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Margaret Hope
Solicitors Regulation Authority
Ipsley Court
Redditch Worcestershire
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By email: LSA@sra.org.uk

Dear Margaret

Re: Repeal of Solicitors' (Non-Contentious Business) Remuneration Order 1994

The City of London Law Society ("CLLS") represents approximately 13,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi jurisdictional legal issues.

The CLLS responds to a variety of consultations on issues of importance to its members through its 17 specialist committees. This response in respect of the SRA's consultation paper "Repeal of Solicitors' (Non-Contentious Business) Remuneration Order 1994" has been prepared by the CLLS Professional Rules and Regulation Committee.

Our views on your 8 numbered questions are as follows:

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?

Yes, subject to consideration of the issues raised elsewhere in this response.

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)?

Clients should be notified of the right to complain to the LCS where this is appropriate and applicable.

In an article dealing with this rule change on page 13 of issue 3 of the Law Society legal compliance bulletin it was stated that "The LCS will only investigate a complaint about the level of fees charge where there is a prima facie complaint of inadequate professional service. This means that a client is no longer able to asks the LCS to review the reasonableness of the bill simply to 'double check' that the fees are fair as was the case with the remuneration certificate process".

To reflect this the rule must draw a distinction between a commercial dispute over quantum and circumstances where the bill is being disputed as a consequence of inadequate professional service. Reference to the LCS is applicable in the latter scenario only.

In the first instance we do not believe the client should be referred to the LCS, but suggest that the client is advised of their right to complain only in the following terms: "You may have a right to apply to the court for an assessment of this bill under Part III of the Solicitors Act 1974".

Where and when notification and information on the right of referral to the LCS should be given is dealt with in our response to Q5.

Q.3 Should the required information include a reference to using firms' internal complaints procedures?

Not in the first instance.

Where the complaint arises as a consequence of inadequate professional service the firm's internal complaints procedure will be invoked in the normal way; a copy of the procedure (and information as to the right to complain to the LCS) should be sent to the client at this point.

See our response to Q2 and Q5.

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?

Subject to consideration of the matters raised elsewhere in our response, the requirement should cover all 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?

With reference to giving the information on raising a complaint about the bill with the solicitor using the wording specified in our response to Q2, at the outset of the matter in the firm's client care letter or standard terms of business or, in default of this, before suing the client for costs.

With reference to giving information on the firm's complaint procedure and as to the right to complain to the LCS:

1. In the firm's client care letter or standard terms of business as is required by rule 2.05(1)(b); and
2. When a complaint is received and this complaint relates to inadequate professional service (as opposed to a commercial dispute over quantum), in writing as is required by rule 2.05(1)(d).

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?

We do not support the proposal that providing this information with the bill should be made mandatory, in particular when dealing with sophisticated commercial clients (see our responses to Q7 and Q8).

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?

The new rule should not be mandatory in all cases; a distinction has to be drawn between a commercial dispute over quantum and a bill which is being disputed as a consequence of inadequate professional service (see our response to Q2).

There is also a distinction to be drawn between sophisticated commercial clients, who do not require this sort of protection, and unsophisticated private clients who may require more protection; the rule should recognise this distinction.

There is also a danger that more sophisticated clients may seek to exploit the rule to frustrate or delay recovery. Making this rule mandatory may put a firm at a commercial disadvantage and constitute an inappropriate and unnecessary intervention in dealings with sophisticated clients.

Q.8 Do you have any other comments?

Increasing numbers of clients are using e-billing technology and insist that professional service providers, including lawyers, bill them electronically. These clients and the software they use prescribe the information and the format of electronic bills; many systems do not allow for additional data to be added.

A rule making the provision of this information mandatory is incompatible with this technology, is not required or necessary when dealing with sophisticated clients (who know how to complain), and would add unnecessarily to the costs and administrative burden of the firms involved.

Yours sincerely

David McIntosh
Chair
City of London Law Society

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