

# Research Paper on Legal Costs in Ireland

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<b>Part I Introduction .....</b>	<b>2</b>
A. Scope of Paper. ....	2
B. Categories of legal business.....	2
C. Types of legal costs .....	3
D. Taxation of costs .....	4
E. Counsel fees .....	5
<b>Part II. Non-Contentious Business.....</b>	<b>5</b>
A. Non-contentious business .....	5
B. Agreements .....	6
C. Security for costs.....	7
D. Information .....	7
E. Scale of costs .....	8
F. Instruction Fees.....	10
G. Bill of costs .....	11
H. Taxation of costs .....	14
<b>Part III. Contentious Business .....</b>	<b>15</b>
A. Contentious business .....	15
B. Agreements .....	15
C. Section 68 .....	16
D. Security for costs.....	17
E. Scaled costs.....	17
F. Instruction Fee .....	19
G. Disbursements.....	22
H. Bill of costs .....	25
<b>Part IV. Taxation of costs.....</b>	<b>27</b>
A. Powers of Taxing Master.....	27
B. Referring costs to taxation.....	28
C. Role of Taxing Master.....	28
D. Review by Court .....	32
E. Alternative means of challenging costs.....	34
<b>Part V. Counsel fees.....</b>	<b>35</b>
A. Types of fees.....	35
B. General principles .....	35
C. Taxation.....	39
Appendix A .....	41
Solicitors' Remuneration General Order 1986.....	41
Appendix B.....	43
Land Registration (Solicitors' Costs) Rules 1970 .....	43

# Research Paper on Legal Costs in Ireland

## Part I Introduction

### A. Scope of Paper.

This Paper examines legal costs in civil matters generally. The Paper does not consider the legal costs that may arise in the practice of specific areas of law or in particular legal contexts. The Paper does not, for example, address the legal costs incurred in tribunals of inquiry, or the distinct principles that may apply to the legal costs of family law matters, personal injury litigation or other specific areas of legal practice. The principles advanced in this Paper are of a more general nature. There are two appendices to the Paper that provide more detailed information about the diverse systems for computing costs and these can be referred to, should more specific information be required.

It should also be noted that there are certain topics that relate to legal costs that may be deserving of particular attention, but which are not addressed specifically in this Paper. These include the revenue treatment of legal costs and the imposition of interest on awards of costs. Finally, it should be noted that this Paper does not consider the costs of witnesses and experts, as these are not regarded as falling squarely within the scope of “legal costs.”

### B. Categories of legal business

There are essentially two broad categories of business in respect of which legal services may be provided. The first may be referred to as “non-contentious business”. This encompasses situations where there is no litigation or other proceedings. The second category may be referred to as “contentious business.” This category covers legal services provided, or work done, in connection with legal proceedings, whether before a court, a tribunal or an arbitrator.

The approach that is adopted in this Paper is to treat non-contentious and contentious business separately and to consider the distinct rules and principles governing each. This approach seems to be supported by the fact that there are different regimes that regulate legal costs in respect of the two types of business. There are also different factors and different considerations that are relevant to the question of legal costs in contentious business as opposed to non-contentious business.

Denning L.J. confirmed this distinction in the following terms:

“There is a great difference for solicitors between ‘contentious business’ and ‘non-contentious business’. A bill for contentious business must be made out item by item, with a separate charge against each item; but a bill for non-

contentious business can be charged by a lump sum. The difference in the method of charging leads to a difference in the amount, which the solicitor receives. Non-contentious business is, I believe, more remunerative than contentious business.”<sup>1</sup>

### **C. Types of legal costs**

There are also two basic categories of costs, namely party and party costs and solicitor and client costs. The first, party and party costs, refers to those legal costs, which may be recovered by one party to proceedings from another party. It is typically the successful party whose costs are paid and this is typically dealt with at the conclusion of the proceedings. The second category of costs, solicitor and client costs, refers to those costs that a solicitor claims from his own client. These costs can arise either in contentious or non-contentious matters.<sup>2</sup>

The costs that are payable to counsel as a result of work done or services provided in contentious proceedings appear as a disbursement in the solicitor’s bill of costs.

It should be noted that the principles on which party and party costs are awarded is different to the basis of calculation of solicitor and client costs. It was confirmed by the High Court that the essential principle underlying party and party costs is one of indemnity. In *Tobin and Twomey v. Kerry Foods Ltd.*,<sup>3</sup> Kelly J. stated the principle that, “It is clear that the basis of party and party costs is one of indemnity.”<sup>4</sup>

The effect of this premise is that a party is entitled to have all costs reasonably incurred in the defence of their rights covered. Order 99, Rule 10(2) of the Rules of the Superior Courts 1986 provides,

“... costs to which this rule applies [party and party costs] shall be taxed on the party and party basis, and on a taxation on that basis there shall be allowed all such costs as were necessary or proper for the attainment of justice or for enforcing or defending the rights of the party whose costs are being taxed.”

With regard to solicitor and client costs, the basic premise is that the solicitor is entitled to be paid all costs claimed for, other than such costs as may be unreasonable. Order 99, Rule 11(1) of the Rules of the Superior Courts 1986 accordingly provides, “On a taxation as between solicitor and client, all costs shall be allowed except in so far as they are of an unreasonable amount or have been unreasonably incurred.”

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<sup>1</sup> *In Re A Solicitor – In Re A Taxation of Costs* [1955] 2 QB 252.

<sup>2</sup> Solicitor and client costs may, for example, remain payable by the successful party to his own solicitor, after the receipt of party and party costs, if the solicitor and client costs are not taxable as party and party costs. See further below.

<sup>3</sup> [1999] 1 I.L.R.M. 428.

<sup>4</sup> *Tobin and Twomey v. Kerry Foods Ltd.* [1999] 1 I.L.R.M. 428 at 432.

The distinction in treatment between the two types of legal costs was set out as follows in *Dyotte v. Reid*:<sup>5</sup>

“Costs as between party and party are not the same as solicitor and client costs. In costs between party and party one does not get a full indemnity for costs incurred against the other. The principles to be considered in relation to party and party costs is that you are bound in the conduct of your case to have regard to the fact that your adversary may in the end have to pay your costs.”

It is important to note that solicitor and client costs do arise in contentious matters. The case of *Smith v. Buller*<sup>6</sup> states the following rule in this regard:

“I adhere to the rule which has already been laid down, that the costs chargeable under a taxation as between party and party are all that are necessary to enable the adverse party to conduct the litigation, and no more. Any charges merely for conducting litigation more conveniently will be called ‘luxuries’, and must be paid by the party incurring them.”<sup>7</sup>

Where such “luxuries” are charged to a client, they will be treated as solicitor and client costs, and not taxed as party and party costs.

There is a further division between types of legal costs that should be noted. A solicitor’s bill of costs will include a number of categories of charges. There are certain scaled fees for legal work and/or services that are fixed by legislation. These scales can apply, whether the fees are charged on a party and party, or on a solicitor and client, basis. A solicitor’s bill of costs will also charge a so-called “instructions fee”<sup>8</sup> and what are referred to as “disbursements”.

#### **D. Taxation of costs**

The fourth topic that is addressed by this Paper is the taxation of costs. Whether costs arise in contentious or non-contentious matters, and whether the costs be party and party or solicitor and client costs, they can be referred to the Taxing Master for taxation.<sup>9</sup> The fourth part of this Paper therefore addresses the system of taxation and considers the role of the Taxing Master, the scope of the Taxing Master’s powers, and review by the courts of the Taxing Master’s decisions. This section will also consider the taxation of costs from the perspective of solicitors’ and counsels’ costs and any principles that can be derived from decisions of the Taxing Master and/or the Courts in this regard.

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<sup>5</sup> (1876) 10 I.L.T.R. 110.

<sup>6</sup> (1875) 19 Eq 473.

<sup>7</sup> This rule has been applied in Irish decisions, including the decision of Kelly J. in *Tobin and Twomey v. Kerry Foods Ltd.* [1999] 1 I.L.R.M. 428.

<sup>8</sup> The “instructions fee” is addressed in detail below.

<sup>9</sup> The County Registrar can also exercise the power of the Taxing Master. This Paper, however, refers only to the Taxing Master of the High Court, and is confined to treating the taxation of costs before the Taxing Master.

## **E. Counsel fees**

Most of the legal principles that are relevant to the assessment and taxation of counsels' fees will be considered in other sections of the Paper. However, there are certain rules and practices that remain to be addressed and these will be included in the fifth, and final, section of the Paper.

## **Part II. Non-Contentious Business**

### **A. Non-contentious business**

The term “non-contentious business” as it is used in the context of the remuneration of solicitors, has been defined as any business other than contentious business.<sup>10</sup> There are some situations in which the divide between contentious and non-contentious business may not be a clear one. Where legal services are provided in respect of a matter that subsequently becomes contentious, it may be necessary to determine whether the initial services qualify as contentious or non-contentious. In this regard, it is important to consider the nature of the work done, rather than the timing of the work.<sup>11</sup> For instance, if the work was clearly done in contemplation of litigation and would be allowed on a party and party taxation, then that work should be treated as relating to contentious business, even though no proceedings may yet have commenced. If, on the other hand, the costs of the services would not be allowed on a party and party taxation, those services may be regarded as relating to non-contentious business.

The remuneration of solicitors in connection with non-contentious business is regulated by the Solicitors' Remuneration Act 1881. The Long Title of this Act is “An Act for making better provision respecting the remuneration of solicitors in conveyancing and other non-contentious matters.” According to section 2 of the Act, general orders can be made from time to time,

“for prescribing and regulating the remuneration of solicitors in respect of business connected with sales, purchases, leases, mortgages, settlements, and other matters of conveyancing, and in respect of other business, not being business in any action, or transacted in any court, or in the chambers of any judge or master, and not being otherwise contentious business.”

This provision of the Act empowers the legislature to introduce so-called “General Orders” to regulate the remuneration of solicitors in respect of all non-contentious business. A number of such orders have been introduced, setting scales of costs for different types of non-contentious matters.<sup>12</sup> The Act of 1881 and the General Orders

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<sup>10</sup> Solicitors' Remuneration Act 1881, s. 2.

<sup>11</sup> See *In re A Solicitor; In re Taxation of Costs* [1955] 2 Q.B. 252; 1 All ER 257.

<sup>12</sup> Solicitors' Remuneration General Order 1884; Solicitors' Remuneration General Order 1960 (SI No. 165 of 1960); Solicitors' Remuneration General Order 1964 (SI No. 128 of 1964); Solicitors'

introduced under the Act also govern such matters as agreements for the charging of fees,<sup>13</sup> security for costs<sup>14</sup>, and the taxation of solicitors' bills of costs in non-contentious matters.<sup>15</sup>

## **B. Agreements**

Solicitors and clients can enter into agreements to govern the payment of legal fees to the solicitor for services provided to the client.<sup>16</sup> This is provided for by s 8 of the Solicitors' Remuneration Act 1881. There are a number of points to note about these agreements.

1. Agreements for the payment of fees can be entered into before, during or after the provision of the services.
2. An agreement can provide for remuneration to be made in such amount or in such manner as the solicitor and the client think fit. An agreement between a solicitor and a client may, for instance, provide for the payment of the solicitor by a lump sum, by commission, by percentage or otherwise.<sup>17</sup>
3. Any such agreement must be in writing, signed by the person to be bound by the agreement, or his agent.<sup>18</sup>
4. The agreement can provide that the amount of remuneration mentioned in the agreement either does, or does not, include the solicitor's expenses and disbursements.<sup>19</sup>
5. An agreement formed under section 8 is treated in the same manner as any other agreement and can, for example, be sued upon.<sup>20</sup>
6. If, upon a taxation of costs, the client objects that the agreement as to remuneration was unfair or unreasonable, the taxing master may certify the agreement to the Court for consideration. The Court may then look into the agreement and, if deemed just, cancel or reduce the amount of remuneration provided for in the agreement, and make any other necessary orders and directions.<sup>21</sup>

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Remuneration General Order 1970 (SI No. 286 of 1970); Solicitors' Remuneration General Order 1972 (SI No. 227 of 1972); Solicitors' Remuneration General Order 1978 (SI No. 329 of 1978); Solicitors' Remuneration General Order 1982 (SI No. 361 of 1982); Solicitors' Remuneration General Order 1984 (SI No. 155 of 1984); Solicitors' Remuneration General Order 1986 (SI No. 379 of 1986)

<sup>13</sup> Solicitors' Remuneration Act 1881, s 8. This topic is addressed in more detail below.

<sup>14</sup> Solicitors' Remuneration General Order 1884, s. 7.

<sup>15</sup> Solicitors' Remuneration Act 1881, s 7. The taxation of costs in non-contentious business is addressed in more detail below.

<sup>16</sup> Solicitors' Remuneration Act 1881, s 8(1).

<sup>17</sup> Solicitors' Remuneration Act 1881, s 8(1).

<sup>18</sup> Solicitors' Remuneration Act 1881, s. 8(2).

<sup>19</sup> Solicitors' Remuneration Act 1881, s. 8(3).

<sup>20</sup> Solicitors' Remuneration Act 1881, s. 8(4).

<sup>21</sup> Solicitors' Remuneration Act 1881, s. 8(4).

When agreements for the payment of legal costs come before the courts, the courts can make a variety of directions, including directing the delivery of an itemised bill of costs and the submission of such bill for taxation.<sup>22</sup>

### **C. Security for costs**

The Solicitors' Remuneration Act 1881 does not govern the question of security of costs directly, but does provide that a General Order may be introduced authorising the taking of security for future payment by a solicitor.<sup>23</sup> In 1884, a General Order was introduced that included a provision for the taking of security by solicitors.

Section 7 of the Solicitors' Remuneration General Order 1884 permits a solicitor to "accept" security for the amount of money to become due to the solicitor, with interest. Any interest so chargeable does not arise until the amount due to the solicitor has been ascertained, by agreement or taxation. A solicitor may charge 4% interest on costs and disbursements from one month of making demand.

There are two points to note about this provision. First, it does not permit a solicitor to require a client to provide security for costs. The solicitor is only entitled to "accept" such security. Secondly, the security sought can only relate to such interest as is taxed and agreed between the parties.

### **D. Information**

The Solicitors (Amendment) Act 1994 introduced an important provision regarding legal fees. Section 68 of the Act of 1994 requires solicitors to provide clients with written particulars concerning the fees that will be charged for the requested legal services.<sup>24</sup> There are a number of points to note regarding this provision.

1. The information in question must be furnished to the client upon taking instructions from that client, "or as soon as is practicable thereafter."<sup>25</sup> The solicitor should not commence legal services without having provided the information required by section 68.
2. The information referred to in section 68 must be provided in writing.<sup>26</sup> The fact that the solicitor may have informed the client orally of the charges and other such information will not satisfy the provision.
3. The following particulars regarding the legal services to be provided by the solicitor or his firm, must be included in a section 68 notice:<sup>27</sup>

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<sup>22</sup> See *Meagher v. O'Boyle* (Unreported, High Court, McCracken J., February 20, 1996); *Rutter v. Sheridan-Young* [1958] 2 All ER 13.

<sup>23</sup> Solicitors' Remuneration Act 1881, s 5.

<sup>24</sup> There are other aspects of section 68 that relate to costs arising in contentious matters. These are dealt with below.

<sup>25</sup> Solicitors (Amendment) Act 1994, s 68(1).

<sup>26</sup> Solicitors (Amendment) Act 1994, s 68(1).

<sup>27</sup> Solicitors (Amendment) Act 1994, s 68(1).

- (a) the actual charges for the legal services sought; or
- (b) where (a) is impossible or impracticable, an estimate of the charges; or
- (c) where (a) and (b) are impossible or impracticable, the basis for making the charges.

In *A&L Goodbody Solicitors v. Colthurst*<sup>28</sup> this provision fell for consideration. The defendants sought to argue that the failure of the plaintiff (a firm of solicitors which formerly represented the defendant) to serve a letter complying with section 68 deprived the plaintiff of the right to recover their costs, outlays and disbursements, as the requirement of section 68 was a mandatory one.

Peart J. held that there were other sanctions arising from a solicitor's failure to deliver a section 68 letter. First, the Taxing Master may take the absence of such a letter into account in determining the appropriate fees. Secondly, the Disciplinary Committee of the Law Society can have regard to the failure to comply with section 68 in appropriate cases.<sup>29</sup> Peart J. moreover concluded, "I do not believe that section 68 was intended to deprive the solicitor, who has failed to send a section 68 letter, of his right to recover his costs when taxed, in spite of the fact that the section is worded in mandatory terms."<sup>30</sup>

## **E. Scale of costs**

The Solicitors' Remuneration General Orders contain schedules, which set scales for the payment of costs. The scales of fees established by the General Order of 1884 comprised two schedules, the second of which included 182 items of charge. This was simplified by the General Order of 1960, which introduced 21 items of charge in Schedule II. The amounts and calculations of fees chargeable were amended and increased by the General Orders of 1964, 1970, 1972, 1982 and 1984. The General Order of 1986 introduced a new scale for Schedule II. Its explanatory note describes the Order as follows, "This Order prescribes a revised structure and level of scale fees for certain non-contentious business undertaken by solicitors, it does not affect the present commission scale fee on sales, purchases, leases, mortgages or settlements."

The scale fees on sales, purchases, leases, mortgages and settlements are covered by Schedule I to the General Order of 1884. The scale of fees set out in Schedule I was amended by the Solicitors' Remuneration General Order 1970, which inserted the decimal currency equivalents of the fees.

The scales contained in the General Orders are not always strictly binding. The Solicitors' Remuneration General Order 1884 contains a provision that permits solicitors to elect between being paid according to the scales set out in that Order, or

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<sup>28</sup> *A&L Goodbody Solicitors v. Colthurst* [2003] IEHC 74 (Unreported, High Court, Peart J., November 5, 2003).

<sup>29</sup> *A&L Goodbody Solicitors v. Colthurst* [2003] IEHC 74 (Unreported, High Court, Peart J., November 5, 2003) at page 16.

<sup>30</sup> *A&L Goodbody Solicitors v. Colthurst* [2003] IEHC 74 (Unreported, High Court, Peart J., November 5, 2003) at page 16.

otherwise. Section 6 states, "...a solicitor may, before undertaking any business, by writing under his hand, communicated to the client, elect that his remuneration shall be according to the present system." It should be noted that the election has to be made before undertaking any work for the client and that, in default of such election, the solicitor's remuneration shall be in accordance with the scale provided in the Order.<sup>31</sup>

The General Orders of 1960 and 1986 state expressly that,

"If having regard to all the circumstances of the case, including the complexity of the matter, the novelty of the questions raised, the skill, labour and responsibility of the solicitor, the amount involved and the importance of the matter to the client, it is reasonable to do so, the foregoing charges for drawing, perusing, attendances and letters may be increased. The said charges may also be reduced by the Taxing Master for any special reason."

Section 5 of the Solicitors' Remuneration General Order 1884, which is still applicable, permits solicitors to charge extra remuneration where work is required to be done in "an exceptionally short space of time", thus necessitating "special exertion" on the part of the solicitor.

There are particular scaled fees provided for certain non-contentious matters. These are not dealt with in detail in this Paper. However, it should be noted that the Land Registration Rules 1966 and the Land Registration (Solicitors' Costs) Rules 1970 contain distinct schedules for the charges to be made in connection with certain conveyancing matters.<sup>32</sup> Other conveyancing matters remain within the remit of the General Orders, as clarified by rule 6 of the Rules of 1970:

"The remuneration of a solicitor for conveyancing or other business with registered property, not being business in any action, or transacted in any court or in the chambers of any judge or master, shall be regulated by the Orders of 1884 and 1960 as varied by these Rules."

For the purposes of charges that are governed by the Rules of 1970, it should also be noted that the instruction fee contained in the General Orders does not apply. Rule 14 of the Rules of 1970 substitutes the following for the instruction fee that is prescribed by the Order of 1960: "Such fees for instructions as, having regard to the care and labour required, the number and lengths of the papers to be perused and the other circumstances of the case, may be fair and reasonable."

In non-contentious probate matters and in bankruptcy matters, the scale of costs and fees are also designated separately. Appendix W to the Rules of the Superior Courts contains detailed provisions in this regard.<sup>33</sup>

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<sup>31</sup> Solicitors' Remuneration General Order 1884, s. 6.

<sup>32</sup> Schedule of Costs to the Land Registration (Solicitors' Costs) Rules 1970 appears below as Appendix B.

<sup>33</sup> Appendix W to the Rules of the Superior Courts 1986 is appended to the Report of the Working Group on Legal Costs (Appendix 8).

## F. Instruction Fees

In addition to the charges calculated in accordance with the scales set out in the General Orders, solicitors also charge their clients what are referred to as “instruction fees”. The Solicitors’ Remuneration General Order 1960 provides guidance on the computation of instruction fees. Section 5 of that Order provides that an instruction fee shall be,

“Such fee as may be fair and reasonable having regard to all the circumstances of the case, including:—

- (a) the complexity, importance, difficulty, rarity or urgency of the questions raised;
- (b) where money or property is involved, its amount or value;
- (c) the importance of the matter to the client;
- (d) the skill, labour, and responsibility involved therein and any specialised knowledge given or applied on the part of the solicitor;
- (e) the number and importance of any documents perused;
- (f) the place where and the circumstances in which the business or any part thereof is transacted; and
- (g) the time reasonably expended thereon.”

It was noted by Murphy J. in *Smyth v. Tunney*<sup>34</sup> that the practice of relying on the instruction fee is “rough and unscientific” and that the instruction fee operates in practice, as the “great equaliser” to overcome the meagre amounts allowed to solicitors in itemised schedules.<sup>35</sup>

The topic of instruction fees is addressed in more detail in the context of contentious business.<sup>36</sup> In this regard, it may be noted that cases such as *Best v. Wellcome Foundation Ltd.*<sup>37</sup> and *Irish Independent Newspapers Ltd v. Irish Press Ltd.*<sup>38</sup>, although determined in the context of contentious proceedings, may also be of assistance in assessing the relevant criteria for an instruction fee in non-contentious business.<sup>39</sup> This is particularly likely in light of the fact that the principles governing instruction fees in contentious matters, as set out in Order 99, Rule 37(22) of the Rules of the Superior Courts, mirror to a considerable extent the terms of section 5 of the General Order of 1960.

The law governing the taxation of costs also provides considerable guidance regarding the instruction fee that should be charged in non-contentious matters.<sup>40</sup> In particular, Order 99, Rule 11(1) of the Rules of the Superior Courts 1986 provides, “On a taxation as between solicitor and client, all costs shall be allowed except in so far as they are of an unreasonable amount or have been unreasonably incurred.”

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<sup>34</sup> [1993] 1 I.R. 451.

<sup>35</sup> In *Smyth v. Tunney* [1993] 1 I.R. 451, Murphy J. analysed Appendix W to the Rules of the Superior Courts. This is considered in more detail below.

<sup>36</sup> See Part III below.

<sup>37</sup> [1996] 3 I.R. 378.

<sup>38</sup> [1939] I.R. 371.

<sup>39</sup> These cases are addressed in more detail in a later section of this Paper.

<sup>40</sup> See Part IV below for an examination of the law governing the taxation of costs.

This has been interpreted as implying that the burden of proof is on client to challenge the reasonableness of the costs charged by the solicitor in respect of solicitor and client costs.<sup>41</sup> Unless the client establishes that the charges were unreasonable, the charges will be allowed.<sup>42</sup>

## **G. Bill of costs**

A bill of costs is defined in the Solicitors (Amendment) Act 1994 as including, “any statement of account sent, or demand made, by a solicitor to a client for fees, charges, outlays, disbursements or expenses.”

A solicitor has some flexibility regarding the format to adopt for bills of costs in non-contentious matters. Section 6 of the Solicitors’ Remuneration General Order 1960 governs the means of remuneration and provides,

“The remuneration of a solicitor in respect of all business described in paragraph 2(c) of the Solicitors' Remuneration General Order, 1884 may at the option of a solicitor be by a gross sum in lieu of by detailed charges, provided that within twelve months after delivery of a charge by way of gross sum, or within one month after payment (whichever shall be the earlier date), the client may require particulars of the charges computed in the manner prescribed by the Order of 1884 as amended by this order and the solicitor shall thereupon comply with the requisition and any further bill so delivered shall be subject to taxation as if the provisions of this order with respect to the regulation of remuneration by gross sum has not been made. The Solicitors' Remuneration General Order (No. 2) 1920 is hereby revoked.”

The effect of this provision is as follows:

1. The solicitor has the right to choose how remuneration should be paid;
2. The solicitor can choose to be paid by a gross sum rather than by means of detailed charges;
3. Within 12 months of delivery of a bill of costs by way of gross sum, the client may require particulars of the charges, computed in accordance with the General Orders;
4. Within 1 month of payment of a gross sum bill of costs, the client may require particulars of the charges, computed in accordance with the General Orders;
5. Where a client requires particulars, the solicitor is obliged to comply with this requirement;
6. Any further bill delivered by the solicitor to the client shall be subject to taxation as if the provisions regarding remuneration by gross sum were not introduced.

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<sup>41</sup> See *Heffernan v. Heffernan*, Unreported, High Court, Gannon J., December 2, 1974; *McGrory v. Express Newspapers*, Unreported, High Court, Murphy J., July 21, 1995.

<sup>42</sup> This can be contrasted with the position regarding party and party costs, as will be seen in more detail in a later section of this Paper.

When a solicitor is requested to furnish a detailed bill of costs, the requirements set out in Order 99, Rules of the Superior Courts are relevant. This was confirmed by the High Court in *Smyth v. Montgomery*.<sup>43</sup>

Order 99, rule 29(5) requires a bill of costs to adopt the following format:

“ Bills of costs are to be prepared with seven separate columns:—

- ( a ) the first or lefthand column for dates;
- ( b ) the second for the numbers of the items;
- ( c ) the third for the particulars of the services charged for;
- ( d ) the fourth for disbursements;
- ( e ) the fifth for the Taxing Masters' deductions from disbursements;
- ( f ) the sixth for the professional charges;
- ( g ) the seventh for the Taxing Masters' deductions from professional charges.”

These requirements must be complied with and, in the event that the bill of costs is not within the requisite format, the time allowed for a client to submit the bill for taxation will not begin to run.<sup>44</sup> There are important judicial pronouncements regarding the content of bills of costs in contentious matters.<sup>45</sup> A solicitor who is required to deliver a detailed bill of costs in a non-contentious matter should heed those decisions regarding the preparation of bills of costs in contentious matters.

In *J Walsh & Company v. Greenmount Oil Company*<sup>46</sup> the Solicitors' Remuneration General Order 1960 arose for consideration. Solicitors acted for clients in respect of complex takeover transactions and submitted a lump sum bill in respect of the work done. In response to a request submitted by the client under section 6 of the General Order of 1960, the solicitors subsequently furnished an itemised bill of costs that ran to approximately 100 pages in length. The clients refused to sign a requisition to taxation in respect of this bill on the basis that the majority of the bill related to charges for “instructions”, which the clients claimed was no longer a proper category for legal charges. The clients submitted that the new schedule introduced by the General Order of 1960 included items that should be used for all work done and that all work must be charged for and itemised in accordance with that schedule, rather than under the general heading of “instructions”.

Kenny J. noted that the General Order of 1960 introduced a new method of charging, with “instructions” appearing as the first item in the schedule of charges and the final item, item number 21, catering for any work not covered specifically under the other item headings. Kenny J. gave the following description of the purpose of the instructions fee: “The Instructions Fee allowed the Taxing Master to give remuneration over and above the total of the itemised charges, where, having regard to a number of considerations, he thought it reasonable to do so.”

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<sup>43</sup> Unreported, High Court, Blayney J., July 7, 1986.

<sup>44</sup> See *Smyth v. Montgomery*, Unreported, High Court, Blayney J., July 7, 1986.

<sup>45</sup> See, for example, the decision of the Supreme Court in *Irish Independent Newspapers Ltd. v. Irish Press Ltd.* [1939] I.R. 371; 73 I.L.T.R. 171. See further below.

<sup>46</sup> [1964] 98 I.L.T. 155.

As numerous items were included in the instruction fee and not separately charged for, the Court held that the bill of costs did not comply with this Order and should not be referred to taxation.

It has been established that a solicitor cannot amend a bill of costs to reflect a higher charge, when requested to submit the bill of costs in form suitable for submission to taxation. This issue fell for determination in *Agritex v. O'Driscoll*.<sup>47</sup> Lynch J. noted that,

“The right of a client to have a bill of costs, with which he has been served by his solicitor, taxed by a taxing master of the High Court is an important protection of the public in a situation where almost invariably the client is in a dependent position vis-à-vis his solicitor. It is a right which must not be inhibited or circumvented.”<sup>48</sup>

The Court concluded that, if a solicitor, upon being required to prepare a detailed bill of costs, could increase the amount of the fees claimed considerably, as the solicitor in that case attempted to do, this would diminish the protection afforded to the client by the system of taxation of costs.<sup>49</sup> Kenny J. gave the following description of the purpose of the instructions fee:

“The Instructions Fee allowed the Taxing Master to give remuneration over and above the total of the itemised charges, where, having regard to a number of considerations, he thought it reasonable to do so.”

The rule that the costs charged by a solicitor in a bill of costs could not be increased was considered by the High Court in *A&L Goodbody Solicitors v. Colthurst*.<sup>50</sup> In that case, the defendant challenged the discrepancy between two successive bills of costs delivered by the plaintiff, a firm of solicitors who had acted for the plaintiff. Peart J. considered this submission, concluding that, on the facts of the case, the discrepancy was more apparent than real, as the first, lower bill of costs took into account payments that had previously been made by the defendant. This indicates that the courts will be realistic in assessing the scale of different bills of costs and not apply the rule in *Agritex v. O'Driscoll*<sup>51</sup> too rigidly.

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<sup>47</sup> [1995] 2 I.L.R.M. 23.

<sup>48</sup> [1995] 2 I.L.R.M. 23 at 28.

<sup>49</sup> “If it were permissible for a solicitor who is ordered by the court to prepare and deliver a formal bill of costs in a form suitable for submission to a taxing master of the High Court in lieu of bills, invoices and dockets not so suitable or convenient for taxation to increase the amount of his total claim by some 60%, as is the case here, I have no doubt that that would greatly inhibit the protection of citizens to require taxation of bills of solicitors and client costs delivered to them by their own solicitors.” [1995] 2 I.L.R.M. 23 at 28.

<sup>50</sup> *A&L Goodbody Solicitors v. Colthurst* [2003] IEHC 74 (Unreported, High Court, Peart J., November 5, 2003).

<sup>51</sup> [1995] 2 I.L.R.M. 23.

## H. Taxation of costs

The Taxing Master's jurisdiction to tax solicitor-and-client costs derives from the Solicitors (Ireland) Act 1849, which provides in section 2 as follows:

"No solicitor... shall commence or maintain any action or suit for the recovery of any fees, charges, or disbursements for any business done by such solicitor, until the expiration of one month after such solicitor... shall have delivered unto the party to be charged therewith... a bill of such fees, charges, and disbursements... on the application of the party chargeable by such bill within such month it shall be lawful... to refer such bill, and the demand of such solicitor... to be taxed and settled by the proper officer of the court in which such reference shall be made, without any money being brought into court."

This provision prevents a solicitor from seeking to enforce a bill of costs unless and until the following conditions are met:

1. A bill of costs must have been delivered to the client;
2. One month must have passed since the delivery of that bill;
3. The client can, within that one-month period, refer the bill for taxation.

Section 6 of the Act of 1849 provides that the payment of a bill of costs,

"shall in no case preclude the court or judge to whom application shall be made from referring such bill for taxation, if the special circumstances of the case shall in the opinion of such court or judge appear to require the same upon such terms and conditions and subject to such directions as to such court or judge shall seem right, provided the application for such reference be made within twelve calendar months after payment."

In *State (Gallagher Shatter & Co.) v. de Valera*,<sup>52</sup> McCarthy J. summarised the effect of sections 2 and 6 of the Act of 1849 as follows:

- "1. The solicitor cannot lawfully sue for one month after delivery.
2. The client has a period of twelve months within which to demand and obtain taxation.
3. After the expiry of twelve months or after payment of the amount of the bill, then the Court may, if the special circumstances of the case appear to require the same, refer the bill to taxation, provided the application to Court is made within twelve calendar months after payment.
4. After the expiration of the latter period, there is no statutory power to refer to taxation."

In *Smyth v. Montgomery*,<sup>53</sup> Blayney J quoted this decision with approval. In that case, the solicitors sought to prevent the submission to taxation of a solicitor and client bill of costs, on the basis that more than 12 months had expired since the delivery of the bill of costs. Blayney J. considered the rules governing bills of costs, including Order

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<sup>52</sup> [1986] I.L.R.M. 3.

<sup>53</sup> Unreported, High Court, Blayney J., July 7, 1986.

99, rule 30(5) of the Rules of the Superior Courts, and concluded that the 12 month time limit for submission to taxation did not apply, as no valid bill of costs within the meaning of sections 2 or 6, had been furnished to the client.

With regard to the third point in *State (Gallagher Shatter & Co.) v. de Valera*<sup>54</sup>, that an application can be made to court within 12 months of the payment of the bill, to refer the bill of costs for taxation, it is established that there must be special circumstances to warrant such taxation. The types of situations in which such special circumstances have been found to exist include situations where the payment was made without the consent of the client, where pressure was exerted on the client, where there was gross overcharging and where the payment was made subject to the right to have the bill taxed.<sup>55</sup>

### **Part III. Contentious Business**

#### **A. Contentious business**

“Contentious business” is defined by the Solicitors (Amendment) Act 1994 as follows: “business done by a solicitor in or for the purpose of or in contemplation of proceedings before a court or tribunal or before an arbitrator appointed under the Arbitration Acts 1954-1980.”

The legislation that governs the remuneration of solicitors for “contentious business” includes the Attorneys’ and Solicitors’ Act 1849, the Attorneys’ and Solicitors’ Act 1870, the Rules of the Superior Courts 1986 and the Solicitors (Amendment) Act 1994.

#### **B. Agreements**

Solicitors and clients are free to enter into agreements regarding the solicitor’s remuneration in contentious matters. This is provided by the Attorneys’ and Solicitors’ Act 1870, section 4 of which states,

“An attorney or solicitor may make an agreement in writing with his client respecting the amount and manner of payment for the whole or any part of any past or future services, fees, charges, or disbursements in respect of business done or to be done by such attorney or solicitor whether as an attorney or solicitor or as an advocate or conveyancer, either by a gross sum, or by commission or percentage, or by salary or otherwise, and either at the same or a greater or at a less rate as or than the rate at which he would otherwise be entitled to be remunerated...”

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<sup>54</sup> [1986] I.L.R.M. 3.

<sup>55</sup> *Re MacLoughlin* 42 ILTR 153; *Re Williams* 65 ILT 68; *Re Horan* [1964] I.R. 263.

This permits the solicitor and client to enter into agreements in the following terms:

1. They can enter an agreement regarding the amount or the manner of payment of legal charges;
2. The agreement can relate to past or future charges;
3. The agreement can relate to the whole, or part only, of the charges;
4. The charges that may be subject of such an agreement include fees and disbursements;
5. The agreement can provide for payment in a gross sum, or by means of commission, percentage, salary or otherwise;
6. The agreement must be in writing;
7. The payment under the agreement may be the same, less or more than the solicitor would otherwise receive.

### **C. Section 68**

An important provision that deals with the interaction between the solicitor and client was introduced by section 68 of the Solicitors (Amendment) Act 1994.<sup>56</sup> While this provision does apply to non-contentious business, there are certain aspects of the provision, which are relevant solely to contentious business.

First, where legal services involve contentious business, the section 68 letter must, in addition to the generally required content<sup>57</sup>, also include particulars of the circumstances in which the client may be required to pay the costs of another party or other parties. It must also include particulars of the circumstances, if such exist, in which the client may be required to pay costs to the solicitor above the costs that may be recovered from the other party or parties in contentious proceedings.<sup>58</sup>

Secondly, in the context of contentious business, section 68 prohibits solicitors from entering into any agreements with clients to the effect that the solicitor's charges will be a percentage of the damages or monies that may be payable to the client in contentious proceedings. Any charges made in contravention of this rule, are not enforceable against the client.<sup>59</sup>

Thirdly, solicitors are prohibited by section 68 from retaining any part of damages or other moneys payable to the client arising from contentious business, in full or partial discharge of the solicitors' charges.<sup>60</sup> However, this does not preclude a solicitor and a client from entering into an agreement that the solicitor's costs will be paid out of damages or other moneys that become so payable to the client.<sup>61</sup> Such an agreement must be in writing and must include an estimate of what costs the solicitor believes

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<sup>56</sup> See generally, Part II, above.

<sup>57</sup> See further Part II, above.

<sup>58</sup> Solicitors (Amendment) Act 1994, s 68(1).

<sup>59</sup> Solicitors (Amendment) Act 1994, s 68(2).

<sup>60</sup> Solicitors (Amendment) Act 1994, s 68 (3).

<sup>61</sup> Solicitors (Amendment) Act 1994, s 68 (4).

may be recoverable in respect of the solicitor's charges, from other parties to the proceedings in question.<sup>62</sup>

Fourthly, as soon as practicable after the conclusion of contentious business, a solicitor is obliged to provide a bill of costs to the client, displaying the following:

- “ ( a ) a summary of the legal services provided to the client in connection with such contentious business,
- ( b ) the total amount of damages or other moneys recovered by the client arising out of such contentious business, and
- ( c ) details of all or any part of the charges which have been recovered by that solicitor on behalf of that client from any other party or parties (or any insurers of such party or parties).”<sup>63</sup>

The bill of costs so furnished must also show separately the amounts of fees, outlays, disbursements and expenses incurred or arising in connection with the provision of such legal services.

#### **D. Security for costs**

Section 16 of the Attorneys' and Solicitors' Act 1870 permits solicitors to take security from their clients for future charges, fees and disbursements in relation to contentious matters.

Section 16 provides, “An attorney or solicitor may take security from his client for his future fees, charges, and disbursements, to be ascertained by taxation or otherwise.”

This can be contrasted with the provision governing security for costs in non-contentious matters, section 7 of the Solicitors' Remuneration General Order 1884, for wording of which suggests that solicitors can “accept” such security but cannot necessarily require security to be furnished.<sup>64</sup> Section 16, by contrast, permits solicitors to “take” security for costs.

#### **E. Scaled costs**

In the context of contentious matters, there is a schedule of fees set out in Appendix W to the Rules of the Superior Courts, which lists 81 items and the prescribed fee for all but ten of these items.<sup>65</sup> The scales of the fees prescribed for the various items in Appendix W have been criticised heavily by the courts. Murphy J. described the scale of fees as follows: “The vast bulk of the fees are in the order of £1 or £2 with or without some pence. In the result a solicitor's bill will, as the present case illustrates,

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<sup>62</sup> Solicitors (Amendment) Act 1994, s 68 (5).

<sup>63</sup> Solicitors (Amendment) Act 1994, s 68 (6).

<sup>64</sup> See further Part II above.

<sup>65</sup> Appendix W is appended to the Report of the Working Group on Legal Costs and appears as Appendix 8 to that Report.

record in page after page sums of a magnitude of 28p to £16 and rarely exceeding in total a figure of £2,000 to £3,000 until the instruction fee is reached.”<sup>66</sup>

In *Smyth v. Tunney*,<sup>67</sup> Murphy J. went on to criticise the minimal amount of the fees allowed by Appendix W to the Rules of the Superior Courts and the fact that the instruction fee is required to compensate solicitors for the inadequacy of those fees.

“Why the Rules of the Superior Courts persist in prescribing fees which are demonstrably unreal even by reference to transport costs and clerical overheads is difficult to understand... Outrageously low though the solicitor’s prescribed fees may be, I find difficulty in acquiescing in the proposition that the instruction fee should be used to compensate the solicitor (whether as against his own client or the unsuccessful party to the proceedings) for the inadequacy of the fees payable for the individual items... It seems to me that it would be much more in the interests of clients and the public generally if a realistic fee were prescribed in the first instance so that it would not be necessary to have recourse to this artificial and in my view doubtful procedure for obtaining proper remuneration.”<sup>68</sup>

This view was echoed by Barron J. in *Best v. Wellcome Foundation Ltd.*<sup>69</sup> in the following terms: “.. the provisions of Appendix W are long since out of date and should be brought up to date.”

It should be noted that, in some instances, the amount of the fee prescribed by Appendix W is a range from one figure to another, and in other instances, is expressed as being at the discretion of the Taxing Master. Where such discretion is being exercised, Order 99, Rule 37(22) provides the following guidance:

- “ (i) Where in Appendix W there is entered either a minimum and a maximum sum, or the word "discretionary", the amount of costs to be allowed in respect of that item shall, subject to any order of the Court, be in the discretion of the Taxing Master, within the limits of the sums so entered (if any).
- (ii) In exercising his discretion in relation to any item, the Taxing Master shall have regard to all relevant circumstances, and in particular to—
  - ( a ) the complexity of the item or of the cause or matter in which it arises and the difficulty or novelty of the questions involved;
  - ( b ) the skill, specialised knowledge and responsibility required of, and the time and labour expended by, the solicitor;
  - ( c ) the number and importance of the documents (however brief) prepared or perused;
  - ( d ) the place and circumstances in which the business involved is transacted;
  - ( e ) the importance of the cause or matter to the client;
  - ( f ) where money or property is involved, its amount or value;
  - ( g ) any other fees and allowances payable to the solicitor in respect of other items in the same cause or matter but only where work done in relation to those

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<sup>66</sup> *Smyth v. Tunney* [1993] 1 I.R. 451 at 468.

<sup>67</sup> [1993] 1 I.R. 451.

<sup>68</sup> [1993] 1 I.R. 451 at 469.

<sup>69</sup> [1996] 3 I.R. 378.

items has reduced the work which would otherwise have been necessary in relation to the item in question.”<sup>70</sup>

## F. Instruction Fee

There have been different approaches to the determination of instruction fees. Certain judicial pronouncements and regulations prescribe particular criteria to be taken into account in fixing an appropriate instruction fee. Another approach that has been adopted is to compare the fees allowed in different cases. As an over-riding principle, however, it is important to bear in mind that what should be allowed, is what is “fair and reasonable in the circumstances” of any particular case.<sup>71</sup>

Instruction fees in contentious matters were defined in *Best v. Wellcome Foundation Ltd.* as covering the following:<sup>72</sup>

“To cover taking instructions for the trial or hearing and not merely for the preparation of a brief... It was a fee to cover the overall care and attention which the case required, the difficulties in taking proofs of evidence and intended witnesses and generally organising the case. Ensuring the availability of witnesses and indeed the availability of counsel. It had to cover living with the case. It covered a variety of consultations as well as the cost of assembling and preparing the brief itself.”

Appendix W to the Rules of the Superior Courts 1986 confirms that instruction fees in contentious matters are discretionary<sup>73</sup> and contains the following description of such fees and the work they are intended to cover:

“These items are intended to cover the doing of any work, not otherwise provided for, necessarily or properly done in preparing for a trial, hearing or appeal, or before a settlement of the matters in dispute, including:—

(a) taking instructions to sue, defend, counter-claim or appeal, or for any pleading, particulars of pleading, affidavit, preliminary act or a reference under Order 64, rule 46;

(b) considering the facts and law;

(c) attending on and corresponding with client;

(d) interviewing and corresponding with witnesses and potential witnesses and taking proofs of their evidence; (e) arranging to obtain reports or advice from experts and plans, photographs and models;

(f) making search in Public Record Office and elsewhere for relevant documents.

(g) inspecting any property or place material to the proceedings;

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<sup>70</sup> This mirrors to a very large extent the criteria for an instructions fee in non-contentious matters, as stipulated by the Solicitors’ General Remuneration Order 1960, section 5. See above.

<sup>71</sup> See Courts and Courts Officers Act 1995, s 27(2).

<sup>72</sup> [1996] 3 I.R. 378; [1996] 1 I.L.R.M. 34.

<sup>73</sup> Appendix W, Rules of the Superior Courts 1986, Items 16 and 17. See Appendix 8 to the Report of the Working Group on Legal Costs.

- (h) perusing pleadings, affidavits and other relevant documents;
- (i) where the cause or matter does not proceed to trial or hearing, work done in connection with the negotiation of a settlement; and
- (j) the general care and conduct of the proceedings.”

The principles that govern the discretion of the Taxing Master in allowing fees, where Appendix W permits such discretion, are contained in Order 99, Rule 37(22) of the Rules of the Superior Courts.<sup>74</sup> These principles are also relevant in the context of the instruction fee in non-contentious matters.

Instruction fees account for much of the controversy and challenges surrounding solicitors’ remuneration. There are a number of reasons for this. First, due to the low level of the fees prescribed for individual items, solicitors rely on instruction fees for payment. This was acknowledged by Murphy J. in *Smyth v. Tunney*.<sup>75</sup>

Secondly, instruction fees are by their nature not itemised to the same extent as other fees and may be regarded as being less transparent. This was acknowledged in the following terms in the case of *Irish Independent Newspapers Ltd. v. Irish Press Ltd.*:<sup>76</sup>

“..however extensive the particulars supporting the claim to a particular fee for instructions for brief, the item is but one unit in the bill and the charge remains, if I may borrow the expressive French description, a ‘global’ charge.”<sup>77</sup>

Thirdly, instruction fees are usually the principal item on a bill of costs. In *Irish Independent Newspapers Ltd. v. Irish Press Ltd.*<sup>78</sup> Gavan Duffy J. noted that, “instructions for the brief generally constitute the principal single item of remuneration in any large bill after action.”

Fourthly, the amount of instruction fees can be quite subjective, as compared with the individual items specified in Appendix W. Instruction fees are not as susceptible of precise calculation. As Gavan Duffy J. observed in *Irish Independent Newspapers Ltd. v. Irish Press Ltd.*,<sup>79</sup> “I feel it is my duty to state that the taxation of such items as ‘instructions for brief’ can never be made an exact science or a matter of specialised accountancy; in order to achieve justice it is necessary for the Taxing Master to exercise the discretion given to him in such matters.”<sup>80</sup>

Finally, the fact that instruction fees in contentious matters are typically assessed by the Taxing Master allows considerable scope for scrutiny and review of such fees. The overall difficulty with computing instruction fees was summarised by Murphy J. in *Smyth v. Tunney*<sup>81</sup> as follows:

<sup>74</sup> See further above.

<sup>75</sup> [1993] 1 I.R. 451. See quote from judgment of Murphy J above.

<sup>76</sup> [1939] I.R. 371; 73 I.L.T.R. 171.

<sup>77</sup> [1939] I.R. 371 at 382 (per Gavan Duffy J.)

<sup>78</sup> [1939] I.R. 371; 73 I.L.T.R. 171.

<sup>79</sup> [1939] I.R. 371; 73 I.L.T.R. 171.

<sup>80</sup> [1939] I.R. 371 at 373.

<sup>81</sup> [1993] 1 I.R. 451.

“There are obvious difficulties in attempting to determine an appropriate instruction fee for a solicitor. The problem is that many of the items for which a solicitor is entitled to charge are defined with particularity and costed at derisory figures as I have already said. In relation to the items in respect of which no figure is provided the authorities appear to be wholly at large, with no guidance to be obtained by reference to the time involved or an hourly charge as one finds in some professions or a percentage fee as is adopted in others.”<sup>82</sup>

In *Irish Trust Bank Ltd. v. Central Bank of Ireland*<sup>83</sup> Parke J. expressed a similar view, observing in the context of a challenge to a solicitor’s instruction fee, “It is extraordinarily difficult for a judge to attempt to review such an item...”<sup>84</sup>

There are a number of factors that are relevant to the calculation of an instruction fee in respect of contentious business. In *Crotty v. An Taoiseach*,<sup>85</sup> Barr J. considered the following factors to be relevant in this regard:

- (a) the magnitude of the case;
- (b) the unique and complex nature of the case;
- (c) the importance of the case;
- (d) time spent on the case;
- (e) the skill and experience of the solicitors;
- (f) the speed of the work done;
- (g) the pressure exerted on the solicitor;
- (h) the nature and volume of documentation involved;
- (i) assistance from the client and/or counsel.

There is considerable overlap between these factors and the factors listed in Order 99, Rule 39(22) of the Rules of the Superior Courts 1986, which must be taken into account in fixing an instructions fee. The following elements are common to both and also mirror the factors that are relevant to the determination of an instructions fee in non-contentious matters, as set out above:

- 1. The complexity of the case;
- 2. The novel or unique nature of the case<sup>86</sup>
- 3. The skill and experience of the solicitor;
- 4. The time spent on the case;
- 5. The value/importance of the case;
- 6. The number and nature of documents.

In *Best v. Wellcome Foundation Ltd*<sup>87</sup> Barron J. considered the terms of Order 99, Rule 37(22) and expressed the view that,

“Ultimately, there are only three criteria upon which the fee is determined:-

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<sup>82</sup> [1993] 1 I.R. 451 at 473.

<sup>83</sup> [1976-7] I.L.R.M. 50.

<sup>84</sup> [1976-7] I.L.R.M. 50 at 60.

<sup>85</sup> [1987] I.L.R.M. 400; [1990] I.L.R.M. 617.

<sup>86</sup> There have been so-called “test cases” in which the novel questions were important in the determination of the appropriate instruction fees and counsel fees. See, for example, *Gaspari v. Iarnrod Eireann* [1997] 1 I.L.R.M. 207.

<sup>87</sup> [1996] 3 I.R. 378.

1. any special expertise of the solicitor;
2. the amount of work done;
3. the degree of responsibility borne.”<sup>88</sup>

The Court criticised over-reliance on the amount of the settlement in that case and the use of the settlement figure to increase the instructions fee. Barron J. endorsed a different approach to the calculation of instruction fees: “In my view comparison is ultimately the correct approach to assess the instruction fee.” In comparing different cases, the Court acknowledged, “Every case has its own difficulties, its own complexities, and its own principles of law. It is an amalgam of issues, some of fact, some of law, and some more difficult or more complicated than others.”<sup>89</sup>

In this regard, the Taxing Master noted in *Kenny v. Independent Newspapers*<sup>90</sup> that

“it must be remembered that two cases may sometimes be compared together though, strictly speaking, they resemble each other in nothing, the actual work may display a common denominator. This paradox may be explained by the fact that the taxation is not directly concerned with the substantive cause of action but rather with the costs incurred and the nature and extent of the work. Though cases may be dissimilar, they yet may agree in the effects of costs which they incurred.”

In *Doyle v. Deasy & Co.*<sup>91</sup>, O’ Caoimh J. echoed the view that comparing fees in different cases can be a useful means of determining instruction fees, subject to the following caution:

“With regard to the use of comparisons, neither I nor any of the Judges who have addressed the area of comparative evidence in the area of Taxation, suggest a slavish approach to the adoption of same. As the area involved is not an exact science and as it is probable that few if any cases will be exactly the same, comparators must only be a guide to the assessment in question. However, I am satisfied that they are our most valuable guide.”

## **G. Disbursements**

While there is no statutory definition of “disbursements”, cases such as *Sadd v. Griffin*<sup>92</sup> treat disbursements as meaning actual payments made before delivery of the bill of costs. The types of items at issue include travel expenses, witness expenses, and counsel fees. Whereas *Sadd v. Griffin*<sup>93</sup> was authority for the proposition that sums claimed in the bill of costs as disbursements must have not been paid before delivery of the bill, the recent Irish decision of *A&L Goodbody Solicitors v.*

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<sup>88</sup> [1996] 3 I.R. 378 at 387.

<sup>89</sup> [1996] 3 I.R. 378 at 391.

<sup>90</sup> December 1998.

<sup>91</sup> Unreported, High Court, O’Caoimh J., March 21, 2003.

<sup>92</sup> [1908] 2 KB 510.

<sup>93</sup> [1908] 2 KB 510.

*Colthurst*<sup>94</sup> adopts a different approach. In *A&L Goodbody Solicitors v. Colthurst*<sup>95</sup>, Peart J. considered the impact of section 27(5) of the Courts and Courts Officers Act 1995, which provides,

“On a taxation of costs as between solicitor and client it shall not be necessary to produce vouchers or receipts for the payment of any disbursements (including counsel's fees), but on the completion of the taxation no Certificate of Taxation shall issue until proper vouchers or receipts for disbursements have first been produced and vouched, and accepted by the Taxing Master or unless the parties agree or the Taxing Master decides that proper vouchers or receipts for disbursements need not be provided.”

The defendant in that case attempted to argue that this provision did not change the requirement that disbursements must be paid before they could be included as such in a bill of costs and that section 27(5) merely allowed the Taxing Master greater discretion as to what evidence of the disbursements could be required. Peart J. considered this submission and noted,

“In my view if counsel for the defendants is correct in saying that the section does not have the effect of altering the requirement that a solicitor must himself discharge counsel's fees before presenting a bill for solicitor/client costs for taxation, even when not in funds to do so but rather means simply that the vouchers or receipts in respect of such payment to counsel may be produced after taxation has been completed rather than before the bill is presented for taxation, the statutory amendment has little or no meaningful purpose, since such voucher or receipt would be readily available at the time of presentation if the fees have been paid at that point in time.”<sup>96</sup>

Rather than accepting an interpretation that rendered section 27(5) almost meaningless, Peart J. concluded that, as a result of the introduction of that provision,

“... The fact that in this case counsel's fees have not been paid as yet does not therefore render the bill of costs invalid, and in my view therefore this point of objection by the defendants must fail.”<sup>97</sup>

The legal position in Ireland, regarding solicitor and client costs, is now that “disbursements” do not have to be paid before delivery of the bill of costs.

The most notable “disbursement” in a solicitor's bill of costs for the purposes of this Paper are counsels' fees. There are a number of principles governing the conduct of a solicitor in selecting counsel and paying the fees of counsel. The most important

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<sup>94</sup> *A&L Goodbody Solicitors v. Colthurst* [2003] IEHC 74 (Unreported, High Court, Peart J., November 5, 2003).

<sup>95</sup> *A&L Goodbody Solicitors v. Colthurst* [2003] IEHC 74 (Unreported, High Court, Peart J., November 5, 2003).

<sup>96</sup> *A&L Goodbody Solicitors v. Colthurst* [2003] IEHC 74 (Unreported, High Court, Peart J., November 5, 2003) at page 12.

<sup>97</sup> *A&L Goodbody Solicitors v. Colthurst* [2003] IEHC 74 (Unreported, High Court, Peart J., November 5, 2003) at page 13.

principles were set out in the judgment of Hamilton J. in *Kelly v. Breen*.<sup>98</sup> In that case, Hamilton J. set out, in nine numbered paragraphs, the rules to be applied in the taxation of party and party costs and, in particular, with regard to the payment of counsels' fees. These paragraphs have been relied upon frequently and have become an important guide in the determination of legal costs. The first five paragraphs have a bearing on the question of counsel's fees and are included here, whereas the final four paragraphs are relevant to the role of the Taxing Master in reviewing costs and are cited in a later section of this Paper.

1. "A successful party should, so far as is reasonable, be indemnified from the expense he is put to in an action to attain justice or enforce of defend his rights. He is not however entitled to be indemnified against such costs of expenses, which had been incurred or increased through over caution, negligence or mistake, or by payment of special fees to counsel or special charges or expenses to witnesses or other persons or by any other unusual expenses.
2. It is the function of the practising solicitor
  - (a) to select counsel competent in the field of work to which the brief relates and
  - (b) to determine the proper and reasonable fee which such counsel namely counsel competent in the field of work to which the brief relates and not a particular counsel whom the solicitor may wish to brief would be content to take.
3. In the determination of such fee the practising solicitor should act reasonable carefully and reasonable prudently and should have regard to his day to day and year to years experiences in the course of his practice.
4. These experiences include, *inter alia*, fees charged and paid in respect of cases of a similar nature, the practice of barristers as to marking fees in so far as accepted by solicitors in practice, fees paid to opposing counsel in the same matter, subject to whatever factors might be special to the case, and the depreciation in the value of money.<sup>99</sup>
5. The fees payable to counsel by a solicitor who has retained him in an action are disbursements made by him in the course of his practice."<sup>100</sup>

These criteria have been quoted with approval in many subsequent decisions and remain relevant to the computation of counsels' fees.

One principle that should be noted regarding solicitors' payment of counsel fees is that an agreement between the solicitor and counsel is not enforceable. In *Best v. Wellcome Foundation Ltd.*<sup>101</sup> Barron J. confirmed,

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<sup>98</sup> [1978] I.L.R.M. 63.

<sup>99</sup> The requirement to consider the depreciation in the value of money was established in *Dunne v. O'Neill* [1974] I.R. 180 at 191 to 192: "The evidence before me has clearly demonstrated that the continuing and accelerating depreciation in the value of money is a matter of real significance to the solicitor in practice today in every aspect of his work. I am satisfied that the practising solicitor in contemplating the 'hypothetical counsel' with a view to assessing the reasonable fee which he would be content to take, would have regard instinctively – if not deliberately – to the depreciation in the value of money."

<sup>100</sup> [1978] I.L.R.M. 63 at 68 to 69.

<sup>101</sup> [1996] 3 I.R. 378.

“There is nothing in these rules [the rules set out in *Kelly v. Breen*<sup>102</sup>] nor in the manner in which they have been applied which indicates that once fees have been marked by agreement between solicitor and counsel they must be allowed by the Taxing Master or on appeal by the court.”<sup>103</sup>

## H. Bill of costs

There are various provisions governing the format of a bill of costs in contentious matters. These requirements are important, as a failure to submit a valid bill of costs will preclude the application of certain time limits, such as the time within which a client may refer a bill of costs to taxation.<sup>104</sup>

The rules governing bills of costs are set out in Order 99, rule 29, of the Rules of the Superior Courts, 1986, as follows:

“(1) Every bill of costs which shall be lodged for taxation shall be indorsed with the name and registered place of business of the solicitor by or for whom it is so lodged. Where value added tax is claimed in a bill of costs the registered number allocated by the Revenue Commissioners to the person registered for value added tax must appear in a prominent place at the head of every bill of costs, account or voucher, as appropriate, on which value added tax is claimed or chargeable.

(2) Bills of costs and notices, the service whereof is required, shall have the service as effected indorsed upon them in a manner sufficiently though briefly specifying the person served the time, place and mode of service, and the person serving, and the documents so indorsed shall be produced on proving service.

(3) No addition or alteration shall be made in a bill of costs after it is lodged for taxation except by permission or direction of the Taxing Master.

(4) No entry, initialing or marking in a bill of costs lodged shall be made, save by the Taxing Master, nor shall any erasures be allowed. Where this provision is infringed the Taxing Master may, subject to an appeal to the Court, disallow the item or items in respect of which the infringement has taken place, or may report the matter to the Court.

(5) Bills of costs are to be prepared with seven separate columns:—

- ( a ) the first or lefthand column for dates;
- ( b ) the second for the numbers of the items;
- ( c ) the third for the particulars of the services charged for;
- ( d ) the fourth for disbursements;
- ( e ) the fifth for the Taxing Masters' deductions from disbursements;
- ( f ) the sixth for the professional charges;
- ( g ) the seventh for the Taxing Masters' deductions from professional charges.”

Where a solicitor is submitting a bill of costs that includes party and party as well as solicitor and client costs, the solicitor should submit a bill for all of the costs, allowing

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<sup>102</sup> [1978] I.L.R.M. 63.

<sup>103</sup> [1996] 3 I.R. 378 at 393.

<sup>104</sup> See *Smyth v. Montgomery*, Unreported, High Court, Blayney J., July 7, 1986.

the client a credit in respect of party and party costs which are recoverable from the other party or parties to the proceedings. This was established in *In re Osborn and Osborn*,<sup>105</sup> where Buckley L.J. stated at page 868:

“A solicitor’s bill against his client for costs in an action in which party and party costs are recoverable against the opposite party ought to contain the whole bill of the fees, charges and disbursements in reference to the business to which it relates and not merely a bill of the extra costs chargeable as between solicitor and client... The solicitor should deliver a bill of the whole costs, giving his client credit for the sum received for party and party costs.”

The difficulties with solicitors’ instructions fees that were addressed in relation to non-contentious business<sup>106</sup>, also arise in the context of contentious business. In *Irish Independent Newspapers Ltd. v. Irish Press Ltd.*<sup>107</sup> an instruction fee was challenged on the grounds that it ought to have been itemised. The Supreme Court held that a charge entitled, “instructions for brief” was chargeable as a single category and did not need to be further itemised. Gavan Duffy J, delivering the judgment of the Court, quoted the following dicta from *Murray v. Burlingame*,<sup>108</sup>

“We must exclude from the item ‘instructions for brief’, firstly every taxable item, that is to say, every item for which the schedule of fees provides a price; secondly, every item which, although not specifically provided for by the schedule, is of such a character as could properly be measured thereby, e.g. searches. When these items are got rid of, a residue will then remain, upon which the difficulty of valuation will arise. The Court, therefore, endorsed the view that the fee for instructions for brief is meant to pay a solicitor for work for which there was no appropriate, separate provision in the schedule... According the instructions item should comprise the services for which the solicitor would get nothing, if he were not paid for them under this head.”

The Court recognised in that case that an instruction fee is by its nature, a “global” charge, and further observed that,

“Its oneness is as characteristic as its diversity, and both are due to the need, under the paradoxical system..., for a flexible device to allow an honorarium, under one compendious heading, for miscellaneous services, omitted from an archaic schedule, and so many and so varied as almost to defy satisfactory classification as distinct subjects for specific charges.”<sup>109</sup>

This highlights the difficulty of incorporating a detailed instruction fee in an otherwise itemised and scaled, bill of costs.

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<sup>105</sup> [1913] 3 K.B. 862.

<sup>106</sup> See further above, Part II.

<sup>107</sup> [1939] I.R. 371; 73 I.L.T.R. 171.

<sup>108</sup> 46 I.L.T.R. 180.

<sup>109</sup> *Independent Newspapers Ltd. v. Irish Press Ltd.* [1939] I.R. 371 at 382 (per Gavan Duffy J.).

## **Part IV                      Taxation of costs**

### **A.       Powers of Taxing Master**

Before examining the topic of taxation of costs in detail, it should be pointed out that the overriding function of the Taxing Master has been placed on a statutory footing and is as follows:

“...the Taxing Master (or County Registrar as the case may be) shall have power on such taxation to allow in whole or in part, any costs, charges, fees or expenses included in a bill of costs in respect of counsel (whether senior or junior) or in respect of a solicitor or an expert witness appearing in a case, or any expert engaged by a party as the Taxing Master (or County Registrar as the case may be) considers in his or her discretion to be fair and reasonable in the circumstances of the case, and the Taxing Master shall have power in the exercise of that discretion to disallow any such costs, charges, fees or expenses in whole or in part.”<sup>110</sup>

The important aspect of this provision is that it establishes the standard by which costs, charges, fees and expenses should be allowed or disallowed as one of fairness and reasonableness. While this section of the Paper will consider different criteria and means of assessing the appropriate legal charges and fees on taxation of costs, the principle that the taxing master has the discretion to allow such costs as are fair and reasonable in the circumstances of the case, should not be lost.

In terms of the conduct of the taxation, the Taxing Master has the right to inspect books, papers and documents relating to the cause or matter in accordance with Order 99, Rule 34 of the Rules of the Superior Courts, which provides,

“Where, upon the taxation of any bill of costs it appears to the Taxing Master that it is necessary to inspect any books, papers or documents relating to the cause or matter, the Taxing Master shall be at liberty to request the Registrar or Examiner who has the custody of such books, papers or documents to cause the same to be transmitted to the office of Taxing Master..”

The Taxing Master also has the general power to,

“summon and examine witnesses, administer oaths, direct production of books, papers and documents, require any party to be represented by a separate solicitor, and generally direct any party to the taxation to do such acts as he may consider necessary.”<sup>111</sup>

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<sup>110</sup> Courts and Courts Officers Act 1995, s 27(2).

<sup>111</sup> Order 99, Rule 25.

## B. Referring costs to taxation

The court has an inherent jurisdiction to order taxation in any particular case. This has been described as follows:

“It is well established law that the court has always retained its inherent jurisdiction to order taxation; it derives from the court’s inherent jurisdiction to supervise its officers, including solicitors, all of whom are officers of court.”<sup>112</sup>

This power exists in parallel with the statutory schemes governing the reference of legal costs to taxation, such as sections 2 and 6 of the Solicitors (Ireland) Act 1849, which prescribe the power of a client to refer solicitor and client costs to taxation.

In respect of contentious matters, Order 99 of the Rules of the Superior Courts contains detailed provisions regarding the taxation of costs. Rule 33 provides that the client may set a bill of costs down for taxation directly, “[i]f a solicitor following a request by a client for the taxation of costs that may be payable by such client, fails to set down the bill of costs for taxation...”.

Order 99, Rule 14 provides,

“The Taxing Master shall have power to tax—

( a ) the costs of or arising out of any cause or matter in any of the Superior Courts;

( b ) the costs directed by an award made on a reference to arbitration to be paid;

( c ) the costs of a receiver appointed in any cause or matter, on the application of the receiver or of any party to such cause or matter;

( d ) the cost of registering judgments as mortgages, of obtaining grants of probate and of letters of administration, of satisfying judgments, and any other other costs usually taxed *ex parte*, on the application of any party interested;

( e ) without any order for the purpose, costs as between solicitor and client, upon the application of the client and upon his written undertaking, to be lodged in the Taxing Masters' Office, to pay any balance which the Taxing Master may certify;

( f ) any other costs to be taxed under or by virtue of a statute or these Rules.”

## C. Role of Taxing Master

Before the enactment of the Courts and Courts Officers Act 1995, the scope of the taxing master’s role in reviewing costs was largely determined by decisions of the High Court and the Supreme Court, applying the Rules of the Superior Courts.

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<sup>112</sup> *State (Gallagher Shatter & Co.) v. de Valera* [1986] I.L.R.M. 3 at 8, per McCarthy J. (delivering the judgment of the Supreme Court).

In *Dunne v. O'Neill*,<sup>113</sup> Gannon J. interpreted the powers of the taxing master, particularly from the perspective of assessing counsels' fees, as follows:

“It is no part of the function of the Taxing Master on taxation of the costs, or of the Court on a review of the taxation, to examine the nature or quality of the work done by or required of counsel or to assess, by measurement of fees, the value of counsel's work. The sole matter with which the Taxing Master is concerned in respect of the items which are the subject matter of this application is whether to allow in whole or in part the disbursements made by the solicitor in the course of his practice in respect of fees to counsel retained by him in the action in accordance with the rules relating to party and party taxation.”<sup>114</sup>

In deciding whether to allow such disbursements, Gannon J. further stated that,

“the amounts of the disbursements should be assessed on the basis of what a practising solicitor who is reasonably careful and reasonably prudent would consider a proper and reasonable fee to offer to counsel. This standard does not involve any presumption in favour of particular fees allotted by a solicitor to counsel of his choice, but it does involve having due regard to the changes in what the practising solicitor considers to be reasonable derived from his day to day and year to year experiences in the course of his practice.”<sup>115</sup>

The decision of *Dunne v. O'Neill*<sup>116</sup> was authority for the standard of the so-called hypothetical reasonably careful and reasonably prudent solicitor, which was then adopted by Hamilton J. in *Kelly v. Breen*.<sup>117</sup>

*Kelly v. Breen*<sup>118</sup> was a seminal decision regarding the scope of the role of the Taxing Master in the taxation of costs. Paragraphs 6 to 9 address the role of the Taxing Master, with paragraph 9 in the decision of Hamilton J. proving particularly influential.

“6. The Taxing Master is obliged by virtue of O. 99, r. 37(18) to allow all such costs charges and expenses as shall appear to him to have been necessary or proper for the attainment of justice or for enforcing or defending the rights of any party but, save as against the party who incurred the same, no costs shall be allowed which appear to the Taxing Master to have been incurred or increased through over caution, negligence or mistake or by payment of special fees to counsel or special charges or expenses to witnesses or other persons or by any other unusual expenses.

7. The discretion vested in the Taxing Master is not an unfettered one but is of a judicial nature and accordingly should be exercised by him without any element of predetermination or rule of thumb or indeed any arbitrary or capricious determination.

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<sup>113</sup> [1974] I.R. 180.

<sup>114</sup> [1974] I.R. 180 at 189.

<sup>115</sup> [1974] I.R. 180 at 189 to 190.

<sup>116</sup> [1974] I.R. 180.

<sup>117</sup> [1978] I.L.R.M. 63.

<sup>118</sup> [1978] I.L.R.M. 63.

8. In the exercise of this discretion to allow or disallow all or part of a solicitors disbursements, the Taxing Master is not entitled to prescribe the standards which he requires solicitors to adopt but is required to adopt the standard of the practising solicitor who is reasonably careful and reasonably prudent and for this purpose should keep himself informed up to date of the standards of solicitors in practice in relation to the fees properly charged by and payable to counsel.

9. The Taxing Master in the exercise of his discretion is only entitled to disallow any or any part of a solicitors disbursement, including counsels fees if he is satisfied that no solicitor acting reasonably carefully and reasonably prudently based on his experiences in the course of his practice would have determined such fees or would have made such disbursements in the course of his practice.”<sup>119</sup>

In *State (Gallagher Shatter & Co.) v. de Valera*,<sup>120</sup> Finlay C.J. stated, “paragraph 9 does contain what in my view is a comprehensive and definitive statement of the precise discretion which the Taxing Master should exercise on such an issue.”<sup>121</sup> In that case, McCarthy J. similarly stated, “I agree with the Chief Justice that paragraph 9 of the several paragraphs stated by Hamilton J. in *Kelly v. Breen* [1978] I.L.R.M. 63 is a comprehensive and definitive statement of the precise discretion which the Taxing Master should exercise...”

As a result of the decision in *Kelly v. Breen*<sup>122</sup> and other decisions of the Superior Courts, the following approach was adopted to the remit of the taxing master in reviewing costs:

1. A successful party should be indemnified from the expenses necessary to attain justice and protect his rights;
2. A successful party is not entitled to costs attributable to over-caution, negligence or mistake, or to the payment of special or unusual fees, charges or expenses;
3. When considering the scale of counsel’s fees, the taxing master must adopt the perspective of the hypothetical reasonably careful and reasonably prudent solicitor to determine whether counsel’s fees were reasonable;
4. It was not the task of the taxing master to examine the quality of the work done or its value;
5. The taxing master should only disallow solicitors’ disbursements, including counsel fees, if satisfied that no solicitor acting reasonably carefully and reasonably prudently would have made such disbursements;
6. The taxing master should take into account a number of factors, such as the fees paid to opposing counsel, the depreciation in the value of money and fees allowed in comparable cases;
7. When examining solicitors’ instructions fees, the taxing master should consider the special expertise of the solicitor, the amount of the work done and the degree of responsibility borne.<sup>123</sup>

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<sup>119</sup> [1978] I.L.R.M. 63 at 68 to 69.

<sup>120</sup> [1991] 2 I.R. 198.

<sup>121</sup> [1991] 2 I.R. 198 at 205.

<sup>122</sup> [1978] I.L.R.M. 63.

The function of the taxing master was revised by section 27 of the Courts and Courts Officers Act 1995. Section 27(1) provides that, on a taxation of party and party costs or solicitor and client costs, the Taxing Master (or County Registrar, as the case may be),

“...shall have power on such taxation to examine the nature and extent of any work done, or services rendered or provided by counsel (whether senior or junior), or by a solicitor, or by an expert witness appearing in a case or any expert engaged by a party, and may tax, assess and determine the value of such work done or service rendered or provided in connection with the measurement, allowance or disallowance of any costs, charges, fees or expenses included in a bill of costs.”

One of the important changes introduced by this provision is that the Taxing Master now has the power to examine the work done, and services rendered, by solicitors, counsel, expert witnesses and/or experts. As part of this examination, the Taxing Master has the power to consider the nature and extent of the work and services, and to assess and determine the value of such work and services.

Having conducted this examination, the Taxing Master has the power to allow in whole or in part, any costs, charges, fees or expenses included in a bill of costs in respect of counsel, solicitors, expert witnesses or experts “as the Taxing Master (or County Registrar as the case may be) considers in his or her discretion to be fair and reasonable in the circumstances of the case.”<sup>124</sup> The Taxing Master also has the power, in exercising that discretion, to disallow any such costs, charges, fees or expenses in whole or in part.

In *Minister for Finance v. Goodman (No. 2)*,<sup>125</sup> Laffoy J. considered the impact of the Act of 1995 and cited an excerpt from the order of the Taxing Master in that case as follows: “The Act [of 1995] bestows a right on me to examine the nature and extent of work carried out by counsel and solicitor and determine the value of that work in relation to the case. This removes the limitation on my discretionary powers if in fact there were limitations on that discretion.”<sup>126</sup>

Laffoy J. endorsed this position, stating that sections 27(1) and 27(2) of the Act of 1995 “introduced a fundamental change in relation to the function of the Taxing Master in the taxation of solicitor’s disbursements, including counsel’s fees.”<sup>127</sup>

Whereas before the introduction of those provisions, it was not the function of the Taxing Master to evaluate the work done and what the disbursements should be, since

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<sup>123</sup> *Best v. Wellcome Foundation Ltd. (No. 3)* [1996] 3 I.R. 378; *Bloomer v. Incorporated Law Society of Ireland (No. 2)* [2000] 1 I.R. 383.

<sup>124</sup> Section 27(2), Courts and Courts Officers Act 1995.

<sup>125</sup> [1999] 3 I.R. 333.

<sup>126</sup> [1999] 3 I.R. 333 at 348.

<sup>127</sup> [1999] 3 I.R. 333 at 349.

the introduction of the Act of 1995, it has been squarely within the remit of the Taxing Master to examine the nature and value of any work done.<sup>128</sup>

In *Superquinn v. Bray U.D.C. (No. 2)*,<sup>129</sup> Kearns J. considered the impact of the Act of 1995 on the scope of the Taxing Master's power to review costs referred to him for taxation. The Court cited *Minister for Finance v. Goodman (No. 2)*<sup>130</sup> and continued,

“...it must follow that the Taxing Master also has a duty to examine the nature and extent of work in any particular case and make his own fair and reasonable assessment on the merits accordingly. This must mean that some supposed ‘no go areas’, particularly with regard to counsel’s fees, no longer exist and that some principles, expressed in cases such as *Dunne v. O’Neill* [1974] I.R. 180 and *Kelly v. Breen* [1978] I.L.R.M. 63, in relation to counsels’ fees are no longer determinative, but merely factors to be taken into account.”<sup>131</sup>

#### D. Review by Court

The original approach of the Courts in reviewing decisions of the Taxing Masters was that a decision of the Taxing Master should only be reviewed if there was an error of principle in that decision.<sup>132</sup>

In *Irish Trust Bank v. Central Bank of Ireland*,<sup>133</sup> Parke J. considered the scope of the Court’s power to review such items as solicitors’ instruction fees and concluded,

“...I do not think that any judge could properly interfere with the exercise of the taxing master’s discretion unless it can be clearly shown that the taxing master proceeded upon some wrong principle and in addition there was some material before the judge which would enable him to arrive at a figure proper in the circumstances.”<sup>134</sup>

This was considered by Hamilton J. in *Kelly v. Breen*,<sup>135</sup> and, having reviewed the decision of Gannon J. in *Dunne v. O’Neill*<sup>136</sup> to the effect that “the Court is no longer confined to circumstances involving an error in principle on the part of the Taxing Master,” Hamilton J. preferred the latter view.

In *Best v. Wellcome Foundation Ltd.*,<sup>137</sup> Barron J., reviewing the taxation of a solicitor’s instruction fee, confirmed,

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<sup>128</sup> See *Minister for Finance v. Goodman (No. 2)* [1999] 3 I.R. 333 at 349.

<sup>129</sup> [2001] 1 I.R. 459.

<sup>130</sup> [1999] 3 I.R. 333.

<sup>131</sup> [2001] 1 I.R. 459 at 475.

<sup>132</sup> See *Lavan v. Walsh* [967] I.R. 129, where Kenny J. considered that earlier position but concluded that he was not precluded from reviewing decisions of the Taxing Master.

<sup>133</sup> [1976-7] I.L.R.M.50.

<sup>134</sup> [1976-7] I.L.R.M.50 at 60.

<sup>135</sup> [1978] I.L.R.M. 63.

<sup>136</sup> [1974] I.R. 180.

<sup>137</sup> [1996] 3 I.R. 378.

“The jurisdiction of this Court is to determine the appropriate fee. Earlier cases in which it was laid down that the Court’s function was dependent upon an error in principle having been made by the Taxing Master are no longer authoritative.”<sup>138</sup>

The Courts and Courts Officers Act 1995, section 27(3) provides,

“The High Court may review a decision of a Taxing Master of the High Court and the Circuit Court may review a decision of a County Registrar exercising the powers of a Taxing Master of the High Court made in the exercise of his or her powers under this section, to allow or disallow any costs, charges, fees or expenses provided only that the High Court is satisfied that the Taxing Master, or the Circuit Court is satisfied that the County Registrar, has erred as to the amount of the allowance or disallowance so that the decision of the Taxing Master or the County Registrar is unjust.”

In *Smyth v. Tunney*,<sup>139</sup> McCracken J. considered section 27(3) and stated what has become the governing principle for a court reviewing a decision of the Taxing Master.

“The principle upon which I must act, therefore, is not simply to decide whether the Taxing Master erred, but also, if I am to alter his decision, I must find that his taxation was unjust. I cannot approach this issue on the basis of trying to assess what costs I would have awarded had I been the Taxing Master.”<sup>140</sup>

In *Superquinn Ltd. v. Bray U.D.C.*<sup>141</sup> Kearns J. also considered the implications of section 27(3) in the context of the Court’s review of decisions of the Taxing Master and noted that the wording of the provision,

“...seems to represent a significant shift of emphasis and to impose a heavier burden on any party seeking to challenge a ruling of the Taxing Master... the court should exercise a considerable degree of judicial restraint in the context of a review, although it must clearly intervene if failure to do so would result in an injustice.”<sup>142</sup>

With regard to what constitutes “injustice” for the purposes of section 27(3), the approach of Geoghegan J. in *Bloomer v. Incorporated Law Society of Ireland (No. 2)*<sup>143</sup>, as endorsed by Kearns J. in *Superquinn Ltd. v. Bray U.D.C.*,<sup>144</sup> is that the justice of the Taxing Master’s decision in relation to any particular item, should be determined by the amount and a decision should not be disturbed unless the error was of a sufficient magnitude.<sup>145</sup>

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<sup>138</sup> [1996] 3 I.R. 378 at 392.

<sup>139</sup> [1999] 1 I.L.R.M. 211.

<sup>140</sup> [1999] 1 I.L.R.M. 211 at 213. This approach was adopted by Kelly J. in *Tobin and Twomey v. Kerry Foods Ltd.* [1999] 1 I.L.R.M. 428 at 431.

<sup>141</sup> [2001] 1 I.R. 459.

<sup>142</sup> [2001] 1 I.R. 459 at 475.

<sup>143</sup> [2000] 1 I.R. 383.

<sup>144</sup> [2001] 1 I.R. 459.

<sup>145</sup> In *Superquinn Ltd. v. Bray U.D.C.* [2001] 1 I.R. 459, Kearns J. suggested that the court should not interfere unless an error of the order of 25% of more was established in respect of an item under challenge.

## E. Alternative means of challenging costs

The system of taxation of costs has been regarded as an important protection of clients, who are in a dependent position vis-à-vis their solicitor. This was confirmed in *Agritex v. O'Driscoll*.<sup>146</sup> It should be noted that there are other means for clients to ensure protection of their rights, such as their right not to be charged excessively for legal services.

Sections 8 and 9 of the Solicitors (Amendment) Act 1994 introduced important mechanisms for clients to challenge the behaviour of their solicitors. Of particular relevance to this paper is the power of the Incorporated Law Society, upon receipt of a complaint from a client regarding the adequacy or quality of the legal services provided by a solicitor, to “determine whether the solicitor is entitled to any costs in respect of such legal services or purported services, and if he is so entitled, direct that such costs in respect of such services shall be limited to such amount as may be specified in their determination.”<sup>147</sup> If the bill of costs in question is subsequently submitted for taxation, the Act provides that the bill of costs “shall be deemed to be limited to the amount specified in the Society's determination”.<sup>148</sup> A copy of this determination must be included with the bill of costs submitted for taxation.

Section 9 of the Act of 1994 deals with the question of legal costs. Where a client complains that a bill of costs is excessive, the Society has the power to require the solicitor to refund any amount already paid by the client, in whole or in part, or to waive the right to recover those cost, whether in whole or in part.<sup>149</sup> This is without prejudice to the right of any individual to refer a bill of costs to the taxing master for taxation.<sup>150</sup>

In this regard, the Act provides that,

“Where the Society have received a complaint under *subsection (1)* of this section and the client concerned (before or after the receipt of the complaint) has duly requested the solicitor concerned to submit his bill of costs to a Taxing Master of the High Court for taxation on a solicitor and own client basis, the Society shall not make a direction under *subsection (1)* of this section unless, after due notice to that solicitor, they are of the opinion that the solicitor or his agent in that regard is unreasonably delaying in submitting such bill of costs to a Taxing Master of the High Court for such taxation.”<sup>151</sup>

This confirms the precedence of the system of taxation of costs as a means of protecting the rights of clients not to be subjected to excessive charges in respect of solicitor and client costs. This is also confirmed by the terms of section 9 (4), which provides,

<sup>146</sup> [1995] 2 I.L.R.M. 23. See further above.

<sup>147</sup> Solicitors (Amendment) Act 1994, s 8(1)(a).

<sup>148</sup> Solicitors (Amendment) Act 1994, s 8 (4)(a).

<sup>149</sup> Solicitors (Amendment) Act 1994, ss 9 (1)(a) and 9(1)(b).

<sup>150</sup> Solicitors (Amendment) Act 1994, s 9(2).

<sup>151</sup> Solicitors (Amendment) Act 1994, s 9(3).

“Where a bill of costs, which has been the subject of a complaint under subsection (1) of this section has been subsequently taxed, then—  
( a ) if the Society have given a direction under subsection (1) of this section, such direction shall cease to have effect, or  
( b ) if the Society have not given a direction under subsection (1) of this section, the Society shall not enter upon or proceed with the investigation of such complaint or otherwise apply the provisions of this section.”

## **Part V                      Counsel fees**

This topic has been addressed in previous sections of this Paper, such as under the heading of “Disbursements” in “Part III Contentious Business” and under the heading of the “Role of the Taxing Master” in “Part IV Taxation of Costs.” This is largely due to the fact that, in a bill of costs, counsels’ fees appear as one of the solicitors’ disbursements and are taxed as such. However, there are certain aspects of counsels’ fees that remain to be considered.

### **A.     Types of fees**

There are different types of work for which barristers can charge fees. Most of this work is encompassed in the so-called “brief fee”, which is the item that attracts most scrutiny on taxation of costs. The other type of costs that has been considered most frequently in decisions of the taxing master and the courts, are refresher fees.<sup>152</sup> Other fees, such as retainer fees are not taxable.<sup>153</sup>

### **B.     General principles**

Commentators have listed the following as relevant factors to the determination of a fair and reasonable brief fee:<sup>154</sup>

4.       “The taxing master must have regard to the order for costs as awarded by the Court.”
5.       “The taxing master must have regard to the current acceptable standard practice of solicitors.”
6.       “The taxing master will be guided by the selection of counsel by the solicitor and the determination of the fee which must be arrived

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<sup>152</sup> Order 99, Rule 37(28) provides, “It shall be in the discretion of the Taxing Master to allow reasonable refreshers to counsel in proper cases.”

<sup>153</sup> Order 99, Rule 37(29) provides, “No retaining fee to counsel shall be allowed on **taxation** as between party and party.”

<sup>154</sup> See Flynn & Halpin, *Taxation of Costs* (Blackhall Publishing, 1999).

- at on an informed and considered basis; reasonably carefully and reasonably prudently exercised”
7. “Regard should be had to the effect, if any, that inequalities of the parties has in influencing the costs incurred.”
  8. “The taxing master in assessing the fees must recognise the magnitude, difficulties and complexities and the gravity of the case.”
  9. “The fees payable to counsel for the opposing party are not a clear indicator of the amount that should be justifiably and properly allowed.”
  10. “The taxing master must take account of comparable or similar cases in assessing the fee but, if they do not exist, they cannot be invented or formulated for the taxation of costs.”

A number of additional general principles regarding counsel’s fees can be derived from legislation, decisions of the taxing master, and decisions of the courts.

(a) *Factors*

There are certain factors, which should guide a barrister in marking a proper and reasonable fee. These are set out in the Code of Conduct of the Bar of Ireland as follows:

- “(i) the complexity of the issue or subject matter;
- (ii) the length and venue of any trial or hearing;
- (iii) the amount or value of any claim or subject matter in issue;
- (iv) the time within which the work is required to be undertaken;
- (v) any other special feature of the case.”<sup>155</sup>

(b) *Opposing counsels’ fees*

The level of fees paid to opposing counsel in a case was considered to be a relevant factor in *Kelly v. Breen*.<sup>156</sup> However, in *State (Gallagher Shatter & Co.) v. de Valera*<sup>157</sup> McCarthy J. demurred from this view, stating

“I am not wholly satisfied that the fees paid to opposing counsel in the same matter are a relevant consideration in exercising the discretion as detailed in ... the judgment in *Kelly v. Breen* [1978] I.L.R.M. 63. There are many presently identified circumstances that may affect the validity of such comparison; experience has shown that there are many situations that may arise which affect the level of fees for one side or the other so that such a principle may, itself, be impossible of application.”<sup>158</sup>

There are certain practices that are referred to in cases regarding counsels’ fees that support the position of McCarthy J. in this regard. For instance, it appears from

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<sup>155</sup> Rule 11.1.

<sup>156</sup> [1978] I.L.R.M. 63. See paragraph 4 of the judgment of Hamilton J. above.

<sup>157</sup> [1991] 2 I.R. 198.

<sup>158</sup> [1991] 2 I.R. 198 at 208.

decisions such as *State (Gallagher Shatter & Co.) v. de Valera*,<sup>159</sup> that there is a difference in practice between the fees charged by counsel acting for the State and counsel retained by private individuals. Finlay C.J. noted in *State (Gallagher Shatter & Co.) v. de Valera*,<sup>160</sup>

“It was accepted in the course of the argument by counsel on behalf of the Taxing Master that historically there is a very large difference between counsel employed on behalf of the State who for very many and valid reasons may be prepared to accept a lesser fee than counsel employed on the other side by one individual in a case.”<sup>161</sup>

It also appears that counsel who are regularly briefed by a particular client, such as an insurance company, may charge lower fees to those clients.<sup>162</sup> The fees charged in such instances should not be used as a gauge for those barristers’ opposing counsel.

(c) *Retainer and standby fees*

The law leans against the payment of retainer or standby fees to counsel. The Courts and Courts Officers Act 1995 provides, in section 27(4), that,

“No standby or retainer fee shall be payable to any solicitor, counsel (whether senior or junior) or to any witness whether professional or otherwise, on a taxation of costs as between party and party, nor on a taxation of a solicitor and client bill of costs where the Taxing Master (or County Registrar as the case may be) deems the payment of such fee to be unreasonable in the circumstances of the case.”

Similarly, Order 99, Rule 37(29) provides, “No retaining fee to counsel shall be allowed on taxation as between party and party.”

(d) *Refresher fees*

There is an established practice of charging refresher fees. This was acknowledged by Parke J. in *Irish Trust Bank v. Central Bank of Ireland*<sup>163</sup> as follows:

“I think I am entitled to say that the practice in relation to marking refreshers is one which is at least as well known to judges as to taxing masters.... A refresher which was one half of the brief fee was considered customary and reasonable in cases where the brief fee was not unusually high and the case was only expected to last for a comparatively short time. Where however the brief fee was high and the case expected to run for a very considerable number of days it was almost inevitable that the refresher fee would be fixed at a lower figure.”<sup>164</sup>

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<sup>159</sup> [1991] 2 I.R. 198.

<sup>160</sup> [1991] 2 I.R. 198.

<sup>161</sup> [1991] 2 I.R. 198 at 208.

<sup>162</sup> See *Crotty v. Ireland* [1990] I.L.R.M. 617; *Clarke v. Hearty*, Unreported, High Court, Barr J., December 2, 1992.

<sup>163</sup> [1976-7] I.L.R.M. 50.

<sup>164</sup> [1976-7] I.L.R.M. 50 at 59.

In the more recent case of *Superquinn Ltd. v. Bray U.D.C.*<sup>165</sup> Kearns J. considered the appropriate level of refresher fees. In that case, each of the two senior counsel for the first defendant marked brief fees of £52,500 and refresher fees of £3,000. On taxation, this brief fee was reduced to £18,000, with the refresher fees retained. The brief fee of £63,000 marked by the fourth defendant's senior counsel was reduced on taxation to £25,000. The refresher of £3,000 was retained. These reductions were challenged. The plaintiff produced evidence that refresher fees do not usually exceed £2,000 and that, only in exceptional cases and usually where only one senior counsel acted, have refresher fees of £3,000 been allowed. In relation to the refresher fees, Kearns J. concluded,

“I accept fully the submissions made by counsel for the plaintiff. It seems to me that refresher fees of 3000 guineas could only be justified and allowed in quite extraordinary and exceptional circumstances where two senior counsel are retained. This case, while difficult and arduous, falls well short of that threshold.”<sup>166</sup>

Kearns J. accordingly reduced the refresher fee in that case to £2,000. The Court noted that it was not asked to reduce the fees below that threshold “.. or to consider whether refresher fees should be subject to some reduction if a case goes on beyond a certain time.”<sup>167</sup> This aspect of the determination of refresher fees remains outstanding.

In *Bloomer v. Incorporated Law Society of Ireland (No. 2)*<sup>168</sup> the issue of refresher fees was also considered. Geoghegan J. observed that, “In a complex High Court action the complexity should normally be reflected in the main in the brief fee rather than in the refresher as it is the brief fee which covers the preparation of the case.”<sup>169</sup> This principle notwithstanding, Geoghegan J. considered the particular facts of the case before him and, on the basis that, “in this particular case there were a great deal of matters which had to be freshly attended to as the case progressed”, he allowed a refresher fee of £3,150. The unusual nature of that case should be emphasised, however, particularly the fact that the case was “largely barrister led”.

(e) *Comparison cases*

Comparisons with brief fees allowed in other cases can be a useful means of determining the appropriate fee. In *Superquinn Ltd. v. Bray U.D.C.*<sup>170</sup> Kearns J. stressed the importance of comparators in the assessment of counsels' fees and relied heavily upon the fees awarded in other cases.

(f) *Number of counsel*

The general rule is that a maximum of two senior counsel and one junior should be instructed on a case. There have been exceptions to this, however. In relation to

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<sup>165</sup> [2001] 1 I.R. 459.

<sup>166</sup> [2001] 1 I.R. 459 at 481.

<sup>167</sup> [2001] 1 I.R. 459 at 482.

<sup>168</sup> [2000] 1 I.R. 383.

<sup>169</sup> [2001] 1 I.R. 459 at 389.

<sup>170</sup> [2001] 1 I.R. 459. See further above.

motions, the case of *In re South Meath Election Petition*<sup>171</sup> was cited in *Smyth v. Tunney*<sup>172</sup> by McCracken J. “as authority that only two counsel will be allowed on a motion except in very special circumstances. As a general statement of practice I think this is correct...”.

Where a junior counsel is instructed, together with one or more senior counsel, it is an established practice for the junior counsel to charge two-thirds of the fee marked by senior counsel.

### C. Taxation

There are a number of decisions, since the decision in *Kelly v. Breen*,<sup>173</sup> which set out the general duty of the Taxing Master in reviewing counsel’s fees.

In *Kelly v. Breen*,<sup>174</sup> Hamilton J. established that the Taxing Master should apply the standard of the reasonably careful and reasonably prudent solicitor and should only disallow counsel’s fees if no such solicitors would have agreed those fees.

In *Smyth v. Tunney*,<sup>175</sup> Murphy J. held,

“I believe that the whole line of authorities since *Dunne v. O’Neill* [1974] I.R. 180 have established unequivocally first the negative proposition that it is no part of the duty of the Taxing Master (or the High Court on appeal from his decision) to make a value judgment as to what the fees of counsel should be. Secondly, there is the positive function in relation to the taxation of party and party costs to review items claimed in respect of fees paid to counsel by reference to what a reasonably careful and reasonably prudent solicitor would offer to counsel based on his experience and the course of his practice and imputing to that solicitor a knowledge of fees charged and paid in respect of cases of a similar nature, the practice of barristers as to marking fees in so far as accepted by solicitors in practice, fees paid to the opposing counsel in the same manner and the depreciation in the value of money.”<sup>176</sup>

It appears that the Courts and Courts Officers Act 1995 has amended this position and that the Taxing Master does now the right to examine the nature and quality of the work done to assess the fairness and reasonableness of the fee charged.<sup>177</sup>

As Kearns J. stated in *Superquinn v. Bray U.D.C. (No. 2)*,<sup>178</sup> in relation to the impact of the Act of 1995 on the scope of the Taxing Master’s power to review counsels’ fees:

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<sup>171</sup> (1893) 32 LR Ir 407.

<sup>172</sup> [1999] 1 I.L.R.M. 211.

<sup>173</sup> [1978] I.L.R.M. 63. See, for example, *State (Gallagher Shatter & Co.) v. de Valera* [1991] 2 I.R. 198, as set out above.

<sup>174</sup> [1978] I.L.R.M. 63. See further above, Part IV.

<sup>175</sup> [1993] 1 I.R. 451.

<sup>176</sup> [1993] 1 I.R. 451 at 463.

<sup>177</sup> See further Part IV above.

<sup>178</sup> [2001] 1 I.R. 459.

“...it must follow that the Taxing Master also has a duty to examine the nature and extent of work in any particular case and make his own fair and reasonable assessment on the merits accordingly. This must mean that some supposed ‘no go areas’, particularly with regard to counsel’s fees, no longer exist and that some principles, expressed in cases such as *Dunne v. O’Neill* [1974] I.R. 180 and *Kelly v. Breen* [1978] I.L.R.M. 63, in relation to counsels’ fees are no longer determinative, but merely factors to be taken into account.”<sup>179</sup>

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<sup>179</sup> [2001] 1 I.R. 459 at 475.

## Appendix A

### Solicitors' Remuneration General Order 1986

#### "SCHEDULE 11

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1. Drawing deeds, wills, powers of attorney, bonds, memoranda and articles of association, cases for Counsel, regulations, bye-laws, agreements, notices, requisitions and other documents not specifically excluded — per page	3.00
2. Engrossing — per page	1.00
3. Copying documents — per page	0.12
4. Perusing (where not allowed for in the fee for instructions); Deeds, wills, powers of attorney, bonds, memoranda and articles of association, cases for Counsel, regulations, bye-laws, requisitions, searches, agreements and other documents not specifically excluded, newly drawn and fair copied and submitted by or on behalf of another party for examination, approval or agreement on their contents — per page	1.00
5. Certifying any documents as a true copy	1.50
6. Attendance in Solicitor's Office:	
(a) First half hour	12.00
(b) For second and each subsequent half hour	8.00
7. Attendance outside the Solicitor's Office:	
(a) first half hour	13.00
(b) for second and each subsequent half hour	13.00
8. Attendance outside Ireland — per day	Discretionary (not to exceed £300 per day).
9. Writing, signing and entering letters:	
(a) not exceeding one page	5.00
(b) exceeding one page	7.50
10. Registration of Deed	21.00
11. Instructions. Such fee as may be fair and reasonable having regard to all the circumstances of the case, including:—	
( a ) the complexity, importance, difficulty, rarity or urgency of the questions raised;	
( b ) where money or property is involved, its amount or value;	
( c ) the importance of the matter to the client;	
( d ) the skill, labour, and the responsibility involved therein and any specialised knowledge given or applied on the part of the solicitor;	
( e ) the number and importance of any documents perused;	
( f ) the place where and the circumstances in which the business or any part thereof is transacted; and	
( g ) the time reasonably expended thereon.	

This Order shall apply only to business transacted after the 1st day of October, 1986.

## Appendix B

### Land Registration (Solicitors' Costs) Rules 1970

#### *SCHEDULE OF COSTS*

##### PART I

Scale of charges on sales, purchases and mortgages.

	For the first £1,000  (1)	For the second and third £1,000  (2)	For the fourth and each subsequent £1,000 up to £10,000  (3)	For each subsequent £1,000  (4)
<p>Vendor's <b>Solicitor</b>:—</p> <p>For all charges including charges for negotiation by <b>solicitor</b>, connected with the sale of property by private contract or by auction, including preparation of contract and conditions of sale, deducing title and furnishing necessary searches, and perusing and completing conveyance.</p>	£4.00 per £100	£3.00 per £100	£1.50 per £100	£0.75 per £100
<p>In case of private contracts where negotiation for the sale has been conducted without the aid of a <b>solicitor</b>, a reduction of £1 shall be made on Columns Numbers 1 and 2; £0.50 on Column Number 3 and £0.26 on Column Number 4.</p>				
<p>Purchaser's <b>Solicitor</b> :—</p> <p>For all charges connected with purchase of property, whether by private contract or by public auction including perusal of contract or conditions of sale, investigating title and searches, and preparing, completing and registering conveyance.</p>	£4.00 per £100	£3.00 per £100	£1.50 per £100	£0.75 per £100
<p>Subject to the same reductions as last item.</p>				

Mortgagor's <b>Solicitor</b> :— For all charges connected with loan, deducing title, furnishing searches, perusing and completing conveyance.	£3.00 per £100	£2.00 per £100	£1.00 per £100	£0.50 per £100
Mortgagee's <b>Solicitor</b> :— For all charges connected with loan, including investigation of title and searches, and preparing, completing and registering mortgage or other security deed.	£4.00 per £100	£3.00 per £100	£1.50 per £100	£0.75 per £100

## PART II

Scale of charges as to leases or agreements for leases at rack rent (other than mining leases or leases for building purposes or agreements for the same)

### Lessor's **Solicitor**:

For preparing, setting and completing lease and counterpart:—

Where the rent does not exceed £100	£15 per cent. on the rental but not less in any case than £6.
Where the rent exceeds £100 but does not exceed £500	£15 in respect of the first £100 of rent and £5 per cent. in respect of each subsequent £100 of rent or any part thereof.
Where the rent exceeds £500	£15 in respect of the first £100 of rent, £5 in respect of each £100 of rent up to £500 and £2 per cent. in respect of every subsequent £100 or part thereof.

### Lessee's **Solicitor**:

For perusing draft and completing (no sum of less than £1 yearly to be taken into account in any case) One half of the amount payable to the Lessor's **solicitor** but not less in any case than £4.20.

In case the lease is registered a charge of £4 to the **solicitor** registering same.

## PART III

Scale of charges as to certain fee farm grants, building leases reserving rent and other long leases not at rack rent, etc.

Vendor's or lessor's **solicitor**—for preparing, settling, and completing conveyance and duplicate, or lease and counterpart:—

Amount of Annual Rent	Amount of Remuneration
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Where it does not exceed £5	£10
Where it exceeds £5 and does not exceed £50	The same payment as on a rent of £5, and also 40 per cent. on the excess beyond £5.
Where it exceeds £50, but does not exceed £150	The same payment as on a rent of £50, and 20 per cent. on the excess beyond £50.
Where it exceeds £150	The same payment as on a rent of £150, and 10 per cent. on the excess beyond £150.

Where a varying rent is payable the amount of amount of annual rent is to mean the largest amount of annual rent.

Purchaser or lessee's **solicitor**—for perusing draft and completing. . .One half of the amount payable to the Vendor's or Lessor's **solicitor**,

In case the Lease is registered, a charge of £4 to the **solicitor** registering same.

#### PART IV

Scale of charges for transfer (except a transfer on sale) by a registered owner or his personal representative.

Value of property transferred	Remuneration
Not exceeding £100	£ 3·10
Exceeding £100 but not exceeding £200	£4·26
Exceeding £200 but not exceeding £300	£5·43
Exceeding £300 but not exceeding £400	£6·20
Exceeding £400 but not exceeding £500	£7·13
Exceeding £500 but not exceeding £600	£8·44
Exceeding £600 but not exceeding £700	£9·75
Exceeding £700 but not exceeding £800	£11·06
Exceeding £800 but not exceeding £900	£12·37
Exceeding £900 but not exceeding £1,000	£13·69
Exceeding £1,000 but not exceeding £3,000	£13·69 on the first £1,000 and £0·85 on each subsequent £100 or part of £100
Exceeding £3,000 but not exceeding £10,000	£30·69 on the first £3,000 and £0·37 on each subsequent £100 or part of £100
Exceeding £10,000	£56·94 on the first £10,000 and £0·23 on each subsequent £100 or part of £100

#### PART V

Scale of charges for applications for conversion of possessory titles etc., under rules 33, 34 and 35 of the Land Registration Rules, 1966.

Value of property	Remuneration
Not exceeding £250	£2·33
Exceeding £250 and not exceeding £500	£3·10
Exceeding £500	£4·65

PART VI

*Judgment mortgages*

**Costs** payable under rule 121 (6) of the Land Registration Rules, 1966.

**Costs** to applicant:

(a) if cancellation made without objection by judgment creditor	£1·55
(b) if cancellation made after objection by judgment creditor	£3·10

**Costs** to judgment creditor:

On objection by him to cancellation when cancellation refused	£3·10
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