



The Law Society

Contentious Costs

Practice Advice Service

June 2012



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Practice Advice Service

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The Practice Advice Service is staffed by solicitors who deal with enquiries using their own knowledge and a variety of information sources, as well as the experience of colleagues in the Legal Policy Directorate. It deals with enquiries on legal practice in many areas of law including solicitors' costs and Law Society policy.

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Part 1 - Introduction

This booklet, prepared by the Practice Advice Service, is not intended to be a fully comprehensive guide to contentious costs but attempts to cover those areas that generate the most frequent enquiries from solicitors.

This booklet provides information on charging in contentious matters. It discusses billing generally and the procedures available to clients who wish to challenge solicitors' costs.

Solicitors should familiarise themselves in more detail with:

- SRA Code of Conduct 2011, in particular Chapter 1 which deals with Client care
- Parts 43 to 48 of the Civil Procedure Rules 1998 ('CPR') and supplementing Costs Practice Direction

Throughout this booklet, reference is made to various procedures available under the Civil Procedure Rules (CPR). The court fees applicable to each procedure may be accessed at www.hmcourts-service.gov.uk.

Review of civil litigation funding and costs 'the Jackson Report'

In November 2008, Lord Justice Jackson was asked to conduct a fundamental review of the rules and principles governing the costs of civil litigation and to make recommendations which would promote access to justice at proportionate cost.

The Jackson proposals are set out in more detail at the end of this booklet in Appendix 1. In February 2012, the Government indicated that implementation will be deferred until April 2013.

'Costs and customer service in a changing legal services market'

Solicitors find themselves in an ever changing and increasingly competitive legal landscape. The subject of costs continues to be one of the areas that generates most complaints from clients and on 6 March 2012, the Legal Ombudsman (LeO) published a thematic report entitled 'Costs and customer service in a changing legal services market' addressing the issues surrounding costs together with '**An Ombudsman's view of good costs service**' (a guide for lawyers) and 'Ten questions to ask your lawyer about costs' (a guide for consumers). LeO's intention is to give practical advice to assist lawyers improve their service and to give a greater level of specificity to its approach to complaints. The report and guides are available to download at www.legalombudsman.org.uk

For queries or comments on this booklet contact

- **Practice Advice Service:**

This Law Society telephone helpline provides support to solicitors on a wide range of areas of legal practice and procedure. The service is staffed by solicitors and can be contacted on 0870 606 2522 from 09.00 to 17.00 on weekdays.

www.lawsociety.org.uk/practiceadvice

- **Lawyerline:**

This Law Society telephone helpline provides specific support to solicitors on client care and complaints handling. The service is staffed by solicitors and can be contacted on 0870 606 2588 from 09.00 to 17.00 on weekdays. www.lawsociety.org.uk/lawyerline

This booklet refers to various cases. Practitioners requiring copies of the relevant cases or information on case law may wish to contact the Law Society library, telephone 0870 606 2511 or email library@lawsociety.org.uk

Other Practice Advice Service booklets

Booklets on non-contentious costs (entitled 'Non-contentious Costs') and conditional fee agreements (entitled 'Payment by Results') are also available. For advice on solicitors' costs generally, please telephone the Practice Advice Service on 0870 606 2522 or email practiceadvice@lawsociety.org.uk

Contentious costs – what are they?

Contentious costs in this booklet are defined as monies payable for legal services in connection with contentious business

Section 87(1) Solicitors Act 1974 (as amended by s107(2), Sch 4 Arbitration Act 1996 and s8 Sch 1 para 12(A) Administration of Justice Act 1985) defines contentious business as being:-

‘Business done, whether as a solicitor or advocate, in or for the purpose of **proceedings begun before a court or before an arbitrator**....not being business which falls within the definition of non-contentious or common form probate business contained in **s128 Senior Courts Act 1981**.’

Non-contentious costs

Following s 87(1), non-contentious business is defined as ‘any business done as a solicitor which is not contentious business’.

Work done **prior to proceedings being issued** is regarded as non-contentious provided proceedings are not subsequently issued.

* **Please note** - if proceedings are subsequently issued, it is a moot point whether all prior work leading to the action automatically becomes contentious. Please see Obiter comment of Lord Justice Brooke in **Crosbie v Munroe [2003] EWCA Civ 350**.

If solicitors in England and Wales are involved in work where proceedings are issued abroad, the work will be regarded as non-contentious.

For further information on non-contentious costs, please refer to the Practice Advice Service booklet ‘Non-contentious Costs’ which is available at www.lawsociety.org.uk

Examples of contentious and non-contentious matters

Contentious	Non-contentious
1. Proceedings actually begun in the County Court, High Court, Magistrates Court, Crown Court and the Court of Protection.	As a general rule, tribunals work is non-contentious (although there are exceptions, see para 2 in the contentious column). Please note that work in the Employment Tribunal has its own rules in s58AA of Courts and Legal Services Act 1990 and the Damages Based Agreements Regulations 2010.
2. There are exceptions to the general rule about tribunals work being non-contentious – for example, section 3(5) of the Tribunals, Courts and Enforcement Act 2007 states that the Upper Tier Tribunal is a “court of record”. Because of this, such work is	Planning and other public enquiries including Coroners Court work.

“business done ... before a court” for the purposes of s87 of the Solicitors Act 1974. For Employment Tribunals, please see the specific rules in s58AA of Courts and Legal Services Act 1990 and the Damages Based Agreements Regulations 2010.	
3. Contentious probate proceedings actually begun.	Non-contentious or common form probate business.
4. Proceedings on appeal to the Court of Appeal, Privy Council and House of Lords.	Conveyancing, company acquisitions and mergers, the administration of estates and trusts out of court, the preparation of wills, statements and contracts, and any other work not included in the ‘contentious’ column.
5. Proceedings in arbitration.	Criminal Injuries Compensation Authority.
6. Motor Insurers Bureau Uninsured drivers’ claims (proceedings issued).	Motor Insurers Bureau Untraced drivers’ claims. Motor Insurers Bureau Uninsured drivers’ claims (proceedings not issued).
7. Work done preliminary to proceedings covered by 1-5 above including advice, preparation and negotiations provided the proceedings are subsequently begun (although see note above*).	Work done preliminary to the proceedings included in the ‘contentious’ column if such proceedings are not subsequently begun.
8. Licensing (appeals to Magistrates Court)	Licensing (administered by Local Authority)

Part 3 - SRA Code of Conduct 2011 ('the Code')

The Solicitors Regulation Authority (SRA) implemented a new set of outcomes-focused rules (OFR) on 6 October 2011. The SRA have moved away from prescriptive rules and towards a new more constructive and risk-based approach to work. The emphasis will be on high-level outcomes governing practice and the quality of outcomes for clients.

At the heart of the new regime are ten mandatory Principles. The SRA Handbook advises **"You should always have regard to the Principles and use them as your starting point when faced with an ethical dilemma ..."**.

The Code sets out mandatory Outcomes and these are supported by Indicative Behaviours (IBs), which serve to assist in determining how solicitors might achieve compliance. Although the IBs are not mandatory, solicitors who do not follow them may be required to demonstrate how they have nevertheless achieved the outcomes and therefore complied with the Principles.

Client Care

Client care continues to be of paramount importance and the relevant rules are set out in Chapter 1 of the new Code.

In particular, solicitors should familiarise themselves with the following Outcomes:

Outcome	Requirement
1.9	clients are informed in writing at the outset of their matter of their right to complain and how complaints can be made
1.10	clients are informed in writing, both at the time of engagement and at the conclusion of your complaints procedure, of their right to complain to the Legal Ombudsman, the time frame for doing so and full details of how to contact the Legal Ombudsman
1.11	clients' complaints are dealt with promptly, fairly, openly and effectively
1.13	clients receive the best possible information, both at the time of engagement and when appropriate as their matter progresses, about the likely overall cost of their matter
1.14	clients are informed of their right to challenge and complain about your bill and the circumstances in which they may be liable to pay interest on an unpaid bill

Acting in the following way may tend to show how solicitors have achieved the above Outcomes and therefore complied with the Principles:

Indicative Behaviour	Suggestion
1.4	explaining any arrangements, such as fee sharing or referral arrangements, which are relevant to the client's instructions
1.5	explaining any limitations or conditions on what you can do for the client, for example, because of the way the client's matter is funded
1.13	discussing whether the potential outcomes of the client's matter are likely to justify the expense or risk involved, including any risk of having to pay someone else's legal fees
1.14	clearly explaining your fees and if and when they are likely to change
1.15	warning about any other payments for which the client may be responsible
1.16	discussing how the client will pay, including whether public funding may be available, whether the client has insurance that might cover the fees, and whether the fees may be paid by someone else such as a trade union
1.17	where you are acting for a client under a fee arrangement governed by statute, such as a conditional fee agreement, giving the client all relevant information relating to that arrangement
1.19	providing the information in a clear and accessible form which is appropriate to the needs and circumstances of the client
1.22	having a written complaints procedure which: <ul style="list-style-type: none"> a) is brought to clients attention at the outset of the matter; b) is easy for clients to use and understand, allowing for complaints to be made by any reasonable means; c) is responsive to the needs of individual clients, especially those who are vulnerable; d) enables complaints to be dealt with promptly and fairly, with decisions based on a sufficient investigation of the circumstances; e) provides for appropriate remedies; and f) does not involve any charges to clients for handling their complaints.
1.23	providing the client with a copy of the firm's complaints procedure on request
1.24	in the event that a client makes a complaint, providing them with all necessary information concerning the handling of the complaint

Costs estimates

Outcome (1.13) provides that “clients receive the best possible information, both at the time of engagement and when appropriate as their matter progresses, about the likely overall cost of their matter”.

Solicitors should therefore give the best estimate possible at the outset of the matter and make it clear that the estimate is not intended to be fixed. Solicitors should also inform the client that if there are unforeseen developments and/or complications the estimate may need to be revised and updated and the client will be advised of this as the matter progresses. In protracted matters such as litigation, it may be advisable for solicitors to give staged estimates, with an overall estimate at a later stage once all the issues have been identified.

Solicitors should however note that if they give an inaccurate estimate which is too low the client may be able to claim that the solicitor’s estimate was negligently given and that the client suffered loss as a result of this estimate by being deprived of the opportunity to call a halt to the matter before substantial costs were incurred and by being deprived of the opportunity to instruct other solicitors who may have charged less. In those circumstances, it may be found that the client has reasonable justification not to pay a bill which exceeds the estimate (see **Mastercigars Direct Ltd v Withers LLP [2007] EWHC 2733**, **Leigh v Michelin Tyre Plc [2003] EWCA Civ 1766** and **Wong v Vizards (a firm) [1997] 2 Costs LR 46**).

This situation should be distinguished from one where further work is necessary which could not reasonably have been expected at the outset and which increases the costs in excess of the estimate. In those circumstances, the solicitor could not be said to be negligent if further work is required in excess of that estimate and the additional costs should be recoverable from the client. In **Minkin v Cawdery Kaye Fireman & Taylor (A Firm) [2012] EWCA Civ 546** the Court of Appeal found on the facts that the solicitor was entitled to recover costs in excess of the estimate given by the solicitor at the outset because the litigation had become more complicated than had been envisaged and the solicitor could not have been expected to anticipate this when providing the estimate.

Complaints

A complaint about costs may fall into two distinct parts: the fairness and reasonableness of a solicitors’ charges and the adequacy of the client care information provided to the client. Where the client is complaining about the fairness and reasonableness of the charges, then this will be a matter for the solicitor to consider under his complaints handling procedure. If the matter cannot be resolved, the client should be informed of his entitlement to seek assessment of the costs by the court under **s70 Solicitors Act 1974 (Outcome (1.14))**.

If alternatively or in addition, the complaint is about the adequacy of the costs information provided, then again this will be a matter for the solicitor to consider under his complaints handling procedure. If the matter cannot be resolved, the client should be informed of his right to complain to the Legal Ombudsman, the time frame for doing so and full details of how to contact the Legal Ombudsman (**Outcome 1.10**).

Findings from the Legal Ombudsman's Report 'Costs and customer service in a changing legal market' – avoiding complaints about costs

The Legal Ombudsman (LeO) reports that costs have been the most common reason for the complaints it has received. LeO believes the majority of costs complaints could have been avoided if the lawyers had been more open and transparent about the cost of their services. LeO recommends that lawyers provide clear information in client care letters, cost estimates and bills.

Important messages which can be taken from this Report are that a solicitor should explain their costs to the client at the outset, before the client engages the solicitor, including explaining the meaning of such terms as “disbursements” with which many clients are unfamiliar. Further, in most cases only quoting an hourly rate, plus VAT and disbursements is meaningless to a client unless there is a limit on the total costs or an estimate for the overall costs is given. Also, lawyers should attempt to resolve client complaints in house as early as possible so the client does not feel the need to complain to LeO.

Although LeO has jurisdiction only to deal with complaints from individuals, very small businesses, charities, clubs and trusts, the complaints it receives on problems such as lack of sufficient information about the level of costs at the outset are relevant to dealings with all clients, whether individuals or large companies.

Further Reference on Client Care and Complaints Handling

The SRA Handbook, including the Code of Conduct 2011, can be viewed at www.sra.org.uk/handbook

Solicitors may also find the following Law Society Practice Notes of assistance:

- Client Care Letters
- Complaints Management
- Initial Interviews
- Provision of Service Regulations 2009
- Publicising Solicitors' Charges

These can be downloaded at www.lawsociety.org.uk/practicenotes.

Lawyerline

The Law Society's Lawyerline provides specific support to solicitors on client care and complaints handling. The service is staffed by solicitors and can be contacted on 0870 606 2588 from 09.00 to 17.00 on weekdays or by e-mail: lawyerline@lawsociety.org.uk.

Risk & Compliance Service

In today's evolving legal environment, risk management will be a key differentiator between providers of legal services. In response to this, the Law Society has created an innovative Risk and Compliance Service, building on the successful delivery of our in-house client care and compliance consultancy service in 2009. This new service will help solicitors:

- understand risk management and legal and statutory requirements
- develop a robust and coordinated approach to compliance

The service provides support and expertise through a comprehensive range of tools and information that can be tailored to solicitors' needs, enabling them to address successfully and respond to changes in regulatory, financial and client expectations.

Our service will help solicitors demonstrate to the SRA, the Legal Ombudsman (LeO) and other key stakeholders that their firm is focused on the following core areas:

- improving client care and complaints handling
- supervision
- risk management
- quality assurance
- the exercise of sound professional principles

The service will help solicitors to assess their firms' appropriate response to regulatory requirements and supervision, based on the SRA's risk analysis of management systems and procedures.

Membership of the service will help solicitors plan ahead, so that their firms are ready to respond proactively to the demands and uncertainties of operating within a fast evolving regulatory framework.

For further information on membership and fees, please email Risk & Compliance at riskandcompliance@lawsociety.org.uk

Part 4 - Client retainer

The retainer is a contract between the parties and is subject to the ordinary laws of contract. However, the relationship is also governed by the Solicitors Act 1974 which gives the Court the power to assess whether the solicitor's costs are reasonable.

It is not a legal requirement that the retainer should be in writing and under s15 of the Supply of Goods and Services Act 1982 a term will be implied that the solicitor is paid reasonable remuneration for their services. However, in most cases it is advisable to enter into a written retainer as the solicitor is obliged to provide the client with certain information in writing.

Solicitors are also required to adhere to **Outcome (1.16)** of the Code which states that solicitors must only enter into fee agreements with clients that are legal, and which they consider suitable for the client's needs and take account of the client's best interests.

The Law Society publishes a Practice Note on Client Care which includes advice on the information that should be provided to clients about costs and other matters (see **Client Care** above).

In contentious matters in the county court, solicitors should ensure the client signs a copy of the terms of business. The practical effect of CPR rule 48.8(1A) is that unless a client signs a written agreement as to the solicitor's terms of business, s74(3) of the Solicitors Act 1974 limits the amount which the client has to pay his solicitor on the assessment of any item in county court proceedings to that which the client could have recovered from the opposing party.

When considering the options available to a client, if the matter relates to a dispute between the client and a third party, a solicitor should discuss whether mediation or some other alternative dispute resolution (ADR) procedure may be more appropriate than litigation, arbitration or other formal processes. There may be a costs sanction if a party refuses ADR, please see **Halsey v Milton Keynes Trust [2004] EWCA (Civ) 576**.

Part 5 - Methods of charging

The charging options available in contentious matters are:

- hourly rate
- fixed costs
- contingency fee agreements
- conditional fee agreements
- contentious business agreements
- public funding

Hourly rate

Traditionally, privately paying clients paid for work as it was carried out. This was on the basis of (i) the cost per hour of the time spent by a solicitor on a matter having regard to the overhead expenses of that solicitor's firm (the 'A' rate) and (ii) the mark-up for care and conduct, usually at 50 per cent of the A rate (the 'B' rate).

It is now standard practice to charge the client an inclusive figure incorporating the fee earner's expense rate and any appropriate care and conduct uplift.

Charging an hourly rate for time spent is the usual method of charging in contentious matters. As mentioned above (see ***Estimates***), Outcome (1.13) of the Code requires that clients receive the best possible information, both at the time of engagement and when appropriate as the matter progresses, about the likely overall cost of their matter.

The Legal Ombudsman's Report '***Costs and customer service in a changing legal services market***' highlights a common complaint where solicitors provide details of their hourly rate but fail to give the client an overall estimate for their charges at the outset of the retainer and fail to update that estimate during the retainer.

For more information, see above **Client Care** and '***Costs and customer service in a changing legal services market***'.

Guideline hourly rates

In relation to summary assessment of costs, the Senior Court Costs Office (SCCO) sets Guideline Hourly Rates (GHR) for different levels of fee earner in different parts of the country where routine costs are assessed summarily for at the end of a hearing which lasts no more than a day.

Although the solicitor can charge the client an hourly rate which is more than the GHR, if the client is seeking to recover costs from the other side in most cases he will only recover costs at the GHR for what is assessed as the appropriate level of fee earner to carry out the work and at the rate set for the geographical location in question. **IB (1.15)** of the Code requires the client to be warned about any payments for which they may be responsible. Firms should ensure that the client understands that that he may not recover all his costs from the other side even if a costs order is made in his favour. Solicitors should note the relevance of CPR r.48(1A) as set out earlier in this booklet and ensure the client signs the terms of business (see below **Client retainer**).

For further information and the latest GHR figures, please see

Fixed Costs

For certain types of proceedings, fixed costs are recoverable from another party (usually the unsuccessful opposing party) unless the Court orders otherwise (CPR r45.1).

For claims for a specified sum of money where judgment is entered at an early stage either because the defendant admits the sum claimed, judgment in default or summary judgment is entered or the defence is struck out as disclosing no reasonable grounds for defending the claim, only fixed costs in the amount specified in CPR Part 45, are usually recoverable. However, the Court has the power to make a different order and may order that the costs be assessed instead (CPR r45.1).

Fixed costs will also usually be ordered where a judgment creditor has taken steps under CPR Parts 70-73 to enforce a judgment. The provisions as to fixed costs also apply to certain possession proceedings where the defendant does not defend the claim (CPR r45.1).

Fixed *trial* costs also apply to cases allocated to the fast track (CPR Part 46).

Pre-Action Protocol for Low Value Personal Injury Claims in Personal Injury

The Civil Procedure (Amendment) Rules 2010 and **update 52** which came in to force in April 2010 introduced a new Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents ('the RTA Protocol'). This applies to road traffic accident personal injury claims where general damages (pain and suffering and loss of amenities) are valued between £1,000 and £10,000. The road traffic accident must have occurred on or after 30 April 2010. The Protocol provides for fixed stages and costs with set deadlines for both claimants' and defendants' solicitors.

For accidents which occurred between 6 October 2003 to 29 April 2010 and those which exit the new scheme for some reason, then the fixed recoverable costs scheme as set out in **CPR Part 45 and the accompanying Practice Direction about costs (PD43-48) at s25A** still applies. For more information about this, please see our booklet entitled 'Payment by Results'.

As mentioned above (see **Client retainer**), the practical effect of **CPR r48.8** is that in every contentious matter a solicitor should ensure that the client signs a written agreement as to his terms of business. Without this, on the assessment of any item in county court proceedings, the solicitor may not be able to recover any more from his client than the client would have recovered from the other side. This may be of particular importance where a solicitor seeks to recover more than fixed costs in a case in which fixed costs would apply.

Contingency fee agreements

A 'contingency fee' is the generic term used to describe any fee arrangement between solicitor and client where the solicitor's fees (whether these are fixed or calculated as a percentage of the monies recovered) are payable only in the event of success.

Contingency fee agreements are traditionally regarded as agreements where the fee is calculated as a percentage of damages recovered.

Contingency fees were expressly prohibited for use in contentious matters in the 2007 Code of Conduct. In the 2011 Code, **Outcome (1.6)** requires solicitors to enter into fee arrangements that are legal. Generally, contingency fees are unenforceable in England and Wales in litigation because they are considered to be champertous arrangements, which are contrary to public policy and the common law. However, practitioners are reminded that there is no prohibition against doing non-contentious work on a contingency fee basis.

In relation to proceedings before tribunals, the case of **Tel-ka Talk Ltd v. HMRC [2010] EWHC 90175 (Costs)** confirmed that these are non contentious. From April 2010, contingency fee agreements used in Employment Tribunal work must comply with the Damages-based Agreements Regulations 2010.

For further information on charging in non contentious matters, please see 'Non-Contentious Costs' produced by the Practice Advice Service and the Law Society Practice Note 'Damages-based Agreements 2010' which are available at www.lawsociety.org.uk

The Jackson Report proposes that contingency fees be permissible in contentious proceedings subject to regulations which include a cap on the maximum percentage of damages that can be recovered in fees, see www.judiciary.gov.uk

Conditional fee agreements

A conditional fee agreement ('CFA') is a type of contingency fee agreement which is permitted for contentious business, providing it meets the requirements contained in section 58 of the **Courts and Legal Services Act 1990 (CLSA 1990) (as amended by section 27 Access to Justice Act 1999)**.

CFAs are beyond the subject matter of this booklet. The Practice Advice Service has produced a separate booklet on conditional fees entitled 'Payment by Results', which includes the Law Society's model CFA for personal injury and clinical negligence cases and is available to download from www.lawsociety.org.uk/practiceadvice. For further guidance, contact the Practice Advice Service.

On the subject of CFAs, the Jackson Report proposes that after-the-event (ATE) insurance premiums and success fees in civil litigation should cease to be recoverable from the other side, that success fees to be capped at 25 per cent of damages payable by the client and that there be an increase of 10 per cent in general damages for pain, suffering and loss of amenity in personal injury matters; see www.judiciary.gov.uk

Contentious business agreements

Contentious business agreements are governed by s 59-63 Solicitors Act 1974, the effect of which is that the client loses the right to a detailed assessment of his costs. Contentious business agreements are now extremely rare and difficult to get right. For this reason, in light of the new consumer focused approach advocated by the Legal Ombudsman, the Law Society recommends that solicitors avoid using them.

Public funding

Public funding as a means of charging for contentious costs is included in this section for the purpose of completeness. IB (1.16) in Chapter 1 of the Code requires the solicitor to consider whether the client may be eligible for public funding and how their publicly funded status affects the costs.

On this issue, the Jackson Report proposes a Contingency Legal Aid Fund (CLAF) and a Supplementary Legal Aid Scheme (SLAS) which are seen as self funding and not-for-profit forms of litigation funding. The report suggests that the Government reviews the viability of these schemes; see www.judiciary.gov.uk

Part 6 - Billing the client

At common law, the retainer is an entire contract so prima facie the solicitor is not entitled to payment until the conclusion of the matter for which he was instructed (see **Underwood, Son & Piper v Lewis [1894] 2 Q.B.306**). On this basis, if the solicitor wrongfully terminates the retainer, this will have the dramatic consequence that the solicitor is not entitled to receive any fees for the work already done and must repay any sum received on account of fees, although not disbursements.

In respect of contentious business, s65(2) Solicitors Act 1974 provides that if a solicitor requests a client to make a reasonable payment on account of costs and the client fails or refuses to do so within a reasonable time the solicitor is entitled, upon giving reasonable notice, to terminate the retainer. What is a reasonable payment and what is reasonable notice will obviously vary depending upon the facts and circumstances of the particular case.

It should also be taken into account that if proceedings are not issued the costs of what would potentially have fallen within the definition of contentious business will in fact be non-contentious business (see above **Contentious costs – what are they?**) so s65(2) will not apply.

As a matter may often be protracted even if proceedings are not commenced, solicitors should therefore ensure that it is a written term of the retainer that the client makes payments on account of costs to be incurred and agree with the client that the solicitor will render interim bills at various intervals during the retainer e.g. on a monthly basis. Also, solicitors should consider making it a written term of the retainer that the solicitor has the right to suspend services until paid.

The solicitor should therefore include a contractual right to suspend services if a client has no reasonable justification for not paying an interim bill. In **Minkin v Cawdery Kaye Fireman & Taylor [2012] EWCA Civ 546**, the Court of Appeal found that the solicitor had properly exercised a contractual right in the solicitor's terms of business to suspend services until payment of an interim bill and where the client terminates the retainer, this absolves the solicitor from any further performance of the contract but it does not absolve the client from paying the costs properly incurred to that date.

It is important to understand the difference between interim bills and final bills because the status of the bill determines whether a solicitor can sue upon a bill and whether a client has the right to a detailed assessment of the bill.

This section deals with:

- interim bills on account
- interim statute bills
- final bills
- gross sum and detailed itemised bills
- delivery of bills

Interim bills on account

Interim bills on account are rendered prior to the conclusion of the retainer. These bills are effectively requests for payments on account of a 'final bill' to be delivered at a later date. It is not possible to sue on this type of bill and a client is not entitled to an assessment of it.

If the client disagrees with the amount of the interim bill on account, he can ask the solicitor to provide an interim statute bill (see below) which can then be assessed by the court.

Section 68 Solicitors Act 1974 enables the court to require a solicitor to provide such a bill.

If the solicitor has taken money on account once he delivers an interim bill to the client, he is usually entitled to transfer funds from client to office account to meet payment of the bill and indeed, in those circumstances, the funds must be transferred out of client account to office account within 14 days (Rule 17 SRA Accounts Rules 2011, see www.sra.org.uk)

Interim statute bills

These bills are termed 'statute bills' because they must comply with all the requirements of the **Solicitors Act 1974**. Whilst interim, they are discrete and entire bills in their own right. Consequently, a solicitor may sue on them and a client may apply for assessment of them. These bills are final bills in respect of the work covered and cannot be adjusted at a later date.

Interim statute bills can arise in two ways:

i. Natural Break

A natural break will arise where one stage in the proceedings is effectively concluded and a second stage begins. Whether a natural break occurs is a question of fact and law and may sometimes be unclear. Accordingly the Law Society's advice is not to rely on this ground except in the clearest circumstances. For guidance on what constitutes a natural break, see *Chamberlain v Boodle and King* [1982] 3 All ER 188 (CA).

ii. Agreement

Solicitors should make it expressly clear in their terms of business letter that they propose to deliver interim statute bills in the event of protracted work.

For guidance on the distinction between interim statute bills and requests for payment on account generally, see the Court of Appeal judgments in *Davidson v Jones-Fenleigh* (The Times 11.03.1980) and *Palomo v Turner* [2000] 1 WLR 37.

Final bills

Final bills may be rendered in the following circumstances:

- i. where a client has agreed to or asked for delivery of a final bill
- ii. at the conclusion of a matter
- iii. on the termination of a retainer
- iv. on an order made by the High Court for the delivery by a solicitor of a bill of costs (see **s68 Solicitors Act 1974**)

Where interim bills on account have been rendered, these should be treated as requests for payment of money on account. The solicitor should therefore prepare a final bill which covers all the solicitor's costs and disbursements incurred since the commencement of the

retainer and which gives credit for all payments received as a result of the delivery of interim bills on account.

The correct procedure is often not followed in practice and solicitors tend to send a “final” bill for the remainder of the solicitors charges and disbursements due without reference to any previous interim bill on account. However, the solicitor should be aware that this is not the correct procedure specified by the Solicitors Act 1974 and such discrepancies may be identified by the court if proceedings to recover payment or detailed assessment proceeding are commenced.

Gross sum and detailed itemised bills

It is for the solicitor to decide whether to deliver a gross sum bill or one containing detailed items, provided that the costs are not subject to a contentious business agreement under the **Solicitors Act 1974** which may specify the form of bill to be rendered.

In a contentious matter, a client who has received a gross sum bill may, before he is served with proceedings and within three months of the date on which the bill was delivered, require a solicitor to deliver a detailed itemised bill to replace the original bill, see **s64(2) Solicitors Act 1974**. In these circumstances, the solicitor will not be restricted to the amount of the gross sum bill and, if justified after recalculation, may deliver a detailed bill for a higher amount.

Content of bills

A solicitor’s bill should contain sufficient information on the work carried out and the period of time to which it relates, so that the client is able to assess the reasonableness of the charges. Please see **Haigh v Ousey (1857) 7 E&B 578** and **Re Kingsley (1978) 122 Sol Jo 457** for further guidance.

The bill may include unpaid disbursements, however, these must be described in the bill as unpaid (**s67 Solicitors Act 1974**).

VAT

In order to comply with the VAT Regulations 1995, when a third party is paying the solicitor’s costs the bill must be made out to the client (i.e. the person to whom the supply of services is made), however, it should state that the bill is payable by a third party.

Delivery of bills

There is an express statutory requirement that a bill must be signed and delivered whether electronically or otherwise. Once the bill has been delivered, a solicitor is bound by it and except by operation of **s64(2) Solicitors Act 1974** or by consent or order of the court cannot withdraw it, vary, add to it or strike it out, see *Rezvi .v Brown-Cooper* (1997) Costs LR 109.

If the bill does not comply with the provisions of **s69 Solicitors Act 1974** then **s69(1)** provides that no claim shall be brought to recover costs due, and the bill will be unenforceable in the courts. However, it is worth noting that if a claim is brought on a defective bill the court has a discretionary power to allow the solicitor to withdraw the bill and bring a new claim.

Schedule 16 Part 1 s64(3) Legal Services Act 2007, which came into force in March 2008 amended **s69 Solicitors Act 1974**. This amendment allows solicitors to deliver their bills

electronically, provided the client has indicated willingness to accept delivery of the bill electronically and has not subsequently served notice that he no longer wishes to accept bills sent in this way. Please see Appendix 2 for the full text of s69 Solicitors Act 1974.

Part 7 - Client's right to challenge a solicitor's bill

There are three ways that a client can challenge the solicitor's bill:

- i. Assessment under **s70 Solicitors Act 1974**
- ii. Challenge under the common law
- iii. Counterclaim for negligence

(i) Assessment of solicitor and client costs

The client can apply for an assessment of his solicitor's costs under s70 Solicitors Act 1974 and may seek an assessment only of a final or interim statute bill.

There are two bases for the assessment of costs, the standard basis and the indemnity basis, and on neither basis will the court allow costs which have been unreasonably incurred or are unreasonable in amount (**Rule 44.4(1) Civil Procedure Rules**).

On an assessment on the indemnity basis, there is no reference to proportionality and any doubts as to whether costs were reasonably incurred or were reasonable in amount is resolved in favour of the receiving party. However, on an assessment on the standard basis, the court will only allow costs which are proportionate to the matters in issue and will resolve any doubt which it may have about whether costs were reasonably incurred or reasonable and proportionate in amount in favour of the paying party.

Time limits under s70 Solicitors Act 1974

The client has a right to assessment within one month from the date of the delivery of the bill.

If the application is made after one month but before twelve months from the date of delivery of the bill, the court's permission is required for the bill to be assessed.

Except in special circumstances, no order for assessment will be made:

- i) after twelve months from the delivery of the bill or
- ii) after a judgment has been obtained for the recovery of the costs covered by the bill, or
- iii) after the bill has been paid, but before the expiration of 12 months from the payment of the bill.

In relation to the application of **s70**, practitioners should have regard to the Court of Appeal decisions in **Thomas Watts & Co (a firm) v Smith [1998] 2 Costs LR 59** and **Turner v Palomo [2000] 1 WLR 37**. Both of these decisions appear to allow the client a common law means to challenge a solicitor's bill outside the statutory limitations of **s70**. The practical effect of this is that where a solicitor sues for non-payment of fees, any summary judgment will be for assessment of damages and not for a liquidated amount.

Also note the House of Lords decision in **Harrison v Tew [1990] 2 AC 523**, which stated that the Court had no power to order assessment under s70 outside the statutory period. This decision was distinguished in **Turner v Palomo** on the basis that there remained a right under the common law for the client to challenge the reasonableness of the solicitor's bill and the court retained the power to order the bill to be assessed by a costs judge but this would not be by way of detailed assessment (see below **Recovering solicitors' costs**).

Assessment procedure

Rule 48.10 Civil Procedure Rules sets out the procedure to be followed where the court has made an order under **Part III Solicitors Act 1974** for the assessment of costs payable to a solicitor by his client and is as follows:

The solicitor must serve a breakdown of costs within 28 days of the order for costs to be assessed.

The client must serve points of dispute within 14 days after service on him of the breakdown in costs.

If the solicitor wishes to serve a reply, he must do so within 14 days of service on him of the points of dispute.

Either party may file a request for a hearing date:

- i) after points of dispute have been served; but
- ii) no later than three months after the date of the order for the costs to be assessed.

This procedure applies subject to any contrary order made by the court.

Precedent P showing the breakdown of costs is annexed to the Practice Direction accompanying **Rule 48.10**. This Practice Direction also deals generally with the practicalities of the assessment process.

Where to apply

Rule 47.4 deals with the appropriate venue for detailed assessment proceedings. This should be read in conjunction with **s69(3) Solicitors Act 1974**.

Who should apply?

It is usual for the client to apply for assessment although it is possible for a solicitor to apply to have his own costs assessed. The latter is inadvisable because the solicitor will generally be unable to recover his costs for attending the hearing if the client fails to attend.

Costs of assessment

The costs of assessment will follow the event. If a solicitor's bill is reduced by one fifth or more, then the solicitor will bear the costs of the assessment. If the bill is reduced by less than one fifth or is not reduced, the party chargeable will pay the costs. See **Solicitors Act 1974 s70(9)**.

The one fifth figure is calculated on the total of the bill *excluding* VAT.

(ii) Challenge under the common law

Clients may make a challenge under the common law as to the amount charged by the solicitor on the basis that the solicitor is only entitled to recover costs agreed by the client for a reasonable amount for the work carried out.

It was held in **Turner v Palomo [1999] 4 All ER 353** and **Thomas Watts v Smith [1998] 2 Costs L.R. 59** that a solicitor's claim for non-payment of fees should be treated as a claim for an unspecified amount and therefore only judgment in default or summary judgment for an assessment of damages can be entered.

This is on the basis that a solicitor can only charge a reasonable amount for work done and the solicitor has the burden of proving that the costs are reasonable. Therefore, the court will enter judgment in default for an amount to be assessed by the Court. The costs will be assessed by a costs judge but it will not be a detailed assessment.

(iii) Counterclaim for negligence

Where a client suffers loss because of the solicitor's negligence, he may sue the solicitor for damages and claim to set off the damages against the amount of the bill. Further, if as a result of the solicitor's negligence the client has not achieved what was intended, he may be able to bring a claim against the solicitor to recover the sums paid.

Part 8 - Recovering solicitors' costs

Provided that a solicitor's bill complies with the requirements of **s69(2) Solicitors Act 1974** (see above **Delivery of bills**), recovery proceedings for costs may be commenced after one month has elapsed from the date of delivery of the final or interim statute bill. However, in circumstances where the client is about to quit England and Wales, be declared bankrupt or do any other act which might prevent or delay the solicitor obtaining payment, a solicitor may seek leave to issue proceedings within a month, see **s69(1) Solicitors Act 1974**.

Often a client may fail to pay a solicitor's costs because they have a complaint. **Outcome (1.9)** of the Code states that solicitors must ensure that clients are informed in writing at the outset of their matter of their right to complain and how complaints can be made. **Outcome (1.11)** states that all complaints, including a complaint about a firm's bill, must be handled promptly and fairly. (See above **Client care**).

It should be noted that a solicitor will be prevented from issuing recovery proceedings for costs where the client has made an application to the court for detailed assessment of the costs within one month of delivery of the bill or where he has obtained an order for the bill to be assessed – see **s70(1) and (2) Solicitors Act 1974**.

Interest on costs

There is no statutory authority for a solicitor to charge interest on outstanding contentious costs. However, interest may be charged in the following circumstances:

- i) if the right to charge interest has been expressly reserved in the original retainer agreement, or
- i) if the client later agrees for a contractual consideration to pay interest, or
- ii) where the solicitor has sued the client and claimed interest under **s35A Senior Courts Act 1981 (formerly known as the Supreme Court Act 1981)** or **s69(1) County Courts Act 1984**.

Unless otherwise agreed with the client, the rate of interest will be equal to the interest rate on judgment debts, which at the date of publication is 8 per cent per annum (see the **Judgment Debts (Rate of Interest) Order 1993 SI 93/564**).

Service of a Statutory Demand

Practitioners faced with a client who will not pay may consider serving a statutory demand on the client. However, solicitors should proceed with caution.

A solicitor can serve a statutory demand within one month of delivery of a bill and can, after the expiration of one month from the delivery of the bill, issue a bankruptcy petition provided 21 days have expired from service of the statutory demand.

A petition, but not a statutory demand, is an 'action' within the meaning of **s69 Solicitors Act 1974**.

In general solicitors should be wary of following this route as there is a power to set aside a statutory demand on the grounds of injustice. See **Re a Debtor (No 88 of 1991) [1992] 4 All ER 301; Marshalls (a firm) v a debtor [1993] Ch 286** (also reported in *The Independent* 10.07.1992) and **Shalson v DF Keane Ltd [2003] EWHC 599**.

Solicitors should be mindful of the decision in **Turner v Palomo (1999) 4 All ER 353 CA**, which held that a solicitor's claim for non-payment of fees should be treated as a claim for an unspecified amount until those fees have been assessed by the court. The same reasoning was applied in **Truex v Toll [2009] EWHC 396 (Ch)**. On this basis, there may be no right to serve a statutory demand until costs have been assessed.

Part 9 - Assessment of solicitors' contentious costs payable by the other side

The starting point is that each party is primarily responsible for their own solicitor's costs. That said, the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party, provided that these costs have been reasonably incurred, are of a reasonable amount and are proportionate to the matters in issue (**CPR r44.3** and **r44.4**).

The court has the discretion to make any order it chooses in relation to the payment of costs between the parties (**CPR r44.3(2)(b)**). **CPR r44.5** sets out factors that can affect the amount one party can recover from the other.

The Indemnity Principle

The indemnity principle is an entrenched principle of law. **Harold v Smith [1860] 5 H&N 381** provided that costs between party and party are given by the law as an indemnity to the person entitled to them. They are not imposed as a punishment on the party who pays them, or given as a bonus to the party who receives them. The amount which the paying party has to pay cannot exceed the amount which the successful party has to pay to his own solicitor. This was reaffirmed in **Gundry v Sainsbury [1910] 1 KB 645**.

Therefore, if the solicitors representing the successful party have intimated that their client 'need not worry' about paying their fees, there is a possibility that the court will hold that the loser has no liability in costs. (See the House of Lords decision in **British Waterways Board v Norman (1993) 26 HLR 232** (this case was subsequently overruled by **Thai Trading Co (a firm) v Taylor [1998] QB 781 (CA)** but not in regard to this aspect of the judgment.)

There are a number of important **exceptions** to the indemnity principle including:

1. Costs payable under conditional fee agreements (**s58 Courts and Legal Services Act 1990** as amended by the **s27 Access to Justice Act 1999**);
2. Costs funded by the **Legal Services Commission (s22 Access to justice 1999)** and **Community Legal Services (Costs) Regulations 2000 reg 15**);
3. Sums payable to litigants in person (**Litigants in Person (Costs and Expenses) Act 1975**);
4. Fixed costs payable under **CPR Part 45 (Butt v Nizami [2006] EWHC 159 (QB); [2006] 2 All ER 140)**;
5. Fixed sums in respect of fast track trial costs (**CPR Part 46**);
6. The allowance of costs in respect of an in-house solicitor or employed solicitor (**Re Eastwood (deceased) [1975] Ch 112**).
7. Costs payable **under s194 Legal Services Act 2007** to the Access to Justice Foundation. When a successful party has been represented, either fully or partly pro-bono in a civil matter it is possible under **s194** for the court to make a costs order against the opponent in favour of the Access to Justice Foundation who are a national charity. There is a useful article in the *Law Society's Gazette* of 13 November 2008 LSG 105/43 p.14-15 entitled: Laying the Foundation by Jeremy Morgan QC which discusses the procedure and points out a practical issue which

should be considered when facing a number of costs orders going either way in such a case.

There have been many calls to abolish the indemnity principle including Lord Justice Jackson in his Report see www.judiciary.gov.uk and Appendix 1 below.

Under **Outcome (1.13)** of the Code, a solicitor must give his client the best possible information about the overall cost of their matter including any potential liability for paying the costs of any other party. Where appropriate, solicitors are advised to obtain a fixed figure or agree a cap on a third party's costs.

The costs rules (see **CPR Parts 43-48** inclusive) provide four main ways by which the amount of costs payable by one party to another may be ascertained:

- i. fixed costs (**CPR Part 45**)
- ii. fast track trial costs (**CPR Part 46**)
- iii. summary assessment (**CPR Part 44**)
- iv. detailed assessment (**CPR Part 47**)

i) Fixed costs

Cases involving fixed costs mean that the contentious costs payable by another party (e.g. the unsuccessful party) will be automatically fixed at a specified sum depending on the nature of the case. **CPR Part 45** prescribes the sums allowed. There is also a specific scheme for road traffic accidents, see section on Fixed Costs under 'Methods of Charging' set out earlier in this booklet. Solicitors should note the relevance of **CPR r48.8(1) and (1A)** as set out earlier in this booklet and ensure the client signs the terms of business (see below **Client retainer**).

On this point, the Jackson Report proposes fixed costs in all personal injury fast track litigation, for other types of cases a dual system eventually leading to fixed costs for all types of claims in the fast track; see www.judiciary.gov.uk and Appendix 1 below.

ii) Fast track trial costs

Costs recoverable from another party (eg the unsuccessful party) in a hearing on the fast track are subject to fixed costs under CPR Part 46. (See Appendix 1 below for Jackson Review proposals on this subject).

iii) Summary assessment

CPR r43.3 defines summary assessment as 'the procedure by which the court, when making an order about costs, orders payment of a sum of money instead of fixed costs or detailed assessment'.

The general rule is that a court will make a summary assessment for a case dealt with on the fast track or at the conclusion of a hearing that has lasted a day or less in the Court of Appeal to which **Paragraph 14 Practice Direction supplementing Part 52** (appeals) applies, unless there is good reason not to. There are exceptions to this general rule. (Please refer to **CPR r43.3, sections 13 and 14 Practice Direction**).

Each party intending to claim summarily assessed costs must serve a statement of costs at least 24 hours before the date fixed for the hearing (**section 13.5(4) Costs Practice Direction**). The statement of costs should follow form N260 as closely as possible (**section 13.5(3) Costs Practice Direction**). In deciding what figure to allow, the court will hear argument from both parties and will focus on the statement of costs incurred by the party in question.

Solicitors should ensure that where a summary assessment of costs is a possibility that they provide the required statement of costs within the requisite timescale. If they do not, they run the risk of the court deciding that no sums be paid and the solicitor will not be able to claim the cost of the work done for that hearing on a subsequent detailed assessment.

In this area, the Jackson Report proposes a Costs Council be established to annually review fixed costs and the guideline hourly rates see www.judiciary.gov.uk

iv) Detailed assessment

Detailed assessment is defined in **CPR r43.4** as ‘the procedure by which the amount of costs is decided by a costs officer in accordance with **Part 47**’. The detailed assessment procedure is distinct from the main case in which substantive issues are considered and is concerned only with the costs element of the main case. It is generally carried out when the substantive proceedings have been concluded.

Solicitors should familiarise themselves with the procedures set out in **Part 47**. In particular, solicitors should abide by the timetable set for these proceedings because of the default provisions incorporated into the rules which, once triggered, may mean that the paying party is ordered to pay immediately a proportion of the receiving party’s costs.

There are special provisions dealing with the detailed assessment procedure for the costs of a publicly funded client or an assisted person where the costs are payable out of the community legal service fund or another fund, see **CPR r47.17** and **r47.17A**.

There are also various default provisions under **Part 47**, which are dealt with in **CPR r47.11** and **r47.12**.

Unless the court makes a contrary order, the procedure for the detailed assessment of costs payable by one party to another is as follows:

- The receiving party must file a request for a detailed assessment hearing within three months of the expiry of the period for commencing detailed assessment proceedings, see **CPR r47.7** and **r47.14**.
- The receiving party serves on the paying party (i) notice of commencement by using form N252 and (ii) a copy of the bill of costs, (iii) a statement giving the name and address for service of any person upon whom the receiving party intends to serve the notice of commencement (iv) copies of certain supporting documents such as fee notes and vouchers. The notice of commencement should state the date upon which points of dispute must be served.

After service of the notice of commencement and accompanying bill of costs, the paying party may, within 21 days, dispute any item on the bill of costs by serving points of dispute (**CPR 47.9**). These should be short and to the point. It should be noted that if a party serving points of dispute after the requisite period he may not be heard further in the detailed assessment proceedings unless the court gives permission. It would therefore be prudent to extend the time for service by agreement with the other side or apply to the court for an extension of time.

- If the paying party and the receiving party agree the amount of costs, either party may apply for a costs certificate, see **CPR r47.10**, **r47.15** and **r47.16**.

- Where points of dispute are served, the receiving party may serve a reply within 21 days after service on them of the points of dispute to which their reply relates.
- The detailed assessment hearing will usually take place before costs judge, a district judge or an authorised court officer.

Deadline for commencement

Detailed assessment proceedings should be commenced within three months after the event giving rise to the right to detailed assessment, see CPR r47.7.

Where should you apply?

CPR r47.4 refers to assessments being dealt with by the 'appropriate office'. This distinguishes between London and elsewhere.

Costs of the assessment

There is a presumption that the receiving party is entitled to their costs of the detailed assessment proceedings except where the court makes some other order in relation to all or part of the costs or where the provisions of the CPR or legislation provide otherwise.

A claim may also be made for the reasonable costs of preparing and checking the bill of costs (**section 4.18 Costs Practice Direction**). The bill of costs may be prepared by the solicitor or a costs draftsman, whether independent or an employee of the firm, see **Smith Graham (a firm) v Lord Chancellor's Department [1999] NLJR 1443, QBD** and **Crane v Canons Leisure Centre [2007] EWCA (Civ) 1352**.

On the subject of detailed assessment, the Jackson Review proposes that a new format for bills be developed to streamline the procedure through use of IT; see www.judiciary.gov.uk

Further reading

Law Society Practice Notes which are available at www.lawsociety.org.uk/practicenotes

The SRA Code of Conduct 2011 which is available online at www.sra.org.uk.

SRA Handbook published by the Law Society. Available from the Law Society's online bookshop at www.lawsociety.org.uk/bookshop

Outcomes-Focused Regulation, A Practical Guide by Andrew Hopper QC and Gregory Treverton-Jones QC, published by the Law Society. Available from the Law Society's online bookshop at www.lawsociety.org.uk/bookshop

Cook on Costs 2012 by Michael J Cook published by Butterworths.

The Expense of Time – 5th edition, published by the Law Society. A concise guide to calculating the annual expense and hourly expense of fee-earners in a solicitor's firm. Photocopies are available from the Law Society Library (telephone 0870 606 2511) or email library@lawsociety.org.uk

Civil Litigation Handbook, 2nd edition, general editor Suzanne Burn, published by the Law Society. Available from the Law Society Bookshop at www.lawsociety.org.uk.

Civil Costs Assessment Handbook, 2nd edition, by Peter Burdge, published by the Law Society. Available from the Law Society Bookshop at www.lawsociety.org.uk.

Practice Advice Service Questions and Answers which are regularly published on the Law Society's website at www.lawsociety.org.uk/practiceadvice. Updates and guidance on cases and general developments are provided by the Law Society as appropriate. Solicitors should regularly refer to the Law Society website at www.lawsociety.org.uk

Membership networks

Risk and Compliance Service

The Risk and Compliance Service provides key benefits and discounts on existing and new Law Society products and services that will help you to get up to speed and stay up to date on requirements, best practices and important changes that firms need to prepare for and monitor on an ongoing basis.

www.lawsociety.org.uk/riskandcompliance

International

For law firms, solicitors, and foreign lawyers seeking to develop their international business and build global relationships and profile, our innovative International Division provides the contacts, tools and information your firm needs and opportunities to progress your international career.

www.lawsociety.org.uk/international

Competition Section

The Law Society's European Group has relaunched and will provide competition practitioners with a range of opportunities to engage in dialogue and debate, including evening seminars, an annual conference and an annual dinner.

www.lawsociety.org.uk/competition

Law Management Section

Established in 1998, the Law Management Section focuses on the full range of practice management disciplines, including HR, finance, marketing, IT, business development, client care, quality and risk.

www.lawsociety.org.uk/lawmanagement

Private Client Section

Established in 1997, the Private Client Section, formerly known as the Probate Section, focuses on wills, financial planning, trusts, tax planning, Court of Protection, care planning and estate administration.

www.lawsociety.org.uk/privateclient

Property Section

The Property Section focuses on areas including e-conveyancing, housing, land registration, money laundering, planning and environment, as well as tax and revenue.

www.lawsociety.org.uk/property

Civil Justice Section

Formerly called the Dispute Resolution Section, the Civil Justice Section focuses on all areas of civil justice including arbitration, litigation and mediation.

[Civil justice section](#)

Advocacy Section

The Advocacy Section is a dedicated Law Society service to create and facilitate a community of solicitor advocates.

www.lawsociety.org.uk/advocacy

Solicitor Judges

This Division is open to any solicitor holding a judicial appointment in either the courts or the tribunals. It enables members to connect with other solicitor judges and become more involved in the profession through events and networking opportunities.

[www.lawsociety.org.uk/specialinterest/solicitor judges](http://www.lawsociety.org.uk/specialinterest/solicitor_judges)

Junior Lawyers Division

Launched in January 2008, the Junior Lawyers Division provides a clear voice for student members of the Law Society enrolled through the SRA, trainees, and solicitors with up to five years' active PQE.

www.lawsociety.org.uk/juniorlawyers

Lawyers with Disabilities Division

After twenty successful years, the Group for Solicitors with Disabilities has relaunched as Lawyers with Disabilities Division and aims to promote equal opportunities for people with disabilities within the legal profession. Members can benefit from a shared platform to exchange views and further mutual interests, networking opportunities, mentoring scheme and a free regular newsletter.

www.lawsociety.org.uk/specialinterest/disabilities.page

Other groups

The Law Society also maintains a list of [useful practitioner associations and groups](#).

Appendix 1 – Review of civil litigation funding and costs ‘the Jackson Report’

In November 2008, Lord Justice Jackson was selected by the Master of the Rolls to conduct a fundamental review of the rules and principles governing the costs of civil litigation and to make recommendations which would promote access to justice at proportionate cost. A final report was published on 14 January 2010.

In March 2011, the Government published its response to the Jackson Report. 'Proposals for Reform of Civil Litigation and Funding and Costs in England and Wales - Implementation of Lord Justice Jackson's Recommendations' which can be viewed at www.justice.gov.uk. Some of the key proposals that the Government intends to implement are:

1. Abolish the general recoverability of the Conditional Fee Agreement (CFA) success fee and after the event insurance (ATE) premium from the losing side.
2. Regulations to allow recoverability of the ATE insurance premium to cover the cost of expert reports only in clinical negligence cases.
3. An increase of 10 per cent in non-pecuniary general damages such as pain suffering and loss of amenity in tort cases, for all claimants.
4. In personal injury cases, a cap on the amount of damages that may be taken as a success fee. The cap will be set at 25 per cent of the damages other than those for future care and loss.
5. The maximum success fee under a CFA will remain at 100 per cent of base costs except for personal injury cases which would be subject to a 25 per cent cap on damages.
6. Recoverability of the self-insurance element by membership organisations, equivalent to the ATE insurance premium, will be also abolished.
7. Qualified One Way Costs Shifting ('QOCS') will be introduced for personal injury cases, including clinical negligence.
8. Part 36 of the Civil Procedure Rules (offers to settle) will be amended to equalise the incentives between claimants and defendants to make and accept reasonable offers.
9. Damages-based agreements (DBAs) will be allowed to be used in civil litigation. Claimants will not be required to obtain independent legal advice before entering into a contingency fee agreement.
10. A new test of proportionality in costs assessment will be introduced.
11. Prescribed rates which successful litigants in person may recover from lay opponents will increase in line with inflation since they were set.

The government is not currently persuaded that abolishing the indemnity principle is a necessity and is therefore not proposing any further work on it at this stage. There remain a number of recommendations including referral fees, fixed recoverable costs in the Fast Track, the Costs Council, costs and case management, before the event insurance (BTE), third-party funding, predictable damages, clinical negligence, intellectual property where further consultation is on-going.

The government has indicated that changes to the CFA regime will require primary legislation and will follow as soon as parliamentary time allows. Other changes will require changes to the Civil Procedure Rules and other secondary legislation. In February 2012, the Government announced that implementation of the Jackson reforms will be deferred until April 2013.

Appendix 2 - s69 Solicitors Act 1974

Action to recover solicitor's costs

(1) Subject to the provisions of this Act, no action shall be brought to recover any costs due to a solicitor before the expiration of one month from the date on which a bill of those costs is delivered in accordance with the requirements mentioned in subsection (2); but if there is probable cause for believing that the party chargeable with the costs--

(a) is about to quit England and Wales, to become bankrupt or to compound with his creditors, or

(b) is about to do any other act which would tend to prevent or delay the solicitor obtaining payment,

the High Court may, notwithstanding that one month has not expired from the delivery of the bill, order that the solicitor be at liberty to commence an action to recover his costs and may order that those costs be taxed [assessed].

[(2) The requirements referred to in subsection (1) are that the bill must be--

(a) signed in accordance with subsection (2A), and

(b) delivered in accordance with subsection (2C).

(2A) A bill is signed in accordance with this subsection if it is--

(a) signed by the solicitor or on his behalf by an employee of the solicitor authorised by him to sign, or

(b) enclosed in, or accompanied by, a letter which is signed as mentioned in paragraph (a) and refers to the bill.

(2B) For the purposes of subsection (2A) the signature may be an electronic signature.

(2C) A bill is delivered in accordance with this subsection if--

(a) it is delivered to the party to be charged with the bill personally,

(b) it is delivered to that party by being sent to him by post to, or left for him at, his place of business, dwelling-house or last known place of abode, or

(c) it is delivered to that party--

(i) by means of an electronic communications network, or

(ii) by other means but in a form that nevertheless requires the use of apparatus by the recipient to render it intelligible,

and that party has indicated to the person making the delivery his willingness to accept delivery of a bill sent in the form and manner used.

(2D) An indication to any person for the purposes of subsection (2C)(c)--

(a) must state the address to be used and must be accompanied by such other information as that person requires for the making of the delivery;

(b) may be modified or withdrawn at any time by a notice given to that person.

(2E) Where a bill is proved to have been delivered in compliance with the requirements of subsections (2A) and (2C), it is not necessary in the first instance for the solicitor to prove the contents of the bill and it is to be presumed, until the contrary is shown, to be a bill bona fide complying with this Act.

(2F) A bill which is delivered as mentioned in subsection (2C)(c) is to be treated as having been delivered on the first working day after the day on which it was sent (unless the contrary is proved).]

(3) Where a bill of costs relates wholly or partly to contentious business done in a county court and the amount of the bill does not exceed [£5,000], the powers and duties of the High Court under this section and sections 70 and 71 in relation to that bill may be exercised and performed by any county court in which any part of the business was done.

[(4) . . .]

[(5) In this section references to an electronic signature are to be read in accordance with section 7(2) of the Electronic Communications Act 2000 (c 7).

(6) In this section--

"electronic communications network" has the same meaning as in the Communications Act 2003 (c 21);

"working day" means a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971 (c 80).]