
STATUTORY INSTRUMENTS

1976 No. 582

Solicitors (Northern Ireland) Order 1976

[^{F1}PART V

REMUNERATION OF SOLICITORS

[^{F1}Contentious business

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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.]

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