



# Solicitors Act 1974

## 1974 CHAPTER 47

### PART III

#### REMUNERATION OF SOLICITORS

##### *Contentious business*

#### **59 Contentious business agreements.**

- (1) Subject to subsection (2), a solicitor may make an agreement in writing with his client as to his remuneration in respect of any contentious business done, or to be done, by him (in this Act referred to as a “contentious business agreement”) providing that he shall be remunerated by a gross sum [<sup>F1</sup>or by reference to an hourly rate], or by a salary, or otherwise, and whether at a higher or lower rate than that at which he would otherwise have been entitled to be remunerated.
- (2) Nothing in this section or in sections 60 to 63 shall give validity to—
  - (a) any purchase by a solicitor of the interest, or any part of the interest, of his client in any action, suit or other contentious proceeding; or
  - (b) any agreement by which a solicitor retained or employed to prosecute any action, suit or other contentious proceeding, stipulates for payment only in the event of success in that action, suit or proceeding; or
  - (c) any disposition, contract, settlement, conveyance, delivery, dealing or transfer which under the law relating to bankruptcy is invalid against a trustee or creditor in any bankruptcy or composition.

#### **Textual Amendments**

**F1** Words inserted by [Courts and Legal Services Act 1990 \(c. 41, SIF 76:1\)](#), [s. 98\(5\)](#)

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*Changes to legislation: There are currently no known outstanding effects for the Solicitors Act 1974, Cross Heading: Contentious business. (See end of Document for details)*

**Modifications etc. (not altering text)**

**C1** Ss. 58, 59 extended (*prosp.*) by [Administration of Justice Act 1985 \(c. 61, SIF 34\)](#), ss. 9, 69(2), [Sch. 2 para. 22\(2\)](#)

**60 Effect of contentious business agreements.**

- (1) Subject to the provisions of this section and to sections 61 to 63, the costs of a solicitor in any case where a contentious business agreement has been made shall not be subject to taxation or [<sup>F2</sup>(except in the case of an agreement which provides for the solicitor to be remunerated by reference to an hourly rate)]to the provisions of section 69.
- (2) Subject to subsection (3), a contentious business agreement shall not affect the amount of, or any rights or remedies for the recovery of, any costs payable by the client to, or to the client by, any person other than the solicitor, and that person may, unless he has otherwise agreed, require any such costs to be taxed according to the rules for their taxation for the time being in force.
- (3) A client shall not be entitled to recover from any other person under an order for the payment of any costs to which a contentious business agreement relates more than the amount payable by him to his solicitor in respect of those costs under the agreement.
- (4) A contentious business agreement shall be deemed to exclude any claim by the solicitor in respect of the business to which it relates other than—
  - (a) a claim for the agreed costs; or
  - (b) a claim for such costs as are expressly excepted from the agreement.
- (5) A provision in a contentious business agreement that the solicitor shall not be liable for negligence, or that he shall be relieved from any responsibility to which he would otherwise be subject as a solicitor, shall be void.

**Textual Amendments**

**F2** Words inserted by [Courts and Legal Services Act 1990 \(c. 41, SIF 76:1\)](#), [s. 98\(6\)](#)

**Modifications etc. (not altering text)**

**C2** [S. 60](#) (except (5)) extended (*prosp.*) by [Administration of Justice Act 1985 \(c. 61, SIF 34\)](#), ss. 9, 69(2), [Sch. 2 para. 22\(2\)](#)

**61 Enforcement of contentious business agreements.**

- (1) No action shall be brought on any contentious business agreement, but on the application of any person who—
  - (a) is a party to the agreement or the representative of such a party; or
  - (b) is or is alleged to be liable to pay, or is or claims to be entitled to be paid, the costs due or alleged to be due in respect of the business to which the agreement relates,

the court may enforce or set aside the agreement and determine every question as to its validity or effect.
- (2) On any application under subsection (1), the court—

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- (a) if it is of the opinion that the agreement is in all respects fair and reasonable, may enforce it;
  - (b) if it is of the opinion that the agreement is in any respect unfair or unreasonable, may set it aside and order the costs covered by it to be taxed as if it had never been made;
  - (c) in any case, may make such order as to the costs of the application as it thinks fit.
- (3) If the business covered by a contentious business agreement (not being an agreement to which section 62 applies) is business done, or to be done, in any action, a client who is a party to the agreement may make application to a taxing officer of the court for the agreement to be examined.
- (4) A taxing officer before whom an agreement is laid under subsection (3) shall examine it and may either allow it, or, if he is of the opinion that the agreement is unfair or unreasonable, require the opinion of the court to be taken on it, and the court may allow the agreement or reduce the amount payable under it, or set it aside and order the costs covered by it to be taxed as if it had never been made.
- [<sup>F3</sup>(4A) Subsection (4B) applies where a contentious business agreement provides for the remuneration of the solicitor to be by reference to an hourly rate.
- (4B) If on the taxation of any costs the agreement is relied on by the solicitor and the client objects to the amount of the costs (but is not alleging that the agreement is unfair or unreasonable), the taxing officer may enquire into—
- (a) the number of hours worked by the solicitor; and
  - (b) whether the number of hours worked by him was excessive.]
- (5) Where the amount agreed under any contentious business agreement is paid by or on behalf of the client or by any person entitled to do so, the person making the payment may at any time within twelve months from the date of payment, or within such further time as appears to the court to be reasonable, apply to the court, and, if it appears to the court that the special circumstances of the case require it to be re-opened, the court may, on such terms as may be just, re-open it and order the costs covered by the agreement to be taxed and the whole or any part of the amount received by the solicitor to be repaid by him.
- (6) In this section and in sections 62 and 63 “the court” means—
- (a) in relation to an agreement under which any business has been done in any court having jurisdiction to enforce and set aside agreements, any such court in which any of that business has been done;
  - (b) in relation to an agreement under which no business has been done in any such court, and under which more than £50 is payable, the High Court;
  - (c) in relation to an agreement under which no business has been done in any such court and under which not more than £50 is payable, any county court which would, but for the provisions of subsection (1) prohibiting the bringing of an action on the agreement, have had jurisdiction in any action on it;
- and for the avoidance of doubt it is hereby declared that in paragraph (a) “court having jurisdiction to enforce and set aside agreements” includes a county court.

#### Textual Amendments

**F3** S. 61(4A)(4B) inserted by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 98(7)

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**Modifications etc. (not altering text)**

- C3 S. 61 extended (*prosp.*) by Administration of Justice Act 1985 (c. 61, SIF 34), ss. 9, 69(2), Sch. 2 para. 22(2)

**62 Contentious business agreements by certain representatives.**

- (1) Where the client who makes a contentious business agreement makes it as a representative of a person whose property will be chargeable with the whole or part of the amount payable under the agreement, the agreement shall be laid before a taxing officer of the court before payment.
- (2) A taxing officer before whom an agreement is laid under subsection (1) shall examine it and may either allow it, or, if he is of the opinion that it is unfair or unreasonable, require the opinion of the court to be taken on it, and the court may allow the agreement or reduce the amount payable under it, or set it aside and order the costs covered by it to be taxed as if it had never been made.
- (3) A client who makes a contentious business agreement as mentioned in subsection (1) and pays the whole or any part of the amount payable under the agreement without it being allowed by the officer or by the court shall be liable at any time to account to the person whose property is charged with the whole or any part of the amount so paid for the sum so charged, and the solicitor who accepts the payment may be ordered by the court to refund the amount received by him.
- (4) A client makes a contentious business agreement as the representative of another person if he makes it—
  - (a) as his guardian,
  - (b) as a trustee for him under a deed or will,
  - (c) as his receiver [<sup>F4</sup>appointed under Part VII of the Mental Health Act 1983], or
  - (d) as a person other than a receiver authorised under that Part of that Act to act on his behalf.

**Textual Amendments**

- F4 Words substituted by Mental Health Act 1983 (c. 20, SIF 85), s. 148, Sch. 4 para. 38(b)

**Modifications etc. (not altering text)**

- C4 S. 62 extended (*prosp.*) by Administration of Justice Act 1985 (c. 61, SIF 34), ss. 9, 69(2), Sch. 2 para. 22(2)

**63 Effect on contentious business agreement of death, incapability or change of solicitor.**

- (1) If, after some business has been done under a contentious business agreement but before the solicitor has wholly performed it—
  - (a) the solicitor dies, or becomes incapable of acting; or
  - (b) the client changes his solicitor (as, notwithstanding the agreement, he shall be entitled to do),
 any party to, or the representative of any party to, the agreement may apply to the court, and the court shall have the same jurisdiction as to enforcing the agreement so far as

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it has been performed, or setting it aside, as the court would have had if the solicitor had not died or become incapable of acting, or the client had not changed his solicitor.

- (2) The court, notwithstanding that it is of the opinion that the agreement is in all respects fair and reasonable, may order the amount due in respect of business under the agreement to be ascertained by taxation, and in that case—
  - (a) the taxing officer, in ascertaining that amount, shall have regard so far as may be to the terms of the agreement; and
  - (b) payment of the amount found by him to be due may be enforced in the same manner as if the agreement had been completely performed.
- (3) If in such a case as is mentioned in subsection (1)(b) an order is made for the taxation of the amount due to the solicitor in respect of the business done under the agreement, the court shall direct the taxing officer to have regard to the circumstances under which the change of solicitor has taken place, and the taxing officer, unless he is of the opinion that there has been no default, negligence, improper delay or other conduct on the part of the solicitor affording the client reasonable ground for changing his solicitor, shall not allow to the solicitor the full amount of the remuneration agreed to be paid to him.

**Modifications etc. (not altering text)**

C5 S. 63 extended (22.5.2000) by S.I. 2000/1119, regs. 1, 37(3), Sch. 4 para. 7(2)

**64 Form of bill of costs for contentious business.**

- (1) Where the remuneration of a solicitor in respect of contentious business done by him is not the subject of a contentious business agreement, then, subject to subsections (2) to (4), the solicitor's bill of costs may at the option of the solicitor be either a bill containing detailed items or a gross sum bill.
- (2) The party chargeable with a gross sum bill may at any time—
  - (a) before he is served with a writ or other originating process for the recovery of costs included in the bill, and
  - (b) before the expiration of three months from the date on which the bill was delivered to him,require the solicitor to deliver, in lieu of that bill, a bill containing detailed items; and on such a requirement being made the gross sum bill shall be of no effect.
- (3) Where an action is commenced on a gross sum bill, the court shall, if so requested by the party chargeable with the bill before the expiration of one month from the service on that party of the writ or other originating process, order that the bill be taxed.
- (4) If a gross sum bill is taxed, whether under this section or otherwise, nothing in this section shall prejudice any rules of court with respect to taxation, and the solicitor shall furnish the taxing officer with such details of any of the costs covered by the bill as the taxing officer may require.

**Modifications etc. (not altering text)**

C6 Ss. 64, 65, 67, 69(1) extended (*prosp.*) by Administration of Justice Act 1985 (c. 61, SIF 34), ss. 9, 69(2), Sch. 2 para. 22(2)

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## 65 Security for costs and termination of retainer.

- (1) A solicitor may take security from his client for his costs, to be ascertained by taxation or otherwise, in respect of any contentious business to be done by him.
- (2) If a solicitor who has been retained by a client to conduct contentious business requests the client to make a payment of a sum of money, being a reasonable sum on account of the costs incurred or to be incurred in the conduct of that business and the client refuses or fails within a reasonable time to make that payment, the refusal or failure shall be deemed to be a good cause whereby the solicitor may, upon giving reasonable notice to the client, withdraw from the retainer.

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### Modifications etc. (not altering text)

- C7** Ss. 64, 65, 67, 69(1) extended (*prosp.*) by Administration of Justice Act 1985 (c. 61, SIF 34), ss. 9, 69(2), **Sch. 2 para. 22(2)**

## 66 Taxations with respect to contentious business.

Subject to the provisions of any rules of court, on every taxation of costs in respect of any contentious business, the taxing officer may—

- (a) allow interest at such rate and from such time as he thinks just on money disbursed by the solicitor for the client, and on money of the client in the hands of, and improperly retained by, the solicitor; and
- (b) in determining the remuneration of the solicitor, have regard to the skill, labour and responsibility involved in the business done by him.

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### Modifications etc. (not altering text)

- C8** S. 66 extended (22.5.2000) by S.I. 2000/1119, regs. 1, 37(3), **Sch. 4 para. 7(2)**

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