

## **Repeal of Solicitors' (Non-Contentious Business) Remuneration Order 1994**

Legal Services Act 2007: Proposed new rule on information about how to question a bill  
Consultation paper 20

27 July 2009

## Table of contents

Table of contents .....	2
Background .....	3
Rewriting the Remuneration Order .....	3
Proposed “emergency” addition to rule 2 (client relations) .....	4
Proposed definitive addition to rule 2 (client relations) .....	4
<b>Annex 1 .....</b>	<b>6</b>
Current SRA guidance – for information.....	6
Specimen information for entitled persons under the Solicitors’ (Non-Contentious Business) Remuneration Order 1994 .....	6
<b>Annex 2 .....</b>	<b>7</b>
Draft of proposed "emergency" rule – for information .....	7
[Draft] Solicitors' Code of Conduct (Client Relations) LSA Amendment Rules [2009].....	7
<b>Annex 3 .....</b>	<b>9</b>
[Draft] Solicitors' Code of Conduct (Client Relations) LSA Amendment (No. 2) Rules [2009] .....	9
<b>Annex 4 .....</b>	<b>10</b>
Consultation.....	10
Proposed definitive new rule on costs information for clients .....	10
How to respond.....	10

## Background

1. As of 30 June 2008 the Legal Services Act 2007 (LSA) amended section 56 of the Solicitors Act 1974 (orders as to remuneration for non-contentious business) so as to replace the provision for the Secretary of State's Advisory Committee on Non-Contentious Remuneration to make  
"general orders prescribing and regulating ... the remuneration of solicitors in respect of non-contentious business"  
with a provision for the Lord Chancellor's Advisory Committee on Non-Contentious Remuneration to make  
"general orders prescribing the general principles to be applied when determining the remuneration of solicitors in respect of non-contentious business".

## Rewriting the Remuneration Order

2. As of 11 August 2009 the Solicitors' (Non-Contentious) Remuneration Order 1994 will be replaced by a new Solicitors' (Non-Contentious Business) Remuneration Order 2009.
3. The current Order contains not only general principles to govern remuneration for non-contentious business but also procedural provisions, including the provision for remuneration certificates whereby the client can require the solicitor to ask the Legal Complaints Service (the LCS) to assess a bill.
4. The new Order will omit the remuneration certifying procedure and other procedural provisions, and will contain only the general principles to govern remuneration for non-contentious business.
5. The procedural matters which are part of the current Order, but will be omitted from the new Order, include:
  - article 6, which requires solicitors (or registered European lawyers (RELs) or recognised bodies), before bringing any court proceedings to recover their non-contentious costs, to inform the client in writing of the right to a remuneration certificate, statutory rights to taxation (assessment) by the court, and the solicitors' right to charge interest on the bill;
  - article 7, which requires solicitors (or RELs or recognised bodies), when deducting their non-contentious costs from money held on behalf of a client or trust, to inform any client or "entitled third party" (a residuary beneficiary where there is no lay executor) who objects in writing to the amount of the bill within "the prescribed time" (between one month and three months from the delivery of the bill), of their right to a remuneration certificate, statutory rights to taxation (assessment) by the court, and the solicitors' right to charge interest on the bill.
6. The current guidance on informing clients about how to question a bill is at **Annex 1**.
7. There is no statutory or professional requirement for equivalent information to be given in relation to bills for contentious matters.

## Proposed “emergency” addition to rule 2 (client relations)

8. The SRA Board is to be asked to make an "emergency" rule to replace the client information provisions in the current Order. The "emergency" rule reproduces exactly—so far as possible in rule form—the client information provisions in the current Order, apart from information about the right to request a remuneration certificate, which is obviously no longer applicable.
9. The Law Society has agreed to treat the "emergency" rule as a matter of emergency to maintain the current statutory provision pending consultation by the SRA on a new definitive rule—i.e. the current consultation.
10. The consultation is about the proposed definitive rule, not the "emergency" rule, but the draft "emergency" rule is shown at **Annex 2**. It should be noted how complex the current provisions are (even without the requirement to give information about remuneration certificates).

## Proposed definitive addition to rule 2 (client relations)

11. It would seem wrong in principle for clients to lose the right to information about the possibility, in relation to bills for non-contentious matters, of getting their bills reduced. To keep this right intact would require a new professional requirement to be added to rule 2 (client relations) of the Solicitors' Code of Conduct 2007.
12. As to the content of a new professional requirement, questions to be answered include:
  - **Should the requirement merely be to provide information as to rights to assessment by the court, or should it include (as the nearest equivalent of remuneration certifying) information as to the right to complain to the LCS (or in future the Office for Legal Complaints - the OLC)?** The SRA's Firm-Based Regulation Group (FBRG) answered “yes, it should include the wider information”.
  - **Should there be a reference to using firms' internal complaints procedures?** The FBRG answered “yes, it should include such a reference”.
  - **Can there be any justification in requiring information to be made available in respect of non-contentious bills and not for contentious bills?** The FBRG felt there was no justification for such a distinction, given that (a) in principle clients have a right to be notified, (b) it is believed that most firms use the same form for contentious and non-contentious bills, and (c) deciding whether a bill is contentious or non-contentious can raise tricky legal issues.
  - **At what point should it be compulsory to give the information to clients? In the firm's terms of business letter? When the costs are billed? Or before suing for the costs?** The FBRG felt it should be when the costs are billed.
  - **If the information should be given at the time the costs are billed, should the information be on the bill itself, or could it be included**

**in a letter sent with the bill?** The FBRG felt it could be either on the bill itself or in a letter sent with the bill.

- **Should the new rule be mandatory in all cases, or should it be possible for a firm to demonstrate that it was inappropriate in the circumstances to comply with some or all of the requirements of the rule?** The FBRG felt the rule should be mandatory in all cases.

13. A draft of the proposed definitive rule appears at **Annex 3**.

14. A set of questions and answers is at **Annex 4**.

## Annex 1

Current SRA guidance – for information

### **Specimen information for entitled persons under the Solicitors' (Non-Contentious Business) Remuneration Order 1994**

#### **Remuneration certificates**

The specimen information for the entitled person is not part of the Order and solicitors may use any form of words which complies with the requirements of the Order.

- (1) If you are not satisfied with the amount of our fee you have the right to ask us to obtain a remuneration certificate from the Legal Complaints Service.
- (2) The certificate will either say that our fee is fair and reasonable, or it will substitute a lower fee.
- (3) If you wish us to obtain a certificate you must ask us to do so *within a month* of receiving this notice.
- (4) We may charge interest on unpaid bills and we will do so at [the rate payable on judgment debts, from one month after delivery of our bill].
- (5)
  - (i) If you ask us to obtain a remuneration certificate, then unless we already hold the money to cover these, you must first pay
    - o half our fee shown in the bill;
    - o all the VAT shown in the bill;
    - o all the expenses we have incurred shown in the bill—sometimes called "paid disbursements".
  - (ii) However, you may ask the Legal Complaints Service at 8 Dormer Place, Leamington Spa, Warwickshire CV32 5AE to waive this requirement so that you do not have to pay anything for the time being. You would have to show that exceptional circumstances apply in your case.
- (6) Your rights are set out more fully in the Solicitors' (Non-Contentious Business) Remuneration Order 1994.

#### **Taxation**

You may be entitled to have our charges reviewed by the court. (This is called "taxation" or "assessment".) The procedure is different from the remuneration certificate procedure and it is set out in sections 70, 71 and 72 of the Solicitors Act 1974.

## Annex 2

Draft of proposed "emergency" rule – for information

### **[Draft] Solicitors' Code of Conduct (Client Relations) LSA Amendment Rules [2009]**

*Rules dated [the date of the final concurrence or approval]*

*commencing [the date of the repeal of the Solicitors' (Non-Contentious Business) Remuneration Order 1994, or the date of the final concurrence or approval, whichever is the later]*

*made by the Solicitors Regulation Authority Board under sections 31, 79 and 80 of the Solicitors Act 1974 and section 9 of the Administration of Justice Act 1985*

*with the concurrence of the Master of the Rolls and the Lord Chancellor under Schedule 22 to the Legal Services Act 2007*

*and the approval of the Secretary of State under Schedule 4 to the Courts and Legal Services Act 1990*

*further amending the Solicitors' Code of Conduct 2007.*

#### **Rule 1**

In the Solicitors' Code of Conduct 2007, amend rule 2 (client relations) by adding:

#### **"2.08 Information on challenging a non-contentious bill**

(1) If you are a solicitor, REL or recognised body:

- (a) before you bring proceedings to recover costs against a client on a bill for non-contentious business, you must (unless the proceedings are only to recover disbursements, or unless the bill has been assessed by the court) inform the client in writing:
  - (i) that sections 70, 71 and 72 of the Solicitors Act 1974 set out the client's rights in relation to having the bill assessed by the court; and
  - (ii) that you are entitled to charge interest on the outstanding amount of the bill in accordance with article 5 of the Solicitors' (Non-Contentious Business) Remuneration Order 2009; and
- (b) if you deduct your costs (other than disbursements) from money held for or on behalf of a client or estate in satisfaction of a bill and an entitled person objects in writing to the amount of the bill within the prescribed time, you must (unless you have already done so) immediately inform the entitled person in writing:

- (i) that sections 70, 71 and 72 of the Solicitors Act 1974 set out the entitled person's rights in relation to having the bill assessed by the court; and
- (ii) (if the whole of the bill has not been paid, by deduction or otherwise) that you are entitled to charge interest on the outstanding amount of the bill in accordance with article 5 of the Solicitors' (Non-Contentious Business) Remuneration Order 2009.

(2) In this rule:

- (a) "entitled person" means a client or an entitled third party;
- (b) "entitled third party" means a residuary beneficiary absolutely and immediately (and not contingently) entitled to an inheritance, where you have charged the estate for your professional costs for acting in the administration of the estate, and either:
  - (i) the only personal representatives are solicitors, RELs or recognised bodies (whether or not acting in a professional capacity); or
  - (ii) the only personal representatives are solicitors, RELs or recognised bodies acting jointly with partners or employees in a professional capacity; and
- (c) "the prescribed time" means
  - (i) 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
  - (ii) 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."

## **Rule 2**

These amendment rules come into force on [the date of the repeal of the Solicitors' (Non-Contentious Business) Remuneration Order 1994, or the date of the final concurrence or approval, whichever is the later].



## Annex 3

### Draft of proposed definitive rule – for consultation

#### [Draft] Solicitors' Code of Conduct (Client Relations) LSA Amendment (No. 2) Rules [2009]

*Rules dated [the date of the final concurrence or approval]*

*commencing [the first day of the third calendar month to commence after the date of the final concurrence or approval]*

*made by the Solicitors Regulation Authority Board under sections 31, 79 and 80 of the Solicitors Act 1974 and section 9 of the Administration of Justice Act 1985*

*with the concurrence of the Master of the Rolls and the Lord Chancellor under Schedule 22 to the Legal Services Act 2007*

*and the approval of the Secretary of State under Schedule 4 to the Courts and Legal Services Act 1990*

*further amending the Solicitors' Code of Conduct 2007.*

#### **Rule 1**

In the Solicitors' Code of Conduct 2007, delete rule 2.08 (information on challenging a non-contentious bill) and substitute:

#### **"2.08 Information on challenging a bill**

(1) If you are a solicitor, REL or recognised body, your bills (or a letter which accompanies your bills) must include wording to the following effect:

"You may have a right to object to this bill by way of the firm's complaints procedure, and/or by making a complaint to the Legal Complaints Service, and/or by applying to the court for an assessment of the bill under Part III of the Solicitors Act 1974.

If all or part of this bill remains unpaid we may be entitled to charge interest."

(2) After repeal of section 37A of the Solicitors Act 1974, the words "Legal Complaints Service" shall be amended to "Office for Legal Complaints".

#### **Rule 2**

These amendment rules come into force on [the first day of the third calendar month to commence after the date of the final concurrence or approval].

## Annex 4

### Consultation

#### Proposed definitive new rule on costs information for clients

- Q.1 Do you agree that there should be a new rule to replace the requirements in the current Remuneration Order on giving information to clients and others about how to question a bill?
- Q.2 Should the requirement merely be to provide information as to rights to assessment by the court? Or should it include information as to the right to complain to the LCS (or in future the OLC)?
- Q.3 Should the required information include a reference to using firms' internal complaints procedures?
- Q.4. Can there be any justification in requiring information to be made available in respect of non-contentious bills only? Or should the requirement also cover contentious bills?
- Q.5 At what point should it be compulsory to give the information to clients? In the firm's terms of business letter? When the costs are billed? Or before suing for the costs?
- Q.6 If the information is given at the time the costs are billed, should the information be on the bill itself? Or could it be included in a letter sent with the bill?
- Q.7 Should the new rule be mandatory in all cases? Or should it be possible for a firm to demonstrate that it was inappropriate in the circumstances to comply with some or all of the requirements of the rule?
- Q.8 Do you have any other comments?

#### How to respond

The deadline for submission of responses is 13 October 2009, but we request responses by 6 October 2009 if possible.

You can submit your responses either by email or by post. For our email and postal addresses, please visit [www.sra.org.uk/contact-us](http://www.sra.org.uk/contact-us).

There is no prescribed format for your responses. However, please ensure that in your email or in your letter, you identify yourself, and advise us if you do not wish your name or the name of your firm or organisation to appear on the published list of respondents.

