

MODULE 7

High Volume Legal Matter Management

7 High Volume Legal Matter Management

The **objectives** of this section of the Module are:

- To define high volume legal matters
- To describe how informed purchasing principles can be applied to these legal cases.

Key learning concepts to be covered in this Module are:

- High volume legal matters can particularly benefit from the application of informed purchaser tools and approaches
- The type of fee structure is paramount in high volume work
- Retainers, volume discounts, and unit/event fees are appropriate for high volume legal work.

7.1 What are high volume legal matters?

High volume legal matters are those that are undertaken on a regular basis and generally follow the same or similar steps from inception to completion. They tend to be lower in complexity and high in volume.

High volume legal matters allow purchasers of government legal services to obtain increased value for money by demanding economies of scale from legal services panel firms.

Examples of high volume legal work include conveyancing, leasing, patent renewals, debt collection, standard contracts and claims work.

7.2 Informed purchasing and high volume legal matters

An informed purchasing approach to securing legal services for high volume legal work follows the same six steps outlined in the previous sections of this Module.

7.2.1 1. Define legal services needs

It is important to determine the basic components of the legal work required for each matter. After this, the likely volume of matters, per month or per year, should be established. This can be done through analysing historical data and billing records, if they are available. These two sets of information can then be used to extrapolate a baseline for retaining external firms. Particularly, the fee arrangements that are proposed should not exceed this baseline.

7.2.2 2. Establish in-house legal resources

In this stage, it must be determined whether either a proportion of the matters or a discrete part of each matter may be conducted in-house. Considerations include the level of available in-house resources, the volume and complexity of work, and the strategic importance of the work.

Once the in-house role is determined, external resources can be secured.

7.2.3 3. Select external legal services

The two main considerations at this stage are the type of firm and the fee structure.

The type of firm needs to be appropriate to the matters being handled. Negotiating high volume discounts on premium fees does not deliver substantial savings. The firm's starting rates must be competitive.

It is worthwhile to consider the different types of firms and their attributes in determining which type of firm is appropriate. Please review Table 9 in Module 5 for this information.

The fee structure is paramount in high volume work.

The fixed fee structure, often as either a unit or event fee, is appropriate for high volume work. A fixed fee is agreed for each event (per draft contract, pre-claim process, pleading stage) or unit (per debt recovery, per patent renewal, per lease). Such an arrangement is easy to manage and offers readily comparable benchmarks.

Another fee structure that is appropriate to high volume matters is a fixed retainer. This provides clear price certainty to the agency. It also reduces the complexity of processing multiple invoices. For example, three firms may be given an equal distribution of high volume work under an agreed annual retainer.

Another fee structure that is common in high volume work is volume discounts. This is where the firm offers a percentage discount on usual fees charged based on the high volume of work.

The following information summarises the benefits and constraints of these three fee structures for high volume work (this table is a sub section of Table 3).



Table 9: Appropriate Fee Structures for High Volume Legal Work

(Subset of Table 3)

Fee Type	Definition	When used	Benefits	Limitations
Fixed pricing	A set fee is agreed for certain types of work and the fee is charged regardless of the time spent	Capable of being used for most work Most commonly used for work where the variables can be anticipated eg property acquisitions/disposals, leasing (commercial, retail and industrial), debt recoveries of less than an agreed value, trade mark registrations, standard contracts for goods and services	Provides absolute price certainty and enables direct comparison between firms handling similar work	May encourage firms to cut corners if they have scoped badly May incur a high scoping cost for firms
Unit (or event) fee	A payment per unit of work, such as \$2,500 per patent renewal	When repeatable project work costs a similar amount	Easy to manage Low scoping cost Provides certainty to client and firm Aligns to firm's costs Readily comparable benchmarks Encourages efficiency of process and innovation	Some legal professional services are highly customised difficult to unitise
Retainer	Law firm paid a set amount per annum or per month to provide specific services	Often used for high volume/low complexity work where there is a pattern of use and volume, such as leasing portfolio renewals When client needs a fixed budget When requirements can be clearly articulated in advance	Provides cost certainty, reduces administrative burden of processing multiple invoices Total cost of service is often less than if charged on a per matter basis	Workload, or perception of workload, may vary from month to month May create misalignment of objectives between client (wanting greater benefits) and firm (wanting to do less)
Volume discounts	Law firm applies a fixed percentage discount on rates for a guaranteed volume of work	Most often used for high volume yet standard work such as property, leasing, conveyancing, debt recovery	Low scoping cost Total cost is often less than if charged on a per matter basis	No price certainty for client High base rates negate the impact of the volume discount Requires close scrutiny of invoices by agency staff

Whatever structure is preferred and negotiated, the objective is to manage the firms so that they are charging less per matter on a volume – while retaining quality – than if they were retained on a matter-by-matter basis by the agency.

7.2.4 4. Manage provider relationships

All the informed purchasing principles discussed in Module 6 apply to high volume legal matters. Particular attention should be paid to formulating targeted and quantitative KPIs relevant to high volume work. These could include turnaround times for commercial leases or proportion of debts recovered. The approach of providing an initial equal distribution of work among panel providers, followed by work allocation based on performance, should be considered as an effective high volume management tool.

Another approach to consider is allowing firms to exercise limited discretion within pre-agreed parameters. This is effective in management of high volume legal cases as it reduces the workload of both the in-house legal team and the external firm. In this approach, the instructing in-house legal officer provides the external resource with the discretion to negotiate or settle a matter within a limited range. They do not have to seek instructions from the agency to negotiate or settle within this range. An example is the negotiation of multiple leases. The agency may instruct the external firm to negotiate with prospective tenants between a range of \$500 to \$600 per square metre. Allowing the firm this flexibility reduces the time needed to instruct firms on a matter-by-matter basis.

7.2.5 5. Information sharing

As outlined in Module 6.4, sharing information and benchmarking across panel firms on their performance is a powerful informed purchasing approach. It encourages competitive tension and drives performance.

Panel meetings for high volume matters should encourage a collegiate approach to the agency's legal work. Panel firms should be encouraged at each meeting to report on innovations or new approaches that can be applied to reduce costs and improve service levels for high volume work.

7.2.6 6. Measure, monitor and refine

High volume work lends itself to benchmarking and continuous improvement. The strategies outlined in Module 6 are particularly applicable to improving panel firm performance for high volume legal work. Crucially, measuring and reporting on the volume of legal work is a key task of the informed purchaser. This information should feed back into defining the legal services needs when the panel term expires.



Exercise 8

A government agency makes a business decision to rent office space in Burwood in Sydney's inner west. The agency already leases premises in many suburbs in and around Sydney and regional areas. An agency legal officer, Ben Benjen, sends the Burwood lease for review and comment to a contact at a top tier firm (the firm had just finalised a large litigation for the agency) without negotiating a specific fee for the work. At the firm, the partner Ben contacted delegates the review to a senior associate who then delegates the lease to a graduate lawyer. The graduate lawyer spends a day reviewing the lease and provides comments to the senior associate, who then discusses the lease with the partner. Each solicitor notes down their time for the agency's bill.

The lease is then issued to the agency. However, it contained numerous basic errors. Ben corrects the errors and sends it back to the firm. The matter progresses through a number of the firm's lawyers, with comments made by the senior associate on Ben's corrections. In addition, the firm provides several unsolicited pieces of advice on other slightly related property issues. Numerous communications via email, telephone and letter between the landlord, the agency and external firm take place. The firm communicates with several agency employees, particularly those it worked with in the recent litigation, in addition to Ben, for instructions.

The process to finalise the lease takes four months and the firm issues monthly bills during that time. None of these bills are itemised. After the lease is executed and the agency has moved into the premises, the firm issues a final bill. This final bill is also not itemised and is substantially in excess of market rates for similar transactions.

Ben is not quite sure what went wrong, considering it was such a straightforward and simple matter.

Identify the causes of the time and cost blow out, explaining what Ben could have done to prevent this.

(Online answers provided at
http://www.lsc.lawlink.nsw.gov.au/lsc/documents/doc/informed_purchaser_answers.doc)



Exercise 9

A state government department issues many bills to individual households and is required to take debt recovery proceedings on a regular basis against consumers. The department has monitored the number and progress of the last three years' debt recovery proceedings, and is very clear as to how many and what type of debt recovery legal services it needs each month. It has conducted a thorough financial analysis of its external legal costs, and agency staff believe that savings can be made on its high volume work.

What arrangements and processes could the department put in place to ensure efficiency and achieve savings?

(Online answers provided at http://www.lsc.lawlink.nsw.gov.au/lsc/documents/doc/informed_purchaser_answers.doc)

This exercise demonstrates the key principles of 'informed purchasing' of government legal services:

- The agency has certainty as to the fees it will be required to pay
- The agency obtains the benefit of negotiating a low fixed fee rate due to volume of matters that it will be sending to panel firms
- The panel firms are given incentives (such as a fixed fee) to conduct the matter in an efficient and expedient manner by allocating the appropriate resources to the matter.

By adopting an informed purchaser approach in scenario 2, the agency was able to gain increased value for money.

The key to informed purchasing in high volume matters is the type of firm engaged and the type of fee structure negotiated.