

Barristers' Fees and Fee Recovery

Measures to Ensure that Barristers are Paid Fees in a Timely Manner

Introduction

The Legal Services Regulatory Authority ('LSRA') made recommendations to the Minister for Justice under section 34 of the Legal Services Regulation Act 2015 (as amended) in January 2024 which were intended to address the challenges facing early career legal professionals.

These recommendations were set out in [*Breaking Down Barriers: Addressing the challenges facing early career legal professionals*](#).

Recommendation 24 directed relevant stakeholders, The Bar of Ireland, the Law Society, the Department of Justice, the LSRA and relevant State agencies, to collaborate on measures to ensure that barristers are paid fees in a timely manner.

The document sets out the measures agreed by The Bar of Ireland, the Law Society and the LSRA to ensure barristers are paid in a timely manner.

The obligations set out in this document form part of the respective Codes of Conduct that apply for both solicitors and barristers.

General Obligations

Legal practitioners, namely solicitors and barristers, accept the need to work together in order to ensure prompt payment of fees owed to counsel for legal services provided.

All legal practitioners have a responsibility to comply with the provisions of the [Legal Services Regulation Act 2015](#)¹. Attention is drawn to the Part 10 and Part 11 of the Act that are relevant in respect of fees:

- [Part 10](#) - Legal Costs
- [Part 11](#) - Legal Costs in Civil Proceedings

¹ as amended by the Courts and Civil Law (Miscellaneous Provisions) Act 2023

Obligations of Solicitors

- 1) Solicitors must have regard to the Law Society's "[Solicitors Guide to Professional Conduct, 4th Edition](#)". Relevant sections of that Guide as they pertain to counsel fees are set out in Chapter 8 as follows:
 - a) *Prior to engaging counsel, it is the duty of a solicitor to request information in writing from counsel in respect of their fees and obtain the client's agreement to engage counsel on behalf of the client. Solicitors should familiarise themselves with the provisions of the Legal Services Regulation Act 2015, including, but not limited to section 150. Counsel's fees are based upon commitments undertaken and work done, irrespective of whether it involves an appearance in court. In marking a fee, they are entitled to consider all features of the instructions that bear upon the commitment that they undertake. (page 102)*
 - b) *Funds received on behalf of counsel must be lodged to the solicitor's client account and retained there until paid over to counsel. A solicitor who has received a fee from a client intended for counsel should pay such fee when it falls due. A solicitor who instructs counsel should use reasonable endeavours to ensure that counsel receives fees that are properly due and owing to them at the earliest opportunity. (page 103)*
 - c) *A solicitor has no personal liability for counsel's fees. This arises from the law of principal and agent, which is the relationship that exists between solicitor and client. Because the solicitor is an agent, the solicitor does not incur a personal liability for the debts of a disclosed principal (page 103)*
 - d) *If a solicitor has reasonable grounds for believing that the client is unlikely to be in a position to pay counsel's fees in the event of the case being lost or, if the case is won, but the costs will not be recoverable, counsel should be advised of this in the initial letter of instruction or as soon as is practicable thereafter. (page 103)*
- 2) Upon instruction, a solicitor must provide sufficient information to enable counsel to provide a section 150 notice and the payment of fees to counsel shall be in accordance with the agreed section 150 notice provided.
- 3) A solicitor has a duty to use their reasonable endeavours to recover fees that are properly due to counsel. The importance of this duty is emphasised in the [Law Society Practice Note on Payment of Counsel's Fees](#) (03/12/2010) that states:

"At the very least, solicitors should be able to demonstrate that they have written to their clients requesting payment, followed up any such requests, and alerted clients to the

possibility of issuing proceedings for the recovery of the outstanding fees and, where there is a reasonable prospect of recovery, issuing and prosecuting such proceedings.”

Obligations of Barristers

- 1) Barristers, who are members of the Law Library, should familiarise themselves with, “[Guidance for members – costs provisions under Part 10 of the LSRA, Version 1, 11th November 2019](#)”.² This guidance informs members of the Law Library about the cost provisions of the Legal Services Regulation Act, 2015 and assists them in deciding what action, if any, they should undertake in relation to those cost provisions. Barristers are reminded that they are at all times responsible personally for their professional conduct, ethics and decisions. The guidance aims to guide and assist members, however, members are individually responsible for their own professional conduct. Members must satisfy themselves that they understand the relevant provisions of the Act and ensure that they comply with them, where applicable.
- 2) Barristers will submit a comprehensive and detailed fee note to the solicitor within 14 days, or as soon as reasonably practicable, upon completion of the work for which the fee note is raised. Barristers are required to bill promptly, correctly and setting out all information that is required under section 150, including a detailed account of all work carried out in respect of the fee sought, unless otherwise agreed and/or exceptional circumstances exist.
- 3) Barristers will continue to engage with solicitors in instances where a fee note has been raised but has yet to be discharged, however it is accepted that solicitors have no personal liability for barrister’s fees.
- 4) Barristers will comply with their obligations under [Part 10](#) and [Part 11](#) of the Legal Services Regulation Act 2015, as appropriate.
- 5) Members of the Law Library should be familiar with and have regard to section 12 of [The Bar of Ireland’s Code of Conduct](#)³

² [guidance-for-members-costs-provisions-under-part-10-lsra-v1-11.11.19.pdf](#)

³ [Code-of-Conduct-Amended-by-AGM-22.7.24-Updated.pdf](#)