

Guidelines¹

Solicitors (Advertising) Regulations 2002

The Solicitors (Advertising) Regulations, 2002 (“the 2002 Regulations”) were introduced pursuant to Section 71 of the Solicitors Act, 1954 as amended by Section 4 of the Solicitors (Amendment) Act, 2002.

Regulation 1 revokes The Solicitors (Advertising) Regulations, 1996 (S.I No. 351 of 1996) with effect from the first day of February 2003. The 2002 Regulations apply to all advertisements published as and from that date.

Regulation 3 makes clear that, subject to these Regulations, it shall be lawful for a solicitor to advertise.

¹ This note is for guidance only and does not purport to be a statement of the applicable law. In the case of any conflict with the Solicitors Acts 1954-2011 (the “Acts”) or the Solicitors (Advertising) Regulations 2002 (the “Regulations”), the Acts and Regulations will have primacy. In the case of any doubt, please obtain legal advice or consult the Law Society’s Vetting Service operated by the advertising regulations executive.

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1. Introduction

This is a guide to the Solicitors (Advertising) Regulations 2002 (“the Regulations”). The purpose of these Guidelines is to make clear to all persons who are advertising legal services, the extent of the Regulations and the manner in which they may restrict a person’s ability to advertise legal services. The Society does not impose blanket bans on solicitors’ advertising, but certain restrictions are in place for the benefit of the profession and as a public protection measure.

There are specific sections that set out the statutory basis on which proceedings could be brought against:

1. **A non-solicitor**
2. **A solicitor**
3. **A firm**

In addition, there are specific sections on:

- Restrictions on content in advertising
- Permitted content in advertising
- Permitted media in relation to the content of advertisements
- Prohibited locations

There are also sections in relation to:

1. **Rules that apply to all contentious business (personal injury and other types of litigation)**
2. **Rules that apply specific to personal injury**

In addition, there is a Procedural Section that sets out the Society’s powers of enforcement, as well as outlining the various sanctions that may be imposed on a solicitor found to be advertising in breach of the Regulations.

Finally there is a Practical Help section, which sets out the vetting service that the Society provides in respect of approving proposed advertisements submitted by solicitors as well as a Frequently Asked Questions page.

2. Definitions

Regulation 2 defines the key terminology used in the 2002 Regulations. Other words and phrases not defined in the 2002 Regulations have the meanings assigned to them by the Solicitors Acts, 1954 – 2002.

The key definitions in **Regulation 2** are as follows;

“Advertisement” - this definition is wide and means any communication (whether oral or in written or other visual form and whether produced by electronic or other means) which is intended to publicise or otherwise promote a solicitor in relation to the solicitor’s practice. Websites are covered by this definition. In addition, the definition covers websites that are published by a third party, if the intention of the website is to promote a solicitor’s practice – for example, a claims service with a particular solicitor’s name mentioned.

The definition also includes various other forms of communication, including any: brochure, notice, circular, leaflet, poster, placard, photograph, illustration, emblem, display, stationery directory entry, article or statement for general publication, electronic address, audio or visual recording and/or presentation and/or seminar and/or interview. In addition, the Advertising Regulations Division of the Regulation of Practice Committee held that a firm’s letterhead also constitutes a form of advertising under this definition.

The list of different types of advertisements that are detailed by the Regulations are non-exhaustive in nature.

“Published” - this is in relation to an advertisement, and means the communication or intended communication of words to another person which are intended to publicise or otherwise promote a solicitor in relation to the solicitor’s practice. These words may take the following forms; oral, written, or other visual form and may be produced by electronic or other means.

“Legal services” – under the Solicitors (Amendment) Act 1994, legal services are defined as being services of a legal or financial nature provided by a solicitor arising from that solicitor’s practice as a solicitor, and includes any part of such services. For the avoidance of doubt, such services include any investment business services provided by a solicitor who is not an authorised investment business firm; with “investment business services” and “authorised investment business firm” carrying the meanings respectively assigned to them in Section 2 of the Investor Compensation Act 1998.

“Person” - under Section 18 of the Interpretation Act 2005 a “person” is read as encompassing a body corporate (whether a corporation aggregate or a corporation sole) and an unincorporated body of persons, as well as an individual, and the subsequent use of any pronoun in place of a further use of “person” shall be read accordingly.

“Domain name” - a domain name is a unique name that identifies a website, for example www.lawsociety.ie identifies the website for the Law Society of Ireland. Each website has a domain name that serves as an address which is used to access the website.

“Personal injuries” - this includes any disease and any impairment of a person’s physical or mental condition or both.

“Claims for damages for personal injuries” - this is to be read as meaning claims, whether made in court proceedings or otherwise, for damages or compensation for personal

injuries suffered or alleged to have been suffered, by a person or persons owing to an act or omission or alleged act or omission, of another person or persons.

“Contentious business” - means 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 to 1998.

“Clients” - the definition of a client is inclusive of prospective clients.

3. Restrictions on advertising on a non-solicitor

The core statutory provision which may be applied to non-solicitors is to be found in **Section 5 of the Solicitors (Amendment) Act 2002** which states:

“[A] person who is not a solicitor shall not publish or cause to be published an advertisement:
a) *Which expressly or impliedly undertakes to provide a specified service, being a service of a legal nature that could otherwise be provided by a solicitor, for or in expectation of a fee, gain or reward that is directly related to the provision of that service; and*
b) *Which, if published or caused to be published by a solicitor, would not be in compliance with paragraph (h) or (i) of subsection 2 or subsection 4 of Section 71 (as amended by Section 4 of this Act) of the Principal Act”.*

Such a definition raises a number of points in need of clarification. First of all, what constitutes a person as defined by the Act? Section 18 of the Interpretation Act 2005 sets down that a “person” encompasses both a corporate (whether a corporation aggregate or a corporation sole) and an unincorporated body of persons, as well as an individual.

Legal services are defined as being services of a legal or financial nature provided by a solicitor arising from that solicitor's practice as a solicitor, and includes any part of such service, offered for or in expectation of a fee, gain or reward that is directly related to the provision of that service. For the avoidance of doubt, such services include any investment business services provided by a solicitor who is not an authorised investment business firm; with “investment business services” and “authorised investment business firm” as set out above.

Persons who are non-members that advertise legal services that could be performed by a solicitor could be held to be in breach of **section 5**.

By way of example, a website which promotes legal services on a ‘no win, no fee’ basis, with costs covered from the outset, and with charges based on a percentage of the settlement, could be held to be operating in breach of **section 5 of the Solicitors (Amendment) Act 2002**.

3.1: Restricted services that non solicitors are prevented from offering

Pursuant to Section 58 of the Solicitors Act 1954 there are a number of services which non solicitors are expressly restricted from offering. These are:

“(a) the drawing or preparing of a document relating to real or personal estate or any legal proceeding,

(b) the procuring or attempting to procure the execution by an Irish citizen of a document relating to –

- (i) real or personal estate, or movable or immovable property, situate or being outside the State and the United Kingdom, or
- (ii) any legal proceeding, actual or in contemplation, of which the subject-matter is any such estate or property,

(c) the making of an application, or the lodging of a document for registration, under the Registration of Title Act, 1891, or any Act amending that Act, at the Land Registry or to or with a local registering authority,

(d) the taking of instructions for, or drawing or preparing of, documents on which to found or oppose a grant of probate or letters of administration.”

Such express restrictions are not to be interpreted as meaning that the services that non solicitors are prohibited from offering are related only to services connected to real and personal estate as above. Rather, services pertaining to real or personal estate as outlined by Section 58 above are to be read alongside the generality of Section 5 of the Solicitors (Amendment) Act 2002.

4. Restrictions on advertising on a solicitor (general)

In general, solicitors cannot advertise in respect of personal injuries if reference, explicit or otherwise, is made to potential awards that a litigant may enjoy (as per regulations 4(a)(viii) and (ix)). These regulations are enforced as a public protection measure and to ensure that a level playing field is maintained for solicitors in practice who provided personal injury legal services.

This enforcement policy is not however tantamount to a blanket ban on the advertising of a specific legal sector as solicitors may advertise personal injuries services, but must adhere to strict regulations when doing so. Section 6 of these guidelines deals exclusively with restrictions on advertising specific to personal injury.

The Regulations contain restrictions that are expressly stated as well as others that are subjective in nature. Taking the latter first, the subjective restrictions imposed on the advertising of legal services a solicitor is prohibited from publishing include advertising:

- that is likely to bring the profession into disrepute;
- that is in bad taste;
- that may reflect unfavourably on other solicitors;
- that includes dramatic or emotive words or pictures;
- that make reference to a calamitous event or situation.

Objective restrictions are imposed on advertising that:

- is false or misleading in any respect;
- is published in an inappropriate location;
- expressly or impliedly refers to:
 - claims for damages for personal injuries,
 - the possible outcome of claims for damages for personal injuries, or
 - the provision of legal services by the solicitor in connection with such claims.
- include words or phrases such as “no win no fee”, “no foal no fee”, “free first consultation”, “most cases settled out of court”, “insurance cover arranged to cover legal costs” or words or phrases of a similar nature which could be construed as meaning that legal services involving contentious business would be provided by the solicitor at no cost or reduced cost to the client.

This restriction is not only grounded in public policy considerations, but is consistent with the approach taken in other common law jurisdictions throughout Europe.

4.1: What constitutes an advertisement?

An advertisement is any communication that is intended to publicise or otherwise promote a solicitor in relation to the solicitor’s practice, whether that communication is in oral, written, or in any other visual form and whether produced by electronic or other means.

For the avoidance of doubt, websites and all other forms of online marketing published via social media platforms are considered to be advertisements for the purposes of the legislation.

An advertisement is said to be published when there is a communication or intended communication of words to another person, which are intended to publicise or otherwise promote a solicitor in relation to the solicitor's practice.

4.2: Disrepute

4(a)(i): An advertisement shall not be in such a form as is likely to bring the profession into disrepute

Advertisements that are likely to bring the solicitors' profession into disrepute are prohibited.

Examples of this includes banner phrases such as 'where there's blame, there's a claim', advertisements placed in inappropriate locations where persons may be in distress, (such as medical centres or Garda stations), services that offer gifts as inducements and services that may be construed as 'ambulance chasing'.

When interpreting whether an advertisement may be in such a form as is likely to bring the profession into disrepute the Society takes an objective approach. An investigation of this nature would begin with the Society's advertising regulations executive notifying the solicitor concerned of regulation 4(a)(i) and asking for their view. If the matter cannot be resolved through correspondence, it is then referred to the Advertising Regulations Division of the Regulation of Practice Committee for further adjudication.

If a solicitor is unsure if a proposed advertisement may breach regulation 4(a)(i) they can avail of the Society's vetting service, whereby draft content can be reviewed and approved in advance of publication.

4.3: Bad taste

4(a)(ii): An advertisement [shall not be in such a form that is] in bad taste

Advertisements that may be held as being in bad taste are prohibited. Examples include jokes made in reference to death or disease and advertisements placed in funeral homes advertising probate services.

The same objective approach is taken as at 4.2 above.

The Society's vetting service may be availed of in this regard as at 4.2 above.

4.4: That would reflect unfavourably on other solicitors

4(a)(iii): An advertisement [shall not] reflect unfavourably on other solicitors

Advertisements that reflect unfavourably on other solicitors are prohibited. Examples include references made to a solicitor being "more honest" than his colleagues or having the ability to "provide a superior service" than his competitors.

The same objective approach is taken as at 4.2 above.

The Society's vetting service may be availed of in this regard as at 4.2 above.

4.5: Purporting to have knowledge superior to other solicitors

4(a)(iv): An advertisement [shall not] contain an express or implied assertion by a solicitor that he has specialist knowledge in any area of law or practice superior to other solicitors

While a solicitor is permitted to state in their advertising that they have expert or specialist knowledge in a particular service sector, such advertising is prohibited from stating that such knowledge is superior to that of other solicitors.

For example, a solicitor specialising in family law may state;

Expert family law solicitors with over 15 years' experience

However, that same solicitor may not claim such experience to be superior to that of other family law practitioners:

The best family law solicitors in Dublin. Forget the rest, we're the best!

Such an assertion, and its variations, is prohibited under the Regulations.

4.6: False or misleading advertisements

4(a)(v) An advertisement [shall not be] false or misleading in any respect

An advertisement either published or caused to be published by a solicitor must make clear on its face the identity of the solicitor who published the advert (as per Regulation 14(a)).

Under regulation 4(b) advertisements are not permitted to contain more than:

- the name, address (including electronic address), telephone number, facsimile number, place or places of business of the solicitor;
- particulars of the academic and professional qualifications and legal experience of the solicitor;
- factual information on the legal services provided by the solicitor and on any areas of law to which those services relate;
- particulars of any charge or fee payable to the solicitor for the provision of any specified legal service.

Regulation 5(a) provides that advertisements may contain information relating to:

- hours of business;
- closure for annual holidays;
- appointment of a new partner or associate or consultant;
- staff promotions, appointments or retirements;
- job descriptions of members of staff;
- membership of, or affiliation to, named association or organisations (national or international);
- references to entries in, and accreditations by, named generally recognised legal directories (national or international);

- details of premises, including the opening of new premises;
- merger with, or acquisition of, another solicitor's practice;
- the identity of the solicitor by means of a photograph;
- details of existing clients or transactions in relation to which the solicitor has provided legal services;

An example of how a solicitor may be advertising in breach of this prohibition would be where a firm's website carries photographs of and references to;

- solicitors who are no longer working in the firm;
- paralegal, legal executive and other administrative support staff featuring on a firm's website who are not expressly stated as being non-solicitors, thus creating the impression that the firm and/or legal department is much larger than it is;
- references made to work undertaken that exaggerates the solicitor's involvement.

Publications and lectures given in respect of a legal topic:

When deciding whether a legal advice column constitutes an advertisement, the advertising exemption as set down by Regulation 12 must be considered. Under this test, a publication is not considered to be an advertisement but is rather a communication primarily intended to provide information on the law where;

- the publication is an article on a legal topic,
- no part of the space has been paid for, by or on behalf of the solicitor,
- the publication has not been repeated with the same or substantially the same content.

Where a legal advice column satisfies this test, the exemption under Regulation 12 shall apply and the article would be considered to be a communication primarily intended to give information on the law. Where an article does not satisfy this test, i.e. if it has been paid for, by or on behalf of the solicitor or where it has enjoyed repeated publication, the article is subject to the Regulations in the normal way.

An example of how the regulations would apply to a legal advice column that falls outside the Regulation 12 exemption would be where the column relates to medical negligence. As with all other types of advertising, Regulation 8(b) requires that any reference to any subcategory of personal injury must also carry an asterisk that correlates with the disclaimer "In contentious business, a solicitor may not calculate fees or other charges as a percentage or proportion of any award or settlement". Therefore to be fully compliant with the Regulations, any legal advice column that has medical negligence as its subject matter, that does not fall under the Regulation 12 exemption, must make clear reference to the abovementioned disclaimer in connection with contentious business.

4.7: The distinction between an article and an advertisement

Generally speaking, any reference made in an advertisement to a solicitor's authorship of a publication on a legal topic shall be deemed to be factual information on the legal services provided by the solicitor and on any areas of law to which those services relate. Therefore, such references to any such legal articles are permitted under the Regulations.

Moreover, any book and/or article on a legal topic that has been written by a solicitor where the solicitor has not paid for either the book/article's commissioning or publishing, is not considered to be an advertisement.

By extension, online blogs that discuss topical legal matters are permitted as commentary.

However, where an article is published more than once, and where the content is substantially the same as any previous articles published and/or where the article is paid for either by or on behalf of a solicitor, it may stop being considered to be a communication which is primarily intended to give information on the law, and may instead be viewed as a communication primarily intended to publicise or otherwise promote the solicitor's practice. As such, it would be subject to the same prohibitions as all other forms of advertising.

Example:

The Regulations would apply to an article that is repeatedly published and therefore must also carry the disclaimer set down in Regulation 8(a) and 8(b) in respect of personal injury claims:

In contentious business a solicitor may not calculate fees or other charges as a percentage or proportion of any award or settlement

4.8: The distinction between an oral presentation and an advertisement

Specific rules apply to oral presentations delivered by solicitors. For an oral presentation to be deemed a communication primarily intended to give information on the law rather than being an advertisement of a solicitor's services, it must:

- relate to a legal topic where no part of it is paid for or on behalf of the solicitor,
- not be a repetition of an oral presentation given by a solicitor on the same or substantially similar legal topic. If this is the case, rather than it being viewed as a communication which is primarily intended to give information on the law it is instead considered as being intended to publicise or otherwise promote the solicitor in relation to the solicitor's practice. Should this apply, an advertisement of any such oral presentation must carry with it the previously mentioned disclaimer, that:

In contentious business a solicitor may not calculate fees or other charges as a percentage or proportion of any award or settlement

4.9 Accepting referrals from persons acting in contravention of the Regulations

The definition of misconduct in section 3 of the Solicitors (Amendment) Act 1960 was amended to include breaches of section 5 of the Solicitors (Amendment) Act 2002. As a result, having any direct or indirect association with a person who is acting in contravention of section 5, or indeed accepting instructions from such a person in circumstances where it is known or ought to have been known that this person was so acting may constitute misconduct by a solicitor.

The examples listed above are included merely to illustrate the types of restrictions in place. The examples are not intended to act as an exhaustive list of the full range of prohibitions in place. Moreover, breaches of the above prohibitions may occur either separately or in conjunction with other breaches. If you are in doubt as to whether your advertisement may breach any of the above mentioned Regulations, you can avail of the Society's vetting service and the Society's advertising regulations executive shall review the advertisement and provide feedback, thus ensuring compliance.

5. Permitted content, context and size of an advertisement published as a poster or placard:

Content

An advertisement published or caused to be published by a solicitor by means of a poster or placard (which is inclusive of a hoarding or billboard or other means of a similar nature), whether comprised of solid or non-solid material and whether intended to be permanent or temporary is subject to the same restrictions as all other forms of advertising.

Context and size

An advertisement published or caused to be published by a solicitor must be of a size appropriate to the medium in which or location where the advertisement is published. For example, a hoarding covering 2 floors of the front of an office was held to be of an inappropriate size.

Plaque

Where a plaque is to be placed outside the front of a solicitor's practice the specifications, as approved by the Advertising Regulations Division of the Regulation of Practice Committee are:

- the plaque should be no greater than A4 in size,
- if personal injury is listed as a professional service it must be one of a list of other services,
- the reference to personal injury must be no greater than 10% of the overall height of the plaque,
- a scaled sample must be sent to the Society for approval.

6. Restrictions on advertising specific to personal injury

Personal injury advertising²

The Solicitors (Advertising) Regulations 2002³ state that⁴ a solicitor's advertisement shall not expressly or impliedly refer to claims or possible claims for damages for personal injuries or the possible outcome of claims for damages for personal injuries, or the provision of legal services by the solicitor in connection with such claims. It further provides⁵ that such advertisements shall not expressly or impliedly solicit or encourage any person to contact the solicitor with a view to such claims being made.

The exception to this⁶ is that a solicitor's advertisement may, where appropriate, include the words "personal injuries" when providing:

² This note is for guidance only and does not purport to be a statement of the applicable law. In the case of any conflict with the Solicitors Acts 1954-2011 (the "Acts") or the Solicitors (Advertising) Regulations 2002 (the "Regulations"), the Acts and Regulations will have primacy. In the case of any doubt, please obtain legal advice or consult the Law Society's Vetting Service operated by the advertising regulations executive.

³ SI No. 518/2002

⁴ Regulation 4(a)(viii)

⁵ Regulation 4(a)(ix)

⁶ Regulation 4(b)(iii) and Regulation 4(c)

- a) factual information on the legal services provided and
- b) factual information on any areas of law to which those services relate

Factual information is information that solely deals with facts. It is short, non-explanatory and gives indisputable answers to specific questions. No explanation or analysis is needed. It must be distinguished from analytical information which analyses and interprets facts to form an opinion or come to a conclusion.

Legal Services are defined as *“services of a legal or financial nature provided by a solicitor arising from that solicitor's practice as a solicitor, and includes any part of such services and, for the avoidance of doubt, includes any investment business services...”*⁷

The proper interpretation of the regulations in the context of personal injury advertising is that such advertisements may only include factual information on the services of a legal nature performed by a solicitor for a client, examples of which would be:

- (a) The processing of Injuries Board Applications
- (b) The institution of legal proceedings by way of Personal Injury Summons.
- (c) Advice in relation to liability and quantum.

Factual information on areas of the law which relate to those services and in particular personal injuries would include items such as

- (a) The Civil Liability Act
- (b) The Injuries Board
- (c) The Courts
- (d) The Motor Insurers Bureau of Ireland

A recent trend has been observed on the websites of some solicitors where numerous pages are dedicated to the discussion of a large variety of potential accidents or injuries. Where the contents of these pages go beyond merely providing factual information on the legal services provided by the solicitor or factual information on the area of law to which those services relate, they do not comply with the Solicitors Advertising Regulations.

It has also been noted that there is an increasing number of websites encouraging visitors to the site to enter their details into an online claim assessment or suggesting they would telephone a freephone number if they have any query.

Where such websites relates to personal injuries and are deemed to be encouraging a potential client to contact the solicitor with a view to making such claims, they do not comply with the Advertising Regulations.

Section 71 of the Solicitors (Amendment) Act 2002 provides the statutory basis upon which the advertising of personal injury services are restricted. This is not an absolute ban, but does make clear that certain prohibitions exist and certain requirements must be met to ensure compliance.

S71(2)h: provides that a solicitor shall not publish or cause to be published an advertisement which expressly or impliedly refers to claims or possible claims for damages for personal injuries, the possible outcome of claims for damages for personal injuries, or the provision of legal services by the solicitor in connection with such claims.

⁷ Regulation 2 definitions

S71(2)(i): provides that a solicitor shall not publish or cause to be published an advertisement which expressly or impliedly solicits, encourages or offers any inducement to any person or group or class of persons to make the claims mentioned in paragraph (h) of this subsection or to contact the solicitor with a view to such claims being made.

These are the parent provisions under which the Solicitors (Advertising) Regulations operate. They echo the corresponding regulations:

The regulations and claims for damages:

Regulation 4(a)(viii): An advertisement intended to publicise or otherwise promote a solicitor in relation to the solicitor's practice shall not either expressly or impliedly refer to –

- claims or possible claims for damages for personal injuries;
- the possible outcome of claims for damages for personal injuries, or
- the provision of legal services by the solicitor in connection with such claims;

In addition, Regulation 4(a)(ix) also prohibits and advertisement that:

- expressly or impliedly solicits, encourages or offers any inducement to any person or group or class of persons to make the claims mentioned in sub-clause (viii) of this clause or to contact the solicitor concerned with a view to such claims being made.

Where an advertisement refers to personal injuries it must do so without reference made to any sort of potential award. Example of phrases prohibited by Regulation 4(a)(viii) include:

Large compensation awards likely following free, no obligation assessment

Depending on the severity of your injury you could expect to receive a sum of up to €150,000

Have you made your claim? You could be owed thousands

Such a restriction is not tantamount to a blanket ban but is instead proportionate and legitimate given the public policy considerations in which it is grounded.

The Section 8 disclaimer in respect of personal injuries:

Where an advertisement refers to personal injuries it must comply with Regulation 8 of the Solicitors (Advertising) Regulations 2002 which states that any reference made to personal injury must carry with it an asterisk that correlates with the following wording to be displayed adjacent to the reference:

*“*In contentious business, a solicitor may not calculate fees or other charges as a percentage or proportion of any award or settlement”.*

This disclaimer should appear at the foot of all pages, be they web pages or in print media, where an advertisement makes reference to personal injury services.

For the avoidance of doubt, set out below is an example of how such an advertisement might appear:

John Smith & Co. Solicitors

30 years legal experience

All legal services including family, employment and personal injury*
District Court, County Court, High Court representation

*in contentious business, a solicitor may not calculate fees or other charges as a percentage or proportion of any award or settlement

This disclaimer also extends to any reference made to any other subcategory of personal injury litigation, including but not limited to references made to motor accidents, workplace accidents and public place accidents.

Where any reference is made to a subcategory of personal injury litigation (such as 'holiday accidents', 'public place accidents' or 'occupational injury') the reference must carry an asterisk which correlates with the same wording above. For example:

John Smith & Co. Solicitors

What We Do

- Immigration
- Personal Injury Claims and Litigation*
- Occupation Injury Accidents/Work Accidents*
- Medical Negligence Claims*
- Holiday Accidents*
- Divorce in Ireland
- Probate, Wills & Estate Planning
- Conveyancing Services

*in contentious business, a solicitor may not calculate fees or other charges as a percentage or proportion of any award or settlement

6.1 Claims calculator / compensation estimator

Provided such 'claims calculators' are either based on or taken from the PIAB Book of Quantum, or where a solicitor's website provides a link to same, the Society's policy is that such estimators are permitted.

The PIAB Book of Quantum is available at:

<http://www.injuriesboard.ie/eng/Forms-Guidelines/Book-of-Quantum.pdf?gclid=CIDykaHw1cqCFUKe2wodRWAP6Q&gclsrc=aw.ds>

Notwithstanding this policy, the phrase 'claims calculator' is not appropriate, and in deference to the spirit and purpose of Regulation 4(a)(ix), a phrase such as 'compensation estimator' would be more appropriate. Further, a solicitor's advertisement must not state that they could secure a higher award for a client than that offered by PIAB, as such a claim would be a breach of regulation 4(a)(viii) and (ix).

6.2 Restricted wording ('no win, no fee', 'no obligation' etc)

Although the regulations permit the advertising of personal injury legal services, subject to regulation 9(a)(i) an advertisement shall not contain words or phrases such as "no win no fee", "no foal no fee", "free first consultation", "most cases settled out of court", "insurance cover arranged to cover legal costs" or other words or phrases of a similar nature which could be construed as meaning that legal services involving contentious business would be provided by the solicitor at no cost or reduced cost to the client. This restriction is based on public policy and is enforced as a legitimate and proportionate public protection measure.

Other expressions with the same or similar meaning are equally restricted. Such expressions include but are not limited to: 'complimentary consultation', 'complimentary case evaluation', 'no bill until you win', 'our service won't cost you a penny', 'we will fund your case', and 'a solicitor cannot advertise to act on a no win no fee basis, however solicitors can act on this basis. This can be discussed by phone, email or in a meeting'.

In addition, as per Regulation 9(a)(i), it has been held by the Advertising Regulations Division of the Regulation of Practice Committee that 'words or other phrases of a similar nature' include:

- "no pressure",
- "no obligation",
- "complimentary" and,
- "without obligation".

This is to uphold the spirit of the Regulations and ensure that persons are not impliedly encouraged to take an action that may be spurious and/or without merit.

7. Restrictions on advertising in respect of content

Regulation 4(a) prohibits advertising that, in both content and form, may be construed as being:

- likely to bring the profession into disrepute,
- in bad taste,
- capable of reflecting unfavourably on other solicitors.

In addition to the generality of Regulation 4(a) above, there are various, express prohibitions that apply to the content of an advertisement, both in respect of its wording and its use of images.

When interpreting whether an advertisement may be in such a form as is likely to: 1) bring the profession into disrepute, 2) be in bad taste and, 3) reflect unfavourably on other solicitors, the Society takes an objective approach. An investigation of this nature would begin with the Society's advertising regulations executive notifying the solicitor concerned of regulation 4(a)(i) and asking for their view. If the matter cannot be resolved through correspondence, it is then referred to the Advertising Regulations Division of the Regulation of Practice Committee for further adjudication.

If a solicitor is unsure if a proposed advertisement may breach regulation 4(a)(i) they can avail of the Society's vetting service, whereby draft content can be reviewed and approved in advance of publication.

7.1 Restricted wording - 9(a)(i):

As per 6.2 above, subject to Regulation 9(a)(i) an advertisement shall not contain words or phrases such as "no win no fee", "no foal no fee", "free first consultation", "most cases settled out of court", "insurance cover arranged to cover legal costs" or other words or phrases of a similar nature which could be construed as meaning that legal services involving contentious business would be provided by the solicitor at no cost or reduced cost to the client.

See 6.2 for further.

7.2 Reference to hospital or home visits - 9(a)(v):

Given the obvious vulnerability of the sick or infirm, there is a public protection concern when it comes to a solicitor's willingness to make hospital or home visit. As such, the restriction on advertising a willingness to make such home or hospital visits is considered legitimate and proportionate.

7.3 Under 9(a)(ii) an advertisement may not include any cartoons.

Generally, a cartoon has an element of humour/satire as opposed to a graphic, which is more literal. While a cartoon is not defined in the Regulations, The Oxford English Dictionary defines a cartoon as:

A simple drawing showing the features of its subjects in a humorously exaggerated way, especially a satirical one in a newspaper or magazine

Although Regulation 9(a)(ii) prohibits the use of cartoons, the Society is committed to striking the right balance between permitting solicitors to advertise in a way that both complies with the law whilst remaining competitive.

A graphic may be permitted where it does not depict a person in a state of distress and/or trauma, and that could not be considered to be in bad taste.

As per the June 2014 practice note published in the Law Society Gazette, graphics that may be prohibited include (but are not limited to):



7.4 Dramatic or emotive words or pictures – 9(a)(iii):

Dramatic or emotive pictures

The inclusion of dramatic words and images are restricted under the Regulations.

Examples of such 'dramatic' or 'emotive' pictures would be images that depict a person in a state of distress and/or trauma, a catastrophic event and/or that may be considered to be in bad taste.

As per the June 2014 practice note published in the Law Society Gazette, the following are examples of the types of images that may be considered in breach of the Regulations:

1. Medical Negligence



2. Medical Negligence



3. Medical Negligence



4. Medical Negligence



5. Medical Negligence



6. Accident at Work



7. Cerebral Palsy



8. Eye Injury



9. Dental Negligence



10. Medical Negligence



11. Medical Negligence



12. Road Traffic Accidents



13. Accident at Work



14. Slips, Trips & Falls



15. Animated Figure



16. Road Traffic Accident



17. Personal Injury



18. Personal Injury



Examples of permitted images:



7.5 Dramatic or emotive words

Definition:

Words or phrases that may be considered to be emotive would be those that arouse intense feeling and could be inflammatory, contentious or emotional.

Words or phrases that may be considered to be dramatic are those that are forceful in appearance or effect.

When interpreting whether advertising content is considered dramatic or emotive the Society takes an objective approach. An investigation of this nature would begin with the Society's advertising regulations executive notifying the solicitor concerned of regulation 9(a)(iii) and inviting their response. If the matter cannot be resolved through correspondence, it is then referred to the Advertising Regulations Division of the Regulation of Practice Committee for further adjudication.

If a solicitor is unsure if a proposed advertisement may breach regulation 9(a)(iii) they can avail of the Society's vetting service, whereby draft content can be reviewed and approved in advance of publication.

References to a calamitous event or situation are also prohibited

Examples of such prohibited references include:

One of the greatest tragedies to befall the State happened in October 2015 on a traveller halting site. With a death toll of ten people, the fire that ripped through traveller's caravans in Carrickmines, County Dublin, has taken children as the majority of its victims. If you are a member of the travelling community, or are living in social housing paid for by the State, and have suffered a similar trauma, you may be entitled to compensation.

The devastation and harm caused by Dr Neary during his time as consultant obstetrician/gynaecologist at Our Lady of Lourdes Hospital, Dorgheda has been widely documented. Dr. Neary carried out 129 of the hospital's 188 peripartum hysterectomies over a 25-year period, some on very young women of low parity. Unfortunately, medical negligence is a reality, especially when it comes to pregnancy and the safe delivery of babies. If you feel that you are the victim of medical negligence, call our experts today.

The above examples are by no means an exhaustive indication of the types of prohibited words and images currently being used by solicitors in their advertisements and should be viewed as general guidance in relation to the subject matter. The above examples are to act as guidance to, rather than being a definitive statement of, the law. Further, the above examples demonstrate that such content may be legitimately and proportionately prohibited on the grounds of bad taste and for the preservation of the integrity of the profession.

7.6 The Law Society crest

In order to protect the Society's 'brand integrity', the Law Society of Ireland logo is reserved for the exclusive use of the Society. Members should not use the logo for any purpose, including on their firm's website, within their email signature, on social media, on letterhead or any other printed material.

8. Prohibition on words permitted for use in domain names

Domain names may contain the words:

- injury
- personal injury
- claims
- compensation

However, distinction must be made between a website's domain name and a firm/company's trading name.

Where a website is powered by a firm of solicitors, and its domain name is separate and distinct from that of the firm, the actual name of the firm must carry equal prominence to that of the trading name of the website on its webpages.

The same restrictions apply to domain names regarding:

1. bringing the profession into disrepute;
2. being in bad taste;
3. reflecting unfavourably on other solicitors.

9. Prohibitions on unsolicited approaches made to non-clients:

Regulation 13 makes clear that a solicitor is prohibited from making:

“a direct unsolicited approach to any person who is not an existing client...with a view to being instructed to provide legal services, where such direct unsolicited approach is likely to bring the solicitors’ profession into disrepute”.

The objective of prohibiting direct unsolicited approaches to chosen persons at an inappropriate location is a matter of client protection, particularly in respect of vulnerable persons.

Under Regulation 13 a solicitor is prohibited from making an unsolicited approach to a person with a view to being instructed to provide legal services.

Such approaches must not be made:

- at an ‘inappropriate location’; meaning a hospital, clinic, doctor’s surgery, funeral home, cemetery, crematorium or other location of a similar character where a person may be in a state of distress;
- at or adjacent to the scene of a calamitous event or situation affecting that person; or
- in, at, or adjacent to, a Garda station, prison or courthouse.

A complaint alleging that a solicitor has acted in breach of Regulation 13 can trigger an application by the Law Society to the Solicitors Disciplinary Tribunal, as set out in Regulation 15(g)(iii).

Breaches of the Solicitors Acts or any Regulations made thereunder fall within the statutory definition of misconduct [Section 3 of the Solicitors (Amendment) Act 1960 as amended]. In the event of a finding of misconduct by the Disciplinary Tribunal, it can impose sanctions which include censures, fines, costs and in more serious cases, it can recommend to the President of the High Court that the solicitor be suspended from practice or struck off the Roll of Solicitors.

10. Permitted content in respect of advertising

Subject to Regulation 4(b) an advertisement published by a solicitor may contain:

Contact details:

- the name, address (including electronic address), telephone number, facsimile number, place or places of business of the solicitor and any reference to the location of information provided by the solicitor that is accessible electronically;

Must make clear on its face who is publishing the advertisement:

- under Regulation 14(a) an advertisement published or caused to be published by a solicitor must make clear on its face that it is published or caused to be published by such a solicitor.

Qualifications:

- particulars of the academic and professional qualifications and legal experience of the solicitor;

Professional services provided:

- factual information on the legal services provided by the solicitor and on any areas of law to which those services relate;
- where an advertisement contains factual information on the legal services provided, no one category may be given prominence.

Fees:

- particulars of any charge or fee payable to the solicitor for the provision of any specified legal service (subject to any regulations made pursuant to section 71(6) (as inserted by section 4 of the Act of 2002) of the Act of 1954).

This does not circumvent the restriction that advertisements **must not** contain references to either 'no win no fee' arrangements or any other such reduced fee arrangements which may be interpreted as either:

- o expressly or impliedly soliciting, encouraging or offering an inducement to persons to make a claim pertaining to personal injury and,
- o inferring that legal services involving contentious business would be provided by the solicitor at no cost or reduced cost to the client.

Under Regulation 5(a) an advertisement may also contain reference to:

- hours of business
- closure for annual holidays
- appointment of a new partner or associate or assistant or consultant
- staff promotions, appointments and retirements
- qualifications of solicitors and other members of staff
- job descriptions of members of staff
- membership of, or affiliation to, named associations or organisations (national or international)

- references to entries in, and accreditations by, named generally recognised legal directories (national or international)
- details of premises, including the opening of new premises
- merger with, or acquisition of, another solicitors' practice
- authorship of publications or details of public appearances where relevant to the legal services provided by the solicitor
- the identity of the solicitor by means of a photograph
- other existing clients or transactions in relation to which the solicitor has provided legal services

11. Permitted use of business cards

In the strictest sense, a business card is a form of advertising as defined by Section 2 of the Regulations.

However, provided that a business card is used only for its traditional and accepted use, (i.e. as a convenient way of providing your contact details person to person), the Society has taken a practical view that a business card may make reference to a solicitor's personal injury services without stating the Regulation 8(a) disclaimer.

An example of an unacceptable use of a business card would be pinning the card to a public notice board in a supermarket.

12. Prohibited locations

Under the Regulations, an advertisement may not be published:

- in an inappropriate location. An inappropriate location is defined as meaning a hospital, clinic, doctor's surgery, funeral home, cemetery, crematorium or any other location of a similar character where a person may be in distress;
- in or on any form of public transport;
- in a newspaper on the same page on which death notices appear; or
- on radio immediately preceding or following death announcements.

13. Social media

Although the 2002 Regulations make no explicit reference to social media, the definition of advertisement is inclusive of this relatively new development in online advertising:

“advertisement” means any communication (whether oral or in written or other visual form and whether produced by electronic or other means) which is intended to publicise or otherwise promote a solicitor in relation to the solicitor's practice”.

Such a definition therefore encompasses all forms of online marketing, including social media and as such, the same care needs to be taken to comply with the Regulations across all online platforms.

14. Procedural Section

14.1: The Society's powers of enforcement:

14.1(a): Solicitors:

Under Regulation 15(a) the Society is tasked with investigating any possible breach of the Regulations by any solicitor made by either members of the public or profession.

When an advertisement, which may be in breach of the Regulations, is brought to the attention of the Society, the Society's advertising regulations executive will conduct an initial review of the advertisement in question.

The first stage of the process dealing with alleged advertising breaches involves the advertising regulations executive, through written correspondence, putting any alleged breaches to the solicitor first and, adopting a constructive approach, trying to resolve any particulars with the solicitor directly.

Regulation of Practice Committee:

Where it appears that the solicitor is obstructing the investigation by refusing, neglecting or otherwise failing, without reasonable cause, to respond appropriately and in a timely manner, or at all, to the Society's correspondence, the solicitor will be called before the Regulation of Practice Committee (RoPC).

Where the solicitor does not appear before the RoPC, the Society may apply to the High Court for an order compelling the solicitor to respond to correspondence and/or attend before the Committee.

Sanctions:

LEVY

Where the Society has incurred costs as a result of a solicitor's refusal to respond to correspondence in an appropriate and timely manner without reasonable cause, the solicitor may be required to pay up to €3,000 towards the Society's costs.

REPRIMAND

Where the alleged complaint is justified, the solicitor may be issued with a reprimand in such terms as the Society deem appropriate.

APPLICATION TO THE DISCIPLINARY TRIBUNAL

Where the Society are of the opinion that the alleged complaint is sufficiently serious, an application may be made to the Disciplinary Tribunal on the grounds of professional misconduct.

PRACTISING CERTIFICATE

The Committee has the power, where appropriate, to impose conditions on practising certificates that are in force, as per section 59 of the Solicitors (Amendment) Act 1994.

PUBLISH FINDINGS

Pursuant to the provisions of Regulation 15(i) of the Solicitors (Advertising) Regulations, the Society is entitled to publish to the solicitors' profession the imposition of a penalty by the Society on a solicitor.

14.2 The obligations of our members

Under Regulation 14(b) it is the responsibility of a solicitor to ensure that any advertisement published or caused to be published by him or her complies with the foregoing provisions of these Regulations.

15. Practical Help.

15.1 Vetting Service:

Understanding that compliance with the Regulations is preferable to remedial action in respect of breaches, the Society offers an efficient vetting service whereby members of the profession can submit draft advertisements to the Society for approval in advance of publishing. The Society's advertising regulations executive reviews the advertisement submitted and responds in a timely manner, to the solicitor/firm outlining in detail the problems (if any) that exist so that the advertisement may be revised so as to be brought into compliance with the Regulations. Assistance includes:

- Guidance – any solicitor seeking guidance about any advertisement or proposed marketing scheme is advised to contact the Society.
- Prior approval – any solicitor seeking prior approval of any advertisement or proposed marketing scheme is advised to contact the Society.
- Complaints – any person who has concerns regarding a particular advertisement and wishes to make a complaint in this regard can contact the Society.
- Further information – further information on what information may be included in advertisements, where advertisements may be published size and context of advertisements.

15.2 FAQ:

Q. Is the mere mention of personal injury services not itself a breach of Regulation 4(a), which prohibits any express or implied reference to claims or possible claims for damages?

A. No. As a solicitor is permitted to provide factual information on the legal services that they offer, provided the words 'personal injuries' (or any subcategory thereunder) is asterisked and the corresponding wording of Regulation 8(a) and (b) featuring adjacent to the words 'personal injury' (or any subcategory thereunder), a solicitor may state that they offer personal injury services on their advertisement. For ease of reference, the required disclaimer is:

In contentious business a solicitor may not calculate fees or other charges as a percentage or proportion of any award or settlement.

Q. Where a solicitor has been held to have breached the Regulations, what implication might this have on their ability to practice?

A. Under Section 15 of the Regulations, the Society is entitled to:

- issue a reprimand in such terms as the Society deem appropriate and reasonable (Regulation 15(g)(ii)),
- make an application to the Disciplinary Tribunal for an inquiry into the conduct of the solicitor on the ground of alleged misconduct (Regulation 15(g)(iii)).

In addition, where an adverse finding is made against a solicitor the Regulation of Practice Committee, Advertising Regulation Division has the power, where appropriate, to impose conditions on practising certificates that are in force, (as per section 59 of the Solicitors (Amendment) Act 1994).

Q. What should I do if I am amending the content of my advertising (including my websites) and I am unsure as to what is permitted under the Regulations?

A. If you are unsure as to what content is permitted you can submit same to be reviewed by the Society's advertising regulations executive as part of the Society's vetting service. Please see 16.1 above.

Q. Many of the Regulations appear to be subjective. How are they interpreted?

A. As per Regulation 14(b) it is the responsibility of a solicitor to ensure that any advertisement published or caused to be published by him or her complies with the Regulations.

When a solicitor is first notified that their website is potentially breaching the advertising regulations, they are given an opportunity to review the particulars brought to their attention, to interpret the regulations themselves and respond.

If the solicitor is not happy to accept the interpretation of the Society's advertising regulations executive (who works alongside the Society's practice regulation manager and the director of regulation and registrar of solicitors), then the matter can be referred to the Regulation of Practice Committee, Advertising Regulations Division.

The Committee is made up of solicitors and non-solicitors who adjudicate on alleged breaches either on the basis of correspondence before them or in the presence of the solicitor who commissioned the advertisement in question.

Q. My business cards display the professional services I offer. Must the disclaimer set out in Regulation 8(a) and (b) be added to such a small card?

A. In the strictest sense, a business card is a form of advertising as defined by Section 2 of the Regulations.

However, provided that a business card is used only for its traditional and accepted use, (i.e. as a convenient way of providing your contact details person to person, a business card may detail), a business card may make reference to a solicitor's personal injury services without stating the Regulation 8(a) disclaimer.

An example of an unacceptable use of a business card would be pinning the card to a public notice board in a supermarket.

Q. If factual information is permitted in advertising regarding the professional services a firm offers, surely by extension a domain name such as www.personalinjury.ie is only providing such factual information and is not making an express or implied inducement to make a claim relating to personal injury?

A. Domain names may contain the words:

- injury
- personal injury

- claims
- compensation

However, distinction must be made between a website's domain name and a firm/company's trading name.

Where a website is powered by a firm of solicitors, and its domain name is separate and distinct from that of the firm, the actual name of the firm must carry equal prominence on the website.

The same restrictions apply to domain names regarding: bringing the profession into disrepute; being in bad taste; reflecting unfavourably on other solicitors.

Q. I am considering running a free legal clinic from either a youth centre or parish church (after Sunday mass). Would either of these locations constitute 'inappropriate locations' as defined?

A. Aside from the various examples set out in the definition section as to what constitutes an 'inappropriate location' (hospital, clinic, doctor's surgery, funeral home, cemetery etc) the most effective short cut in answering this question is to ask; 'is this a location where a person is in distress?' If the answer is no (such as with a youth centre or parish hall), the location is permitted.

Q. I wish to report a colleague who is advertising in breach of the Regulations but I do not wish them to know that I have reported them. Is it possible for my identity to be kept confidential and if so is this a whistleblowing matter or under the remit of the Data Protection Act?

A. Whistleblowing only becomes a data protection issue when personal data is involved. Personal Data is defined in the Acts as "...data relating to a living individual who is or can be identified either from the data or from the data in conjunction with other information that is in, or is likely to come into, the possession of the data controller". Data means automated data and manual data ("...information that is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system").

The legislation therefore does not apply where:

- no record is kept in electronic or manual form of the content of a whistleblowing report or of the person either making the report or the subject of the report; or
- a whistleblowing report relates to an irregularity in an organisation but responsibility for the irregularity is not, and cannot readily be, attributed from the content of the report.

From a data protection perspective, a best practice approach for an organisation introducing a whistleblowing scheme is to arrange, to the maximum extent possible, that the data produced from such a scheme refer to issues rather than individuals. A report based on information from a whistleblower which refers to alleged irregularities in an organisation does not, on principle, give rise to data protection concerns if neither the whistleblower nor the person/s responsible for the irregularities can be identified from the report. In contrast, a report which identifies either the whistleblower, or a specific person against whom an allegation of irregularity is made, involves personal data.

- Q.** Am I permitted to use the Law Society crest on my advertisement?
- A.** No. In order to protect the Society's 'brand integrity', the Law Society of Ireland logo is reserved for the exclusive use of the Society. Members should not use the logo for any purpose, including on their firm's website, within their email signature, on social media, on letterhead or any other printed material.
- Q.** What constitutes an express and/or an implied inducement as per Regulation 4(a)(ix)?
- A.** **Express inducement:**
An example of how a solicitor may expressly solicit, encourage or offer any inducement to any person to make a claim relating to damages for personal injuries would be to advertise their professional services on a 'no win no fee basis'.
- Implied inducement:**
As per 6.1 above, 'claims calculators' may be held as representing an implied inducement to persons seeking damages for personal injury. As a result, where a solicitor wishes to indicate to clients the gradient value of damages, they are prohibited from using terms such as 'claims calculator', and must refer instead to a 'compensation estimator' in their advertising. By extension, such an estimator must be either based on or taken from the PIAB Book of Quantum, or provide a web link to same.

