

APPENDIX B

Solicitors' Costs Information and Client Care Code 1999

Code dated 3rd September 1999 made by the Council of the Law Society with the concurrence of the Master of the Rolls under Rule 15 of the Solicitors' Practice Rules 1990, regulating the English and Welsh practices of solicitors, registered European lawyers, registered foreign lawyers and recognised bodies in giving information to clients and operating complaints procedures.

1. Introduction

(a) This code replaces the written professional standards on costs information for clients (see paragraphs 3 - 6) and the detail previously contained in Practice Rule 15 (client care) (see paragraph 7).

(b) The main object of the code is to make sure that clients are given the information they need to understand what is happening generally and in particular on:

(i) the cost of legal services both at the outset and as a matter progresses; and

(ii) responsibility for clients' matters.

(c) The code also requires firms to operate a complaints handling procedure.

(d) It is good practice to record in writing:

(i) all information required to be given by the code including all decisions relating to costs and the arrangements for updating costs information; and

(ii) the reasons why the information required by the code has not been given in a particular case.

(e) References to costs, where appropriate, include fees, VAT and disbursements.

2. Application

(a) The code is of general application, and it applies to registered foreign lawyers as well as to solicitors of the Supreme Court and registered European lawyers (subject to note (v) to Practice Rule 15). However, as set out in paragraph 2(b), parts of the code may not be appropriate in every case, and solicitors should consider the interests of each client in deciding which parts not to apply in the particular circumstances.

(b) The full information required by the code may be inappropriate, for example:

(i) in every case, for a regular client for whom repetitive work is done, where the client has already been provided with the relevant information, although such a client should be informed of changes; and

(ii) if compliance with the code may at the time be insensitive or impractical. In such a case relevant information should be given as soon as reasonably practicable.

(c) Employed solicitors should have regard to paragraphs 3 - 6 of the code where appropriate, e.g. when acting for clients other than their employer. Paragraph 7 does not

apply to employed solicitors.

(d) Solicitors should comply with paragraphs 3 - 6 of the code even where a client is legally aided if the client may have a financial interest in the costs because contributions are payable or the statutory charge may apply or they may become liable for the costs of another party.

(e) The code also applies to contingency fee and conditional fee arrangements and to arrangements with a client for the solicitor to retain commissions received from third parties.

3. Informing the client about costs

(a) Costs information must not be inaccurate or misleading.

(b) Any costs information required to be given by the code must be given clearly, in a way and at a level which is appropriate to the particular client. Any terms with which the client may be unfamiliar, for example "disbursement", should be explained.

(c) The information required by paragraphs 4 and 5 of the code should be given to a client at the outset of, and at appropriate stages throughout, the matter. All information given orally should be confirmed in writing to the client as soon as possible.

4. Advance costs information - general

The overall costs

(a) The solicitor should give the client the best information possible about the likely overall costs, including a breakdown between fees, VAT and disbursements.

(b) The solicitor should explain clearly to the client the time likely to be spent in dealing with a matter, if time spent is a factor in the calculation of the fees.

(c) Giving "the best information possible" includes:

(i) agreeing a fixed fee; or

(ii) giving a realistic estimate; or

(iii) giving a forecast within a possible range of costs; or

(iv) explaining to the client the reasons why it is not possible to fix, or give a realistic estimate or forecast of, the overall costs, and giving instead the best information possible about the cost of the next stage of the matter.

(d) The solicitor should, in an appropriate case, explain to a privately paying client that the client may set an upper limit on the firm's costs for which the client may be liable without further authority. Solicitors should not exceed an agreed limit without first obtaining the client's consent.

(e) The solicitor should make it clear at the outset if an estimate, quotation or other indication of cost is not intended to be fixed.

Basis of firm's charges

(f) The solicitor should also explain to the client how the firm's fees are calculated except

where the overall costs are fixed or clear. If the basis of charging is an hourly charging rate, that must be made clear.

(g) The client should be told if charging rates may be increased.

Further information

(h) The solicitor should explain what reasonably foreseeable payments a client may have to make either to the solicitor or to a third party and when those payments are likely to be needed.

(i) The solicitor should explain to the client the arrangements for updating the costs information as set out in paragraph 6.

Client's ability to pay

(j) The solicitor should discuss with the client how and when any costs are to be met, and consider:-

(i) whether the client may be eligible and should apply for legal aid (including advice and assistance);

(ii) whether the client's liability for their own costs may be covered by insurance;

(iii) whether the client's liability for another party's costs may be covered by pre-purchased insurance and, if not, whether it would be advisable for the client's liability for another party's costs to be covered by after the event insurance (including in every case where a conditional fee or contingency fee arrangement is proposed); and

(iv) whether the client's liability for costs (including the costs of another party) may be paid by another person e.g. an employer or trade union.

Cost-benefit and risk

(k) The solicitor should discuss with the client whether the likely outcome in a matter will justify the expense or risk involved including, if relevant, the risk of having to bear an opponent's costs.

5. Additional information for particular clients

Legally aided clients

(a) The solicitor should explain to a legally aided client the client's potential liability for the client's own costs and those of any other party, including:

(i) the effect of the statutory charge and its likely amount;

(ii) the client's obligation to pay any contribution assessed and the consequences of failing to do so;

(iii) the fact that the client may still be ordered by the court to contribute to the opponent's costs if the case is lost even though the client's own costs are covered by legal aid; and

(iv) the fact that even if the client wins, the opponent may not be ordered to pay or be capable of paying the full amount of the client's costs.

Privately paying clients in contentious matters (and potentially contentious matters)

(b) The solicitor should explain to the client the client's potential liability for the client's own costs and for those of any other party, including:

(i) the fact that the client will be responsible for paying the firm's bill in full regardless of any order for costs made against an opponent;

(ii) the probability that the client will have to pay the opponent's costs as well as the client's own costs if the case is lost;

(iii) the fact that even if the client wins, the opponent may not be ordered to pay or be capable of paying the full amount of the client's costs; and

(iv) the fact that if the opponent is legally aided the client may not recover costs, even if successful.

Liability for third party costs in non-contentious matters

(c) The solicitor should explain to the client any liability the client may have for the payment of the costs of a third party. When appropriate, solicitors are advised to obtain a firm figure for or agree a cap to a third party's costs.

6. Updating costs information

The solicitor should keep the client properly informed about costs as a matter progresses. In particular, the solicitor should:

(a) tell the client, unless otherwise agreed, how much the costs are at regular intervals (at least every six months) and in appropriate cases deliver interim bills at agreed intervals;

(b) explain to the client (and confirm in writing) any changed circumstances which will, or which are likely to affect the amount of costs, the degree of risk involved, or the cost-benefit to the client of continuing with the matter;

(c) inform the client in writing as soon as it appears that a costs estimate or agreed upper limit may or will be exceeded; and

(d) consider the client's eligibility for legal aid if a material change in the client's means comes to the solicitor's attention.

7. Client care and complaints handling

Information for clients

(a) Every solicitor in private practice must ensure that the client:

(i) is given a clear explanation of the issues raised in a matter and is kept properly informed about its progress (including the likely timescale);

(ii) is given the name and status of the person dealing with the matter and the name of the principal, or director (in the case of a recognised body which is a company), or member (in the case of a recognised body which is a limited liability partnership) responsible for its overall supervision;

(iii) is told whom to contact about any problem with the service provided; and

(iv) is given details of any changes in the information required to be given by this paragraph.

Complaints handling

(b) Every principal in private practice (or, in the case of a recognised body, the body itself) must:

(i) ensure the client is told the name of the person in the firm to contact about any problem with the service provided;

(ii) have a written complaints procedure and ensure that complaints are handled in accordance with it; and

(iii) ensure that the client is given a copy of the complaints procedure on request.

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