

## **SOLICITORS (CLIENT COMMUNICATION) PRACTICE REGULATIONS 2008**

The Council of the Law Society of Northern Ireland, in exercise of the powers conferred on them by Articles 74(1) and 75(1) of the Solicitors (Northern Ireland) Order 1976 as amended and all other powers enabling them on that behalf, and with the concurrence of the Lord Chief Justice of Northern Ireland hereby make the following Regulations for the purposes mentioned in Article 26(1) of the said Order.

### **Citation and Commencement**

1. (a) These Regulations may be cited as the Solicitors (Client Communication) Practice Regulations 2008.
- (b) These Regulations shall come into force on 1<sup>st</sup> September 2008.

### **Definition and Interpretation**

2. (1) In these Regulations, unless the context otherwise requires:-

**"the 1976 Order"** means the Solicitors (Northern Ireland) Order 1976 as amended by the Solicitors (Amendment) (Northern Ireland) Order 1989;

**"the 1981 Order"** means the Legal Aid Advice and Assistance (Northern Ireland) Order 1981;

**"the 2003 Order"** means the Access to Justice (Northern Ireland) Order 2003;

**"Practice Regulations"** means the Solicitors Practice Regulations 1987 subject to any amendments thereto which may be made from time to time;

**"advice and assistance"** means for the time being, advice and assistance under the provisions of Articles 4 and 5 of the 1981 Order; and on commencement, shall have the meaning set out in Article 2(2) of the 2003 Order;

**"civil legal services"** shall, on its commencement, have the meaning given to it in Article 10 of the 2003 Order;

**"client"** is defined by Article 3(2) of the Solicitors (Northern Ireland) Order 1976 as amended by the Solicitors (Amendment) (Northern Ireland) Order 1989;

**"the Council"** means the Council of the Law Society of Northern Ireland;

**"domestic property"** has the meaning set out in Regulation 8A (3)(a) of the Practice Regulations;

**"legal aid"** has the meaning given to it in Regulation 1 (2) of the Legal Aid and Advice Regulations (Northern Ireland) 1965;

**"the Society"** means the Law Society of Northern Ireland as defined by Article 3(2) of the Solicitors (Northern Ireland) Order 1976 as amended by the Solicitors (Amendment) (Northern Ireland) Order 1989;

**"solicitor"** means a solicitor of the Supreme Court of Northern Ireland and shall include a firm of solicitors, an incorporated practice or any association of solicitors;

- (2) The Interpretation Act (Northern Ireland) 1954 applies to the interpretation of these Regulations as it applies to the interpretation of any statutory instrument.

### **Client Care Information**

3. A solicitor shall, when tendering for the provision of legal services or at the earliest practical opportunity upon receiving instructions to undertake legal services on behalf of a client, provide the following information to the client in writing: -
- (a) details of the work to be carried out on behalf of the client;
  - (b) the identity of the person or persons in the solicitor's firm who will principally provide legal services on behalf of the client;
  - (c) the identity of the person whom the client should contact if the client becomes concerned with the manner in which the work is being carried out.

### **Costs Information**

4. (1) Save where the client is being provided with advice and assistance or assistance under legal aid or with civil legal services, a solicitor shall, when tendering for the provision of legal services or at the earliest practical opportunity upon receiving instructions to undertake legal services on behalf of a client, provide the following information to the client in writing either :-
- (a) an accurate and clear estimate of the total professional fee to be charged for the work, including a note that VAT will be charged at the then current rate at the time of issue of the bill and details of any outlays which may be incurred in the course of the work; or
  - (b) the basis upon which a professional fee will be charged for the work, including a note that VAT will be charged at the then current rate at the time of issue of the bill and details of any outlays which may be incurred in the course of the work.

(2) If the client is being provided with advice and assistance or assistance under legal aid or civil legal services the solicitor shall provide:

- (a) details of the level of contributions required from the client;
- (b) an indication of the factors which may affect any contribution;
- (c) details of any payment which may be required from damages or property recovered or preserved.

### **In-house Complaints Procedures and Records**

5. A solicitor shall:-

- (a) have a written complaints procedure which should be provided to the client as soon as practicable after the client has indicated concern about the manner in which the work is being carried out; and
- (b) maintain a complaints register which shall record the history of all written complaints made to the solicitor by clients including details of how those complaints were resolved.

### **Code of Practice**

6. In any case to which these Regulations apply, a solicitor shall comply with the Code of Practice set out in the schedule to these regulations.

### **Exceptions**

7. (1) Where a client regularly instructs a solicitor in the same type of work, he need not be provided with the information set out in Regulations 3 and 4 in relation to a new instruction to do that type of work, provided that he has previously been supplied with that information in relation to a previous instruction to do that type of work and is informed of any differences between that information and the information which, if this paragraph did not apply, would have been required to be provided by Regulations 3 and 4.

(2) Where there is no practical opportunity for a solicitor to provide the information set out in Regulations 3 and 4 to a client before the completion of the relevant work for that client then the information need not be provided to that client.

(3) When tendering for or on receipt of instructions for the provision of legal services in respect of domestic property conveyancing, a solicitor must comply with the requirements set out in the Solicitors Practice (Amendment) Regulations 2000 and Regulations 3 and 4 of these regulations shall not apply to that work.

**Waiver**

8. The Council shall have the power to waive any of the provisions of these Regulations either generally or in any particular case or circumstances, provided that such waiver may be made subject to such conditions as the Council may in its discretion determine.

I certify that the above are a true copy of the Regulations passed by the Council of the Law Society of Northern Ireland on 9<sup>th</sup> January 2008, with commencement date fixed by resolution of the Council on 15<sup>th</sup> February 2008.

S i g n e d

Alan Hunter

Secretary/Chief Executive.  
I concur.

Signed:

Lord Chief Justice of Northern Ireland



## SCHEDULE

### CODE OF PRACTICE FOR THE SOLICITORS (CLIENT COMMUNICATION) PRACTICE REGULATIONS 2008

1. **Written information about the legal services being provided (under Regulation 3 (a)).**
  - (a) You must set out your understanding of the client's objectives in relation to the work to be done for the client.
  - (b) You must give the client a clear statement of the issues involved, based on the first interview and the options available to the client.
  - (c) You must set out the steps to be taken and record the level of communication agreed between you and the client as necessary to keep the client informed of progress.
  - (d) You must explain your responsibilities to the client and his responsibilities to you to ensure the case progresses.
  - (e) You must explain any limitations or conditions resulting from your relationship with a third party (e.g. an insurance company or other funder), who may affect the service you can provide.
  - (f) You must indicate that where the initial assessment of the case changes in any way as the case evolves, that you will give the client a written review of the case at that point.
  
2. **Written Information for client on the daily management of the file and the in-house complaints procedure (under Regulation 3 (b) and (c)),**
  - (a) You must give the client the name of the person with the day-to-day management of the file and with the name of the supervising partner, if appropriate. An assurance should be given that in the event of change that the client will be notified immediately;
  - (b) You must give the client details of the firm's in-house complaints procedure and the name of the person or competent body who will handle any written complaint or concerns that the client might have about the service or progress in the case as soon as practicable after the client expresses concern about the manner in which the case is being handled.
  - (c) You must ensure that all staff in your office, whether professional or support staff, are fully aware of the details of your in-house complaints procedure and have authority to give a copy of those procedures to any client who expresses concern about the manner in which the case is being handled to that member of staff, whether verbally or in writing.

**3. Written information to be given to client in relation to costs (under Regulation 4 (1) (a) and (b)).**

- (a) You must give the client either an estimate of the professional fee to be charged, including a note that VAT will be charged at the then current rate, or a statement of the hourly rate, the estimated percentage mark-up for skill care and attention, if any, and/or the value percentage being charged, including a note that VAT will be charged at the then current rate.
- (b) If the hourly rate is subject to inflationary increases, or if payments on account are required or interim bills are to be sent, then this should be indicated.
- (c) Outlays, which are known at the time, should be stated. Where the amount of outlay is uncertain then you should advise that this would be notified as soon as the information becomes available.
- (d) If counsel may be required then this should be stated, with an assurance that the client will be asked to authorise the engagement of counsel at the appropriate time.
- (e) Where the fee estimate is in accordance with Regulation 4 (1) (b), and you propose to charge for time, you should indicate how you would calculate charges for telephone calls in and out and letters received and issued.
- (f) If the costs are to be paid by a third party such as an insurer or other funder, then the cost information should be provided to the third party, with the client being advised that the third party is paying the fees and that this will remain the case so long as there is no conflict between him and the third party.
- (g) You should explain the consequences for the client if a conflict arises between his interests and those of the third party.
- (h) In contentious business cases you should inform the client of the possibility of recovering most or all of his costs from his opponent and that you will pursue those costs on his behalf as best you can, but in the event of a shortfall in costs recoverable from the third party or in the event that the third party refuses to pay, the client is liable for your costs and you are entitled to retain any money paid or held on account of costs.
- (i) In contentious business cases you should inform the client of the potential liability for the opponents costs as well as his own, if the case is unsuccessful.
- (j) If the client is or is likely to be in receipt of legal aid or civil legal services, or if the opponent is or is likely to be in receipt of legal aid or civil legal services, then you should explain the limitations this has on being required

to pay costs, if the case is unsuccessful, or of being able to recover costs if the case is successful but the opponent is in receipt of legal aid or civil legal services.

**4. Written information where the client is entitled to assistance under legal aid advice and assistance, legal aid or civil legal services (under Regulation 4 (2) (a) (b), and (c)).**

- (a) You must at the outset and on a regular basis throughout the retainer consider your client's entitlement to funding from the Legal Services Commission.
- (b) Where the client qualifies for advice and assistance or legal aid or civil legal services, you must include information about the level of contributions, if any, the client will have to make and when these will be required.
- (c) You must advise of the factors, which will affect contributions and provide an explanation of the statutory charge.
- (d) Where the client qualifies for advice and assistance, legal aid or civil legal services, you should not proceed without the protection of that assistance unless you have the informed consent of the client, which must be recorded in the letter of engagement.
- (e) You should also provide the client with any relevant available literature published by the Legal Services Commission relating to their obligations under any of the schemes.

**5. In-house Complaints Procedures and Records (under Regulation 5 (a) and (b))**

- (a) You must have a written client complaints procedure and maintain a complaints register for inspection by the Law Society;
- (b) The written client complaints procedure should provide as a minimum that:
  - (i) there is a designated person or competent body to handle complaints about the firm;
  - (ii) all client complaints should be made in writing;
  - (iii) an acknowledgement of the complaint will be sent within 7 days;
  - (iv) a written response will be sent to the client within a reasonable time, usually within the next 28 days;
  - (v) the client must complain within six months of the conclusion of the

business, or within six months of discovery of the difficulty, whichever is the later;

- (v) in the event of the client being dissatisfied with the in-house investigation, he/she must complain to the Law Society within six months of conclusion of the in-house procedure;
- (c) The register should record at a minimum, the date the complaint was made, the name and address of the client, the date the complaint was dealt with and the outcome.

#### 6. **Exceptions to the Regulations (under Regulation 7).**

- (a) You must be satisfied that the new instruction is repeat work, identical to work previously done or part of a series of ongoing instructions for which the client care and costs information under regulations 3 and 4 have already been provided. In the event of doubt on your part or on the part of the client or on enquiry from the client or prospective client, then the information under regulations 3 and 4 should be delivered for that new instruction, with any discrepancies explained.
- (b) The information required under regulations 3 and 4 need not be given where the work can be completed at the first and only consultation. Where work has to be commenced as a matter of urgency, you may do so but the information required by regulations 3 and 4 must be provided as soon as possible after commencement of the retainer, together with a statement of the costs incurred to the date of provision of that information.
- (c) Domestic property conveyancing is governed by the Solicitors Practice (Amendment) Regulations 2000. However, where in the course of a domestic property conveyance additional work is required outside the scope of that instruction, then you must comply with the provisions of regulations 3 and 4 of these regulations.

#### 7. **Waivers (under Regulation 8)**

On any application for a waiver of the provisions of the regulations the Council will regard the interest of the client or clients as of paramount importance.