disbursement, it would be inconsistent to treat electronic searches differently for VAT.

This was rejected on two counts; the first that, although there has been an agreement between HM Customs & Excise (as was) and the Law Society since 1991, that allows postal searches to be treated as a disbursement for VAT purposes, the appeal at hand did not concern itself with whether that concession is right. Secondly; any argument based on consistency effectively equated to one of legitimate expectation, which would have been outside the scope of the Tribunal's jurisdiction.

Therefore, the Tribunal found for HMRC. The Tribunal's ruling indicates that as Local Authorities have been charging VAT on the search fees since early 2017 this ruling is not a pressing issue for transactions going forward. The VAT charged by the Local Authority is reclaimed by the Law Firm (on the basis that the invoice is addressed to them) and the net cost is billed on, plus VAT. Therefore, for the law firm, the VAT "washes through". However, the real issue is in historical treatment and this is where the risk lies. For transactions that did not carry VAT when supplied to the law firm, the imposition of VAT on the recharge to the client creates only output tax for the law firm.

It is understood that the Law Society is reviewing the case and may amend its guidance on the issue of searches and VAT, at least from an historic view point. For most law firms the concern is that HMRC have this "victory" under their belt and may now look to target such businesses to assess for VAT not declared in the last four years on recharges of these fees.

If you feel that your business may be impacted this case, please contact our VAT Associate, Ian Marrow, on 01245 254219, or email him at ian.marrow@rickardluckin.co.uk.