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STATUTORY INSTRUMENTS

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**1994 No. 2616 (L.16)**

**SOLICITORS**

**The Solicitors' (Non-Contentious  
Business) Remuneration Order 1994**

<i>Made</i>	- - - -	<i>5th October 1994</i>
<i>Laid before Parliament</i>		<i>10th October 1994</i>
<i>Coming into force</i>	- -	<i>1st November 1994</i>

The Lord Chancellor, the Lord Chief Justice, the Master of the Rolls, the President of the Law Society, the president of Holborn law society and the Chief Land Registrar (in respect of business done under the Land Registration Act 1925(1)), together constituting the committee authorised to make orders under section 56 of the Solicitors Act 1974(2), in exercise of the powers conferred on them by that section and having complied with the requirements of section 56(3), hereby make the following Order:—

**Citation, Commencement and Revocation**

1.—(1) This Order may be cited as the Solicitors' (Non-Contentious Business) Remuneration Order 1994.

(2) This Order shall come into force on 1st November 1994 and shall apply to all non-contentious business for which bills are delivered on or after that date.

(3) The Solicitors' Remuneration Order 1972(3) is hereby revoked except in its application to business for which bills are delivered before this Order comes into force.

**Interpretation**

2. In this Order:—

“client” means the client of a solicitor;

“costs” means the amount charged in a solicitor’s bill, exclusive of disbursements and value added tax, in respect of non-contentious business or common form probate business;

“entitled person” means a client or an entitled third party;

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(1) 1925 c. 21.

(2) 1974 c. 47, as modified by the Administration of Justice Act 1985 (c. 61), Schedule 2, paragraphs 22 and 23.

(3) S.I.1972/1139.

“entitled third party” means a residuary beneficiary absolutely and immediately (and not contingently) entitled to an inheritance, where a solicitor has charged the estate for his professional costs for acting in the administration of the estate, and either

- (a) the only personal representatives are solicitors (whether or not acting in a professional capacity); or
- (b) the only personal representatives are solicitors acting jointly with partners or employees in a professional capacity;

“paid disbursements” means disbursements already paid by the solicitor;

“recognised body” means a body corporate recognised by the Council under section 9 of the Administration of Justice Act 1985(4);

“remuneration certificate” means a certificate issued by the Council pursuant to this Order;

“residuary beneficiary” includes a person entitled to all or part of the residue of an intestate estate;

“solicitor” includes a recognised body;

“the Council” means the Council of the Law Society.

### **Solicitors' costs**

**3.** A solicitor’s costs shall be such sum as may be fair and reasonable to both solicitor and entitled person, having regard to all the circumstances of the case and in particular to:—

- (a) the complexity of the matter or the difficulty or novelty of the questions raised;
- (b) the skill, labour, specialised knowledge and responsibility involved;
- (c) the time spent on the business;
- (d) the number and importance of the documents prepared or perused, without regard to length;
- (e) the place where and the circumstances in which the business or any part thereof is transacted;
- (f) the amount or value of any money or property involved;
- (g) whether any land involved is registered land;
- (h) the importance of the matter to the client; and
- (i) the approval (express or implied) of the entitled person or the express approval of the testator to:—
  - (i) the solicitor undertaking all or any part of the work giving rise to the costs or
  - (ii) the amount of the costs.

### **Right to certification**

**4.—(1)** Without prejudice to the provisions of sections 70, 71, and 72 of the Solicitors Act 1974 (which relate to taxation of costs), an entitled person may, subject to the provisions of this Order, require a solicitor to obtain a remuneration certificate from the Council in respect of a bill which has been delivered where the costs are not more than £50,000.

(2) The remuneration certificate must state what sum, in the opinion of the Council, would be a fair and reasonable charge for the business covered by the bill (whether it be the sum charged or a lesser sum). In the absence of taxation the sum payable in respect of such costs is the sum stated in the remuneration certificate.

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(4) 1985 c. 61.

### **Disciplinary and other measures**

5.—(1) If on a taxation the taxing officer allows less than one half of the costs, he must bring the facts of the case to the attention of the Council.

(2) The provisions of this Order are without prejudice to the general powers of the Council under the Solicitors Act 1974.

### **Commencement of proceedings against a client**

6. Before a solicitor brings proceedings to recover costs against a client on a bill for non-contentious business he must inform the client in writing of the matters specified in article 8, except where the bill has been taxed.

### **Costs paid by deduction**

7.—(1) If a solicitor deducts his costs from monies held for or on behalf of a client or of an estate in satisfaction of a bill and an entitled person objects in writing to the amount of the bill within the prescribed time, the solicitor must immediately inform the entitled person in writing of the matters specified in article 8, unless he has already done so.

(2) In this article and in article 10, “the prescribed time” means:—

- (a) in respect of a client, three months after delivery of the relevant bill, or a lesser time (which may not be less than one month) specified in writing to the client at the time of delivery of the bill, or
- (b) in respect of an entitled third party, three months after delivery of notification to the entitled third party of the amount of the costs, or a lesser time (which may not be less than one month) specified in writing to the entitled third party at the time of such notification.

### **Information to be given in writing to entitled person**

8. When required by articles 6 or 7, a solicitor must inform an entitled person in writing of the following matters:—

- (a) where article 4(1) applies—
  - (i) that the entitled person may, within one month of receiving from the solicitor the information specified in this article or (if later) of delivery of the bill or notification of the amount of the costs, require the solicitor to obtain a remuneration certificate; and
  - (ii) that (unless the solicitor has agreed to do so) the Council may waive the requirements of article 11(1), if satisfied from the client’s written application that exceptional circumstances exist to justify granting a waiver;
- (b) that sections 70, 71 and 72 of the Solicitors Act 1974 set out the entitled person’s rights in relation to taxation;
- (c) that (where the whole of the bill has not been paid, by deduction or otherwise) the solicitor may charge interest on the outstanding amount of the bill in accordance with article 14.

### **Loss by client of right to certification**

9. A client may not require a solicitor to obtain a remuneration certificate:—

- (a) after a bill has been delivered and paid by the client, other than by deduction;
- (b) where a bill has been delivered, after the expiry of one month from the date on which the client was informed in writing of the matters specified in article 8 or from delivery of the bill if later;

- (c) after the solicitor and client have entered into a non-contentious business agreement in accordance with the provisions of section 57 of the Solicitors Act 1974;
- (d) after a court has ordered the bill to be taxed;
- (e) if article 11(2) applies.

#### **Loss by entitled third party of right to certification**

- 10.** An entitled third party may not require a solicitor to obtain a remuneration certificate:—
- (a) after the prescribed time (within the meaning of article 7(2)(b)) has elapsed without any objection being received to the amount of the costs;
  - (b) after the expiry of one month from the date on which the entitled third party was (in compliance with article 7) informed in writing of the matters specified in article 8 or from notification of the costs if later;
  - (c) after a court has ordered the bill to be taxed.

#### **Requirement to pay a sum towards the costs**

**11.—(1)** On requiring a solicitor to obtain a remuneration certificate a client must pay to the solicitor the paid disbursements and value added tax comprised in the bill together with 50% of the costs unless:—

- (a) the client has already paid the amount required under this article, by deduction from monies held or otherwise; or
- (b) the solicitor or (if the solicitor refuses) the Council has agreed in writing to waive all or part of this requirement.

(2) The Council shall be under no obligation to provide a remuneration certificate, and the solicitor may take steps to obtain payment of his bill, if the client, having been informed of his right to seek a waiver of the requirements of paragraph (1), has not:—

- (a) within one month of receipt of the information specified in article 8, either paid in accordance with paragraph (1) or applied to the Council in writing for a waiver of the requirements of paragraph (1); or
- (b) made payment in accordance with the requirements of paragraph (1) within one month of written notification that he has been refused a waiver of those requirements by the Council.

#### **Miscellaneous provisions**

**12.—(1)** After an application has been made by a solicitor for a remuneration certificate the client may pay the bill in full without invalidating the application.

(2) A solicitor and entitled person may agree in writing to waive the provisions of sub-paragraphs (a) or (b) of articles 9 or 10.

(3) A solicitor may take from his client security for the payment of any costs, including the amount of any interest to which the solicitor may become entitled under article 14.

#### **Refunds by solicitor**

**13.—(1)** If a solicitor has received payment of all or part of his costs and a remuneration certificate is issued for less than the sum already paid, the solicitor must immediately pay to the entitled person any refund which may be due (after taking into account any other sums which may properly be payable to the solicitor whether for costs, paid disbursements, value added tax or otherwise)

unless the solicitor has applied for an order for taxation within one month of receipt by him of the remuneration certificate.

(2) Where a solicitor applies for taxation, his liability to pay any refund under paragraph (1) shall be suspended for so long as the taxation is still pending.

(3) The obligation of the solicitor to repay costs under paragraph (1) is without prejudice to any liability of the solicitor to pay interest on the repayment by virtue of any enactment, rule of law or professional rule.

### **Interest**

**14.**—(1) After the information specified in article 8 has been given to an entitled person in compliance with articles 6 or 7, a solicitor may charge interest on the unpaid amount of his costs plus any paid disbursements and value added tax, subject to paragraphs (2) and (3) below.

(2) Where an entitlement to interest arises under paragraph (1), and subject to any agreement made between a solicitor and client, the period for which interest may be charged may run from one month after the date of delivery of a bill, unless the solicitor fails to lodge an application within one month of receipt of a request for a remuneration certificate under article 4, in which case no interest is payable in respect of the period between one month after receiving the request and the actual date on which the application is lodged.

(3) Subject to any agreement made between a solicitor and client, the rate of interest must not exceed the rate for the time being payable on judgment debts.

(4) Interest charged under this article must be calculated, where applicable, by reference to the following:—

- (a) if a solicitor is required to obtain a remuneration certificate, the total amount of the costs certified by the Council to be fair and reasonable plus paid disbursements and value added tax;
- (b) if an application is made for the bill to be taxed, the amount ascertained on taxation;
- (c) if an application is made for the bill to be taxed or a solicitor is required to obtain a remuneration certificate and for any reason the taxation or application for a remuneration certificate does not proceed, the unpaid amount of the costs shown in the bill or such lesser sum as may be agreed between the solicitor and the client, plus paid disbursements and value added tax.

### **Application by solicitor**

**15.** A solicitor, when making an application for a remuneration certificate in accordance with the provisions of this Order, must deliver to the Council the complete relevant file and working papers, and any other information or documentation which the Council may require for the purpose of providing a remuneration certificate.

*Mackay of Clashfern, C.  
Taylor, C.J.  
Bingham, M.R.  
R C Elly  
J Lewis  
J Manthorpe*

Dated 5th October 1994

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

Section 56 of the Solicitors Act 1974 establishes a Committee with power to make general orders regulating the remuneration of solicitors in respect of non-contentious business. Paragraph 22(2) of Schedule 2 to the Administration of Justice Act 1985 modifies the section so that references to solicitors include references to recognised bodies (solicitors' incorporated practices recognised under section 9 of the Administration of Justice Act 1985). This Order sets out the rights of solicitors' clients and residuary beneficiaries of certain estates to require the solicitor charging the client or estate to obtain a certificate from the Law Society as to the reasonableness of his costs. The Order prescribes requirements in relation to information to be given in writing to clients and beneficiaries who are entitled to require a solicitor to obtain a certificate, and lays certain obligations on clients, beneficiaries and solicitors.