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## STATUTORY INSTRUMENTS

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# 1976 No. 582

## Solicitors (Northern Ireland) Order 1976

### [<sup>F1</sup>PART V

#### REMUNERATION OF SOLICITORS

**F1** 1989 NI 14

#### *Contentious business*

##### **Contentious business agreements**

**64.**—(1) Subject to paragraph (2), a solicitor may make an agreement in, or evidenced by, writing with his client as to his remuneration in respect of any contentious business done, or to be done, by him providing that he shall be remunerated by a gross sum, 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 a contentious business agreement 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 or other contentious proceeding; or
- (b) any agreement by which a solicitor retained or employed to prosecute any action or other contentious proceeding, stipulates for payment only in the event of success in that action 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.

##### **Effect of contentious business agreements**

**65.**—(1) Subject to the provisions of this Article and to Articles 66 to 68, the costs of a solicitor in any case where a contentious business agreement has been made shall not be subject to taxation or to the provisions of Article 71E.

(2) Subject to paragraph (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

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(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.

### **Enforcement of contentious business agreements**

**66.**—(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 paragraph (1), the court—

- (a) if it is of the opinion that the agreement is in all respect 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 Article 67 applies) is business done, or to be done, in any action, a client who is a party to the agreement may make application to the taxing officer for the agreement to be examined.

(4) The taxing officer to whom an application is made under paragraph (3) shall examine the agreement 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.

(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 12 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 Article and in Articles 67 to 69 “the court” means—

- (a) in relation to an agreement under which any business has been done or was to have been done in the High Court, the High Court;
- (b) in relation to an agreement under which any business has been done or was to have been done in the Lands Tribunal, the High Court;
- (c) in relation to any other agreement—
  - (i) under which more than £5,000 is payable, the High Court; or
  - (ii) under which not more than £5,000 is payable, a county court.

(7) In this Article and in Articles 67 to 70 “the taxing officer” means—

- (a) where the court is the High Court, the Master (Taxing Office); and
- (b) where the court is the county court, a circuit registrar.

### **Contentious business agreements by certain representatives**

67.—(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 referred to the taxing officer before payment.

(2) The taxing officer to whom an agreement is referred under paragraph (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 paragraph (1) and pays the whole or any part of the amount payable under the agreement without it being allowed by the taxing 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 controller for his property and affairs under Part VIII of the Mental Health (Northern Ireland) Order 1986, or
- (d) as a person other than a controller authorised under that Part of that Order to act on his behalf.

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

68.—(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); or
- (c) the solicitor withdraws from the retainer,

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 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, or the solicitor had not withdrawn from the retainer.

(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 shall be paid forthwith by the party liable to pay the same, unless rules of court provide otherwise pending the determination of an appeal under Article 71G(6).

(3) If in such a case as is mentioned in paragraph (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

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for changing his solicitor, shall not allow to the solicitor the full amount of the remuneration agreed to be paid to him.

(4) If in such a case as is mentioned in paragraph (1)(c) 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 withdrawal from the retainer has taken place, and the taxing officer, unless he is of opinion that the withdrawal from the retainer was for good cause, shall not allow to the solicitor the full amount of the remuneration agreed to be paid to him.

### **Security for costs and termination of retainer**

**69.**—(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.

(3) On any application for an order declaring that the solicitor has ceased to be the solicitor acting for the party in the cause or matter which is the subject of the contentious business referred to in paragraph (2), the court may determine whether the sum requested by the solicitor was reasonable and whether the client has failed to make the payment within a reasonable time.

### **Taxations with respect to contentious business**

**70.** Subject to the provisions of any rules of court or county court rules, 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.

*Non#contentious business*

### **Orders as to remuneration of solicitors for non#contentious business**

**71.**—(1) For the purposes of this Article there shall be a committee to be known as the “Non#contentious Costs Committee” (in this Part referred to as “the Committee”) and consisting of the following persons—

- (a) two judges of the High Court or the Court of Appeal of whom the Lord Chief Justice may be one, appointed by the Lord Chief Justice;
- (b) the President of the Lands Tribunal;
- (c) two solicitors appointed by the Council; and
- (d) for the purpose only of prescribing and regulating the remuneration of solicitors in respect of business under the Land Registration Act (Northern Ireland) 1970, the Registrar of Titles.

(2) The Committee acting by any three or more of the members thereof (the Lord Chief Justice or another judge of the High Court or the Court of Appeal being one) may make orders prescribing and

regulating in such manner as they think the remuneration of solicitors in respect of non-contentious business.

(3) The Lord Chief Justice may appoint an officer of the<sup>F2</sup>Court of Judicature] to act as Clerk to the Committee.

(4) The Committee may refer any question arising in the exercise of their functions to any person appearing to them to be likely to assist them in reaching a conclusion thereon for advice, investigation or report and the Committee or any such person may receive evidence from any source appearing to the Committee or, as the case may be, to such person to be relevant.

(5) The costs of any reference made by the Committee under paragraph (4) shall be defrayed by the Society.

(6) Before any order is made under this Article, the Committee shall—

- (a) cause a draft of the order to be sent to the Council; and
- (b) consider any observations in writing submitted to them by the Council within three months of the sending of the draft;

and the Committee may then make the order either in the form of the draft or with such alterations or additions as they may think fit.

(7) An order under this Article may, as regards the mode of remuneration, prescribe that it shall be according to a scale of rates of commission or percentage, varying or not in different classes of business, or by a gross sum, or by a fixed sum for each document prepared or perused, without regard to length, or in any other mode, or partly in one mode and partly in another, and may regulate the amount of remuneration with reference to all or any of the following, among other, considerations, that is to say—

- (a) the position of the party for whom the solicitor is concerned in the business, that is, whether as vendor or purchaser, lessor or lessee, mortgagor or mortgagee, and the like;
- (b) the place where, and the circumstances in which, the business or any part thereof is transacted;
- (c) the amount of the capital money or rent to which the business relates;
- (d) the skill, labour, specialised knowledge and responsibility involved therein on the part of the solicitor;
- (e) the complexity, importance, difficulty, rarity or urgency of the questions raised;
- (f) the number and importance of the documents prepared or perused; and
- (g) the time expended by the solicitor.

(8) An order under this Article may authorise and regulate—

- (a) the taking by a solicitor from his client of security for payment of any remuneration, to be ascertained by taxation or otherwise, which may become due to him under any such order; and
- (b) the allowance of interest.

(9) So long as an order made under this Article is in operation, taxation of bills of costs of solicitors in respect of non-contentious business shall, subject to the provisions of Article 71A, be regulated by that order.

(10) All orders made by the Committee shall be laid before the Assembly by the Head of the Department of Finance and Personnel and shall be subject to negative resolution.

(11) In Part I of Schedule 1 to the Statutory Rules (Northern Ireland) Order 1979 for the reference to Article 64 of the Solicitors (Northern Ireland) Order 1976 there shall be substituted a reference to this Article.

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**F2** Words in [art. 71\(3\)](#) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. [59\(5\)](#), [148\(1\)](#), [Sch. 11 para. 6](#); [S.I. 2009/1604](#), [art. 2\(d\)](#)

### **Non-contentious business agreements**

**71A.—(1)** Subject to the provisions of this Article and to regulations, a solicitor may make an agreement in, or evidenced by, writing with his client respecting the amount and manner of payment for the whole or a part of any past or future services in respect of non-contentious business done or to be done by the solicitor, either by a gross sum or by commission or percentage, or by salary or otherwise, and either at the same rate as, or, subject to the provisions of regulations, at a rate different from, that at which he would otherwise be entitled to be remunerated.

(2) Any such agreement shall be limited to the conduct and completion of the non-contentious business in respect of which it is made and shall not extend to any other non-contentious business unless subsequently agreed upon in writing between the client and the solicitor.

(3) If it appears to the High Court upon an application made to the Court in that behalf that any such agreement is in all respects fair and reasonable between the parties, the Court may order the agreement to be enforced in such manner and subject to such conditions as to the costs of the application or otherwise as it thinks fit; but if the terms of the agreement do not appear to the Court to be fair and reasonable the Court may order the agreement to be set aside or varied and may direct that all or any costs incurred or chargeable in respect of the matters included in the agreement be taxed under this Part.

(4) Except as provided by paragraph (3), the bill of a solicitor for the amount due under any such agreement as is referred to in this Article shall not be subject to taxation or to the provisions of Article 71E.

(5) Articles 64(2) and 65(2) to (5) shall apply to a non-contentious business agreement as they apply to a contentious business agreement.

### **Certain stipulations and restrictions on purchasers to be void**

**71B.—(1)** Any stipulation made on the sale of any land after 1st September 1976 to the effect that any purchaser shall be liable for any costs of the vendor's solicitor shall be void.

(2) A grantor or lessor who grants or leases any property for ever or for any term of years may as a condition of the grant or lease lawfully require that it be prepared by his solicitor but may not require the grantee or lessee to pay any costs of such solicitor in connection therewith.

(3) Any stipulation made on the sale of any land after 1st September 1976 to the effect that the assurance to, or the registration of the assurance to, or the registration of the title of, the purchaser shall be prepared or carried out by a solicitor appointed by or acting for the vendor, and any stipulation which might restrict a purchaser in the selection of a solicitor to act on his behalf in relation to any land agreed to be purchased, shall, except as provided in paragraph (2), be void, but a stipulation requiring the purchaser to furnish to the vendor at the purchaser's expense, a duplicate or counterpart of the assurance shall be valid.

(4) For the purposes of this Article—

“sale” includes a transaction effected by a grant or sub-grant in fee farm and a demise or sub-demise, but does not include the compulsory acquisition of land by virtue of any enactment or the acquisition of land by agreement by a person or body authorised or capable of being authorised under an enactment in force at the date of the agreement to acquire that land compulsorily;

“assurance” includes a conveyance or transfer, a grant or sub-grant in fee farm, a lease or sub-lease, or a tenancy agreement;

“vendor” includes a vendor who is a transferor, grantor or sub-grantor in fee farm, a lessor or sub-lessor; and “purchaser” shall be construed accordingly.

### *Remuneration—general*

#### **Power of court to order solicitor to deliver bill**

**71C.**—(1) The jurisdiction of the High Court to make orders for the delivery by a solicitor of a bill of costs, and for the delivery up of, or otherwise in relation to, any documents in his possession, custody or power, is hereby declared to extend to cases in which no business has been done by him in the High Court.

(2) A county court shall have the same jurisdiction as the High Court to make orders making such provision as is mentioned in paragraph (1) in cases where the bill of costs or the documents relate wholly or partly to contentious business done by the solicitor in that county court.

(3) In this Article and in Articles 71D to 71G “solicitor” includes the executors, administrators and assignees of a solicitor.

#### **Right to furnish bill in general terms**

**71D.** A solicitor's bill shall be sufficient in form if it contains a reasonable statement or description of the services rendered, with a lump sum charged there for, together with a detailed statement of disbursements, but in any action upon or taxation of such a bill further details of the services rendered may, if it is deemed proper, be ordered by the court or, as the case may be, by the taxing officer.

#### **Action to recover solicitors' costs**

**71E.**—(1) Subject to the provisions of this Order, no action shall be brought to recover any costs due to a solicitor unless a bill of those costs has been delivered in accordance with the requirements set out in paragraph (2).

(2) The requirements referred to in paragraph (1) are that the bill must—

- (a) be signed by the solicitor, or if the costs are due to a firm, by one of the partners of that firm, either in his own name or in the name of the firm, or be enclosed in, or accompanied by, a letter which is so signed and refers to the bill; and
- (b) be delivered to the party to be charged therewith, either personally or by being sent to him by ordinary post to, or left for him at, his place of business, dwelling-house, or last known place of abode;

and, where a bill is proved to have been delivered in compliance with those requirements, it shall not be necessary in the first instance for the solicitor to prove the contents of the bill and it shall be presumed, until the contrary is shown, to be a bill duly complying with this Order.

#### **Order for taxation**

**71F.**—(1) Where the retainer of a solicitor is disputed, the solicitor or the client may apply to the High Court to have such dispute determined and if the Court then finds that a proper retainer exists the Court may order the bill to be taxed.

(2) Where the retainer of a solicitor is not disputed an order may be obtained from the Master (Taxing Office)

- (a) by the client, for the delivery and taxation of the solicitor's bill;
- (b) by the client, for the taxation of a bill already delivered;

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- (c) by the solicitor, for the taxation of a bill already delivered, at any time after the expiration of one month from its delivery, where no other order for its taxation has previously been made.
- (3) An application for an order under paragraph (2) shall not be made by a client—
- (a) save in exceptional circumstances—
- (i) after the expiration of three months from the date of the delivery of the bill;
- (ii) in any case where judgment has been obtained in an action for the recovery of the amount of a bill of costs; or
- (iii) where the bill has been paid;
- (b) in any event, after the expiration of six months from the date of the delivery of the bill.
- (4) An order for the taxation of a bill made on an application under this Article by a client shall be an order
- (a) for the taxation of all the costs; or
- (b) for the taxation of such part of the costs as the client requests in his application.
- (5) An order under this Article may be made upon such terms as to the costs of the application therefor and of the taxation as the Master (Taxing Office) or, as the case may be, the High Court, thinks fit.
- (6) No bill previously taxed shall be again referred unless in exceptional circumstances the High Court sees fit so to order.
- (7) Where a person other than the client has paid, or is or was liable to pay, a bill either to the solicitor or to his client, that person or his assignee or personal representative may apply to the Master (Taxing Office) for taxation of the bill as if he were the client, and the same proceedings shall be had thereon as if the application had been made by the client.
- (8) Where the Master (Taxing Office) has no power to make an order by virtue of paragraph (7) except in special circumstances, he may in considering whether there are special circumstances sufficient to justify the making of an order, take into account circumstances which affect the applicant but do not affect the client.
- (9) Without prejudice to the provisions of paragraph (7), where a trustee or personal representative has become liable to pay the bill of a solicitor, the Master (Taxing Office) may, upon the application of any person interested in any property out of which the trustee or personal representative has paid, or has power to pay, the bill, and upon such terms (if any) as he thinks fit, make an order for the taxation of the bill; and in considering any such application, the Master (Taxing Office) shall have regard to the provisions of this Article as to applications by the client for the taxation of a solicitor's bill so far as they are capable of being applied to an application made under this paragraph and to the extent and nature of the interest of the applicant.
- (10) If an applicant under paragraph (9) pays any money to the solicitor, he shall have the same right to be paid that money by the trustee or personal representative liable to pay the bill as the solicitor had.
- (11) The Master (Taxing Office) on any application made pursuant to paragraph (7) or (9) may order the solicitor to deliver to the person making the application a copy of the bill upon payment of the costs of the copy.
- (12) Where a bill of costs relates wholly to contentious business done in a county court the functions of the High Court and the Master (Taxing Office) under this Article and Article 71G in relation to that bill may be exercised by the county court and a circuit registrar, and the references in Article 71G(5) and (8) to rules of court shall in any such case be construed as references to county court rules.



### Provisions as to taxation

**71G.**—(1) Where a client or other person obtains an order for the delivery and taxation of a solicitor's bill, a copy of the bill shall be delivered within two months from the service of the order or such extended time as the Master (Taxing Office) may allow.

(2) The bill delivered shall stand referred to the Master (Taxing Office) and he shall tax the bill on such date as he may direct.

(3) On such taxation the solicitor shall give credit for, and an account shall be taken of, all sums of money received by him from or on account of the client and the solicitor shall be entitled to credit for all disbursements, expenses or other sums properly paid by him for or on account of the client.

(4) The costs of the taxation shall, unless otherwise directed by the High Court in any particular case, be in the discretion of the Master (Taxing Office), subject to an appeal under paragraph (6) by any dissatisfied party and shall be taxed by the taxing officer when and as allowed.

(5) The amount certified by the Master (Taxing Office) to be due on such taxation (including, where allowed, the costs of the taxation) shall be paid forthwith by the party liable to pay the same, unless rules of court provide otherwise pending the determination of an appeal under paragraph (6).

(6) An appeal shall lie at the instance of any dissatisfied party to the High Court against any allowance or disallowance made by the Master (Taxing Office) under this Part.

(7) If after due notice of any taxation any party fails, without reasonable explanation given to the Master (Taxing Office) before taxation, to attend or be represented on the taxation, the Master (Taxing Office) may proceed with the taxation in the absence of such party.

(8) Without prejudice to the provisions of section 21 of the Interpretation Act (Northern Ireland) 1954, the procedure to be followed on taxation under this Part and on an appeal therefrom shall be regulated by rules of court.

### Charging orders

**71H.**—(1) Subject to paragraph (2), any court in which a solicitor has been employed to prosecute or defend any action, matter or proceeding may at any time declare the solicitor entitled to a charge on the property recovered or preserved through his instrumentality for his taxed costs in relation to that action, matter or proceeding, and may make such orders for the taxation of those costs and for raising money to pay, or for paying, those costs out of that property as the court thinks fit, and all conveyances and acts done to defeat, or operating to defeat, that charge shall, except in the case of a conveyance to a bona fide purchaser for value without notice, be void as against the solicitor.

(2) No order shall be made under paragraph (1) if the right to recover the costs is barred by any statute of limitations.

*Para. (3) rep. by 1996 c. 23]*

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