



SHOW ME THE MONEY

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March 2023



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AGENDA

- The legislative framework including the Corporations Act and contract law; how we can charge and recover fees under the different fee arrangements.
- Code of Ethics obligations to consider including gaining consent to benefits, what are fair and reasonable fees, and whether referral fees are allowed.
- Explore different types of remuneration – what's ok and what's not?
- Dealing with fee disputes, AFCA and small claims tribunals.
- Practical considerations at every stage from entering into a fee agreement through to refunding a fee.



LEARNING OUTCOMES

By participating in this session, you will be able to:

- Identify relevant legislation that governs remuneration and fee arrangements
- Understand any restrictions or limits that may apply to fees
- Examine relevant standards and ethical principles
- Understand how to prevent and manage fee disputes
- Design remuneration and fee arrangements that are compliant, ethical and practical

WHAT THE CORPORATIONS ACT SAYS ABOUT FEE ARRANGEMENTS

- An Ongoing Fee Arrangement (OFA) is a fee paid during a period of more than 12 months. A client can terminate an OFA at any time. Any conditions to pay an amount on terminating an OFA is void if it exceeds a liability that has been accrued but not paid.
- Insurance premiums – not an ongoing fee arrangement.
- Charging a fee in instalments is not an OFA. The fee must be fixed, not dependent on an amount invested, paid in instalments for a specified period, for services already provided, and cannot opt out.
- Non-ongoing fees e.g., Fixed Term Agreements or upfront fees, require a consent to deduct one off fees from super.
- A super fund member can withdraw their written consent to a non-ongoing fee at any time before the cost is passed on to the member.



CASE STUDY

An adviser had an OFA with a client which entitled the client to an annual review.

A review was provided to the client at the beginning of the year.

The client decided to then cancel the OFA.

The adviser invoiced the client for the remainder of the annual amount, due to the services being provided 'in advance' of payment.

The client refused to pay and complained.

Can you invoice a client for the remainder of the fees under the OFA?

- What did the agreement say? Does that matter?
- Had the liability been accrued?

Under the corporations act s962, you cannot:

- Include a termination clause in an OFA
- Charge fees after the client terminates the OFA

VARYING AN OFA

- The cost of providing advice and services may increase from time to time. To increase a fee:
 - state the new amount in the FDS, and the client can agree in writing to renew the arrangement; or
 - if changing or increasing a fee during the year (when an FDS is not due) terminate the existing arrangement and enter a new OFA.
- If giving additional advice or services that is not covered by the OFA, a one-off fee can be charged.

TERMINATING AN OFA AND OBLIGATION TO REFUND FEES

- An OFA terminates if:
 - a client fails to renew before the renewal period ends
 - the adviser fails to comply with their obligations to provide an FDS and obtain consent
- If the OFA terminates no further fees can be charged.
- If a client notifies the adviser within the renewal period that they do not want to renew, the OFA terminates on that day.
- If a client fails to renew within the renewal period the OFA terminates 30 days after the end of the renewal period.
- If an adviser fails to give an FDS and the client makes a payment under the OFA, the fee does not have to be repaid.
- If an adviser fails to gain consent, and a client then gives consent, the adviser is not obliged to refund fees received.



Consider if there are any fee for no service issues

REFUNDING FEES

- Refund fees back into the relevant product.
- If the fee came from superannuation and the client meets a condition of release it may be paid directly to the client.
- Ensure that the refund does not cause a client financial loss or detriment (e.g., by breaching a contribution cap for superannuation).
- Refunds should not be treated as contributions or income to the fund.

FDS - A REASONABLE ESTIMATE

- An FDS must include the amount to be paid in the upcoming year.
- If the amount cannot be determined (e.g., asset-based fees) the FDS must include:
 - a reasonable estimate of the amount; and
 - an explanation of the method used to work out the estimate.
- ASIC Info Sheet 256 states that a reasonable estimate could include:
 - employer contributions that are expected to be made throughout the year to the fund
 - additional planned investments
 - any known large withdrawals



Do I need to use a calculator to estimate fees for an FDS?

CONTRACT LAW

- A contract is a set of promises that are legally binding if certain criteria are met which includes:
 - an agreement (offer and acceptance)
 - consideration
- While an agreement does not (legally) need to be in writing, there needs to be a communication of acceptance.
- Which agreements are subject to common law?
 - Fixed Term Agreements (FTA) where fees are charged for a period of 12 months or less
 - Upfront or one-off fees



Disclosure of an advice fee in a SoA may not be an agreement



CASE STUDY

Client was quoted a fee to provide advice and the fee was disclosed in the SoA. The fee was to be deducted from the fund after implementation.

The client decided not to proceed with the recommendations.

The adviser invoiced the client for the fee and the client refused to pay.

Can the adviser charge the fee?

- Was there an agreement?
- How and when was the fee to be charged?

Should the adviser charge the fee?

- Did the client understand and agree to the fee?

How can the adviser charge the fee?

- Do you have evidence of an agreement?
- If the client doesn't proceed how do you get paid?

SERVICE AGREEMENTS



- Terms
 - services that will be provided
 - fees applicable (including when and how paid)
 - what happens if an agreement is terminated or varied
 - when and how a client can withdraw or vary consent to the deduction of fees



Consider contingencies and relevant laws when drafting an agreement.



CASE STUDY

The SoA stated that the client would be charged an SOA fee and an ongoing advice fee.

Client elected to proceed with the recommendation but declined ongoing services.

The client paid the SoA fee, but was left to implement the recommendations without remuneration.

What can the adviser do?

- Was there an agreement and what did/didn't it say?

What should the adviser do?

- Is the adviser obliged to implement without remuneration or can they negotiate a fee?

How can the adviser avoid this in the future?

- Consider contingencies in the agreement
- Separate implementation from ongoing fees

FEE DISPUTES - AFCA

- AFCA don't consider complaints about the level of a fee, premium, charge, rebate or interest rate – unless the complaint is about:
 - Charges that were incorrectly applied, or fees/costs that were calculated or charged incorrectly – or were not charged in accordance with the information that was provided to the client.
 - A fee that was not disclosed to the client or was misrepresented to them.
 - A breach of a legal obligation on the part of the financial firm such as failure to provide the services the client was charged for, or the advice did not meet the client's needs.

SMALL CLAIMS TRIBUNAL

- The tribunal in each state or territory can deal with minor disputes including unpaid invoices up to \$25,000.
- You must have had a previous agreement about the payment of money.

Process (QCAT)

1. Submit a form with a copy of the agreement and pay an application fee
2. Once the application is stamped by the relevant tribunal, serve a copy and supporting documents to the respondent in person (yourself or someone you employ e.g. process server)
3. Wait 28 days for a response. If no response apply for a default decision.
4. If there is a response and the amount is >\$1,500, the matter proceeds to mediation. If the amount is up to \$1,500, the matter will be listed for a hearing.
5. Hearing and decision/order is made.
6. If the respondent does not comply with an order, you can file for it to be enforced via the Magistrates Court.

TRUSTEE OBLIGATIONS

Trustees have a variety of broad obligations that impact on the deduction of advice fees.

- Ensure deductions are authorised by members i.e., written consent.
- Ensuring fees comply with the sole purpose test and checking that the expected financial services have been provided— including reviewing SOAs and related advice documents. Trustees are not expected to review individual pieces of advice for quality, value or appropriateness.
- Ensuring fee deductions are in the members' best interests – one measure used is fee caps.
- Expected to review the variety of allowable fees to reduce member confusion and stop multiple fees eroding balances.

SOLE PURPOSE TEST

- Trustees must ensure that financial advice fees are only paid for services that are related to the member's interest in the fund and not for broader, non-superannuation related advice or services.
- Super funds will interpret their obligations and the legislation differently and you should check the rules of each fund when applying fees.
- Not permitted:
 - Fees for transactional assistance where an advice document is not provided
 - Advice fees from the adviser's own account
- Apportioning fees:
 - Charge fees to the member account only for advice to the member that relates to their interest in that fund.
 - Apportion fees between the accumulation and income/pension accounts
 - Apportion fees charged for advice given to a couple.



A fee may be charged for consolidating into a particular super fund.
Can a fee be charged to the 'from fund' before advice is provided?

PRODUCT PROVIDER FEE CAPS

Australian Retirement Trust

- For new clients, an initial advice fee up to \$1,500 (including GST) may be charged
- A fee up to 2.5% of the account balance, capped at \$8,800 p.a. (including GST) to cover implementation, ad hoc, ongoing advice, reviews

CFS First Wrap

- No fees on balances under \$10,000
- Ongoing fee cap is 2.5% on account balances over \$10,000
- One-off advice fees maximum of \$1,750 plus 2.5%, capped at \$12,000 per annum.

CFS FirstChoice

- No fees on balances under \$10,000
- Ongoing fee cap is the lower of 2% of the account balance or \$1,000.
- One-off advice fees maximum of \$1,500 plus 2%, capped at \$8,000 per annum.

CODE OF ETHICS

Standard 7

The client must give free, prior and informed consent to all benefits you and your principal will receive in connection with acting for the client, including any fees for services that may be charged. If required in the case of an existing client, the consent should be obtained as soon as practicable after this Code commences.

Except where expressly permitted by the Corporations Act 2001, you may not receive any benefits, in connection with acting for a client, that derive from a third party other than your principal.

You must satisfy yourself that any fees and charges that the client must pay to you or your principal, and any benefits that you or your principal receive, in connection with acting for the client are fair and reasonable and represent value for money for the client.

CLIENT CONSENT TO BENEFITS

- Give a clear and simple explanation of the fees, charges and benefits you and the licensee will receive for acting for the client.
- Utilise engagement documents to demonstrate consent.
- Don't just rely on the client reading the FSG/Adviser Profile or SoA.
- Don't rely solely on a signed authority or acknowledgement to demonstrate consent.
- Files notes will also be key to demonstrating free, prior and informed consent.

REFERRAL FEES

- Do not accept benefits or payments from a third party.
- Advisers may not receive referral fees. Structuring payment to be paid to another entity will not avoid this restriction as the benefits are derived from a third party.
- Licensees and CARs may have referral arrangements in place with referral partners as they are not bound by the Code. However, where the referring adviser has a financial interest in the licensee or CAR a referral fee would be a direct benefit and is more likely to influence.
- Advisers may pay referral fees provided there is no conflict of interest which would induce them to act other than in the client's best interests.

FAIR AND REASONABLE FEES

- Fees and charges a client pays and any benefits you or the licensee receive must be fair and reasonable and represent value for money for the client. This applies to all fees (fixed or asset-based) and benefits including insurance commissions and referral payments (if applicable).
- The same fee may not necessarily apply for every client as their needs will be different. The fee might take into account (list is not exhaustive):
 - The level of complexity, novelty, difficulty or time involved
 - The level of skill, experience, specialisation, seniority and reputation of the adviser
 - Fees charged by other similar advisers in the area for similar advice and services



CASE STUDY

- Brian gives holistic, strategic advice that greatly improves his clients' financial position.
- Brian typically recommends model portfolios and low cost index funds. He doesn't profess to be an investment specialist.
- Brian has always charged his clients an adviser service fee of 0.8% of their account balance.
- Brian has 2 clients
 - Both clients are 40, receive advice on their superannuation (same fund, similar investments) including salary sacrifice contributions.
 - Both receive one annual review.
 - Client 1 has a super balance of \$150,000 and pays \$1,200 pa
 - Client 2 has a super balance of \$400,000 and pays \$3,200 pa

Are the fees paid by Client 2 fair and reasonable?



ASSET BASED FEES

- Do asset based fees place value on investment management and fail to compensate adequately for strategic advice?
- Is it fair that advice fees increase as clients balances grows and decline as clients move to drawdown phase?
- Are asset based fees justified if the bulk of investment decisions are made by fund managers?
- Is it fair to charge clients different fees for the same services based on their ability to pay?
- Do asset based fees result in advisers being either over-remunerated or under-remunerated?
- Is it always true that the cost to serve is higher when a client has more money?
- Can you justify higher fees for higher balances on the basis of the increased risk of a costly complaint?

INSURANCE COMMISSIONS

- Insurance commissions are an arrangement between the adviser and product issuer. It is not an ongoing fee arrangement.
- Insurance commissions are received without any service obligation. However, under the Code of Ethics advisers need to gain consent for the commission received, explain the services they will provide, and make sure the benefits received are fair and reasonable and represent value for money for the client.
- Explain the services you will provide. This may or may not include an annual review.
- Explain if there are fees for additional advice, services or reviews.



AIA Vitality payments – are they commissions?

Information about the AIA Vitality program is provided in this PDS but does not form part of this PDS. The AIA Vitality program is a separate health and wellbeing program provided by AIA Australia and available to eligible lives insured under eligible AIA Australia insurance policies. Membership of the AIA Vitality program is not offered under this PDS and must be applied for separately. AIA Vitality membership features are not insurance and are exempt from regulation as financial products under the *Corporations Act 2001* pursuant to the ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211. While members of the Scheme may have access to this program and associated discounts, neither the program nor any associated discounts are offered by the trustee of the Scheme.

LIF REVIEW

The Royal Commission recommended considering further reducing the cap on commissions subject to a review of the LIF reforms. This review was incorporated into the Quality of Advice Review (QAR) following ASIC's review of files.

The QAR - Conflicted Remuneration Paper provided some findings and proposals for reform.

- Commission still a risk to quality of advice
- QAR aims to reduce the cost of advice and may encourage advisers to charge advice fees over commissions
- Retain exemption subject to:
 - client consent, in writing, to the commission the adviser will receive upfront and trailing; and
 - the ongoing service (if any) the adviser will provide to the client e.g., assisting the client pursue and settle claims

FEES AND COMMISSIONS

How can you charge for insurance advice?

- Charge an advice fee upfront with/without commission?
- Charge an advice fee if client chooses not to proceed?
- Charge an advice fee upfront and rebate if the client proceeds?
- Charge an advice fee if insurance is declined by insurer?
- Charge an advice fee if insurance is cancelled or lapses (within clawback period)?



CASE STUDY

Can you charge an advice fee if a client cancelled their insurance within the clawback period?

- Consider whether you have a clear contract, preferably a written agreement.
- Do you have client consent – more than just a signature?
- Is the amount fair and reasonable - how would you determine the amount?

Should you charge an advice fee if a client cancelled their insurance within the clawback period?

- Is it ok to charge a fee that is contingent on an arrangement between yourself and the insurer?
- Is it fair to ask a client to choose between retaining a policy that no longer suits or paying a deferred fee?
- What if a client cancels because of affordability (e.g. loss of job)?
- Is it ok to charge a client up to 2 years after advice is provided?



CASE STUDY

How would you charge an advice fee if a client cancelled their insurance within the clawback period?

- What procedures, time and effort would you need to administer this fee?
- How would you actually charge the client - have a signed direct debit; send an invoice?
- Are you prepared to enforce a contract?

What else should I consider before implementing a clawback fee?

- How often is this an issue?
- Do you intend to follow through with the fee?
- Could I have prevented the situation from arising - did I properly assess affordability, do projections, consider funding options?
- Is my fee model right – should I charge an upfront fee (and dial down the commission)?

OTHER FAQs

- Can clients pay advisers directly?
- Should fees from non-financial planning services be paid to the financial planning business?
- Can you charge for estate planning services?

THANK YOU

Questions

