

Solicitors' Liens



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April 2014

1 Introduction

The law in relation to Solicitors' liens has evolved if not changed considerably over the past decade.

A Solicitor's right to a lien can be traced back to Roman Law and the doctrine of *Locatio Operas Faciendi*, which was bailment for work and services. It comprised a contract for services coupled with the bailment of the article upon which the services were to be performed.

The Competition Authority in its report on the legal profession in December 2006 recommended the removal of liens by way of legislation. It concluded that it provided a protection to the solicitor holding the file, but disadvantaged the solicitor looking for the file.

The right of a solicitor to exercise a lien over files or documents may be interpreted as being pro-solicitor and anti-client, whilst this may be so in individual cases, in broader terms it is equally advantageous to both solicitors and clients. This is so because most solicitors for private clients will not alone carry out work but also pay for outlays, secure in the knowledge that their costs and outlays are secured by way of a solicitor's lien. If no such lien existed then many clients would find it impossible to fund cases generally and access to the law would be severely restricted and in many cases clients would be unable to obtain legal representation at all.

Reflecting this rationale, Hodgson LJ in *Hughes v Hughes*¹ stated

“the litigant need not change his solicitor without good cause. It would be odd if he were in effect able to get solicitor's work done for nothing by the simple expedient of changing his solicitor as often as he chose, leaving a trail of unpaid costs in his wake and demanding the papers without payment when he has no just cause to complain of the conduct of the Solicitors instructed and discarded”.

Recent case law has redressed this balance with the Courts increasingly looking at the cause of the breakdown in the relationship between the Solicitor and the Client.

¹ [1958] P244 at P228

In 2013 the Law Society of Ireland published the 3rd edition of the guide to good professional conduct for solicitors. In relation to liens it contains the following provisions:-

Where a solicitor holds documents of a former client under the solicitor's common law lien for undischarged costs and hands them to another solicitor who is then acting for that client, subject to and without prejudice to the first solicitor's lien for costs, the other solicitor should return them on demand to the solicitor claiming the lien, as long as the lien subsists.

A lien can be exercised on all the files of a particular client if there are costs outstanding on one of those files.

A solicitor holding a land certificate as security for costs due by a client may be required by the Registrar of Titles to produce the certificate for the purpose of any dealing with the registered lands. The production of the certificate does not alter the right to the custody of the certificate or affect the solicitor's lien

No solicitor's lien exists over documents or papers held on trust or on accountable receipt.

A lien for a debt due can continue to be exercised even after the period when proceedings for the recovery of the debt would be statute barred has expired. However, a lien cannot arise if a debt has already become statute barred.

When exercising a lien to hold documents a solicitor should try to ensure that the exercise of the lien does not, when viewed objectively, reflect badly on the solicitor or the legal profession in general.

There are four types of Solicitors' Liens.

The first is the retaining, (or common law) lien which allows a Solicitor to retain a client's property, with some exceptions, until the Solicitor has been paid.

The second is a charging (or statutory) lien under Section 3 of the Legal Practitioners (Ireland) Act 1876 which provides that where a Solicitor is employed to prosecute or defend a case in Court, then the Court can declare that the Solicitor is entitled to a Charge on the property recovered or preserved.

The third is a Preserving (or equitable) lien which is a right to ask the court to order that personal property recovered under a

judgment obtained with the solicitor's assistance stand as security for his costs.

The fourth is a contractual lien.

2 Retaining Liens

A retaining (or common law) lien gives solicitors the right to retain a client's money, documents or other property in their possession until outstanding fees are paid. This means that, subject to certain exceptions (considered further below), neither the client (or his successors) nor his new solicitors will be able to access the money in the client account or inspect or copy documents in the solicitor's possession that are subject to the lien.

Ms Justice Laffoy in the case of *Ring v Kennedy*² put it succinctly when she said

“the nature and extend of a solicitors retaining lien is well settled. At common law, he has a right to retain property already in his possession until he is paid costs due to him in his professional capacity by his client against whom the lien is claimed”.

The following conditions must be satisfied to exercise a retaining lien:

- The solicitor must be in possession of the property.
- The property must have come into the solicitor's possession in his professional capacity.
- The property must be the client's property.

In *Ring v Kennedy*, Ms Justice Laffoy held that there can be no lien over title deeds to a client's property where the costs were due by a company owned and controlled by the clients.

Mr Justice McCarthy in *Galden Properties Limited*³ set out the nature and extent of a solicitor's retaining lien as follows:-

“a solicitor holds a general or retaining lien; in that respect it differs from an ordinary lien derived from possession of the article to which value has been added and to which there attaches a lien for payment of the charges in respect of that added value. A solicitor's lien attaches to all documents and other personal property in his possession as such solicitor and relates to all outstanding charges, as solicitor, not merely those in respect of the particular documents over which the lien is claimed. The lien entitled the solicitor to retain the documents, or other

²[1999] 3 IR316 at P319

³[1988] IR212

personal property, till payment of the full amount of his bill, subject to taxation if required and if the bill is still liable to taxation”.

A Retaining Lien secures payment for all outstanding fees owed by the client to the Solicitor on any matter the solicitor was retained, which includes fees, charges and disbursements, but these must arise in a professional capacity as a Solicitor and does not include loans that a solicitor may have made to a client in a personal capacity.

A solicitor’s lien only entitled the solicitor to hold the papers and confers no other right on the solicitors. In the case of *Bundoran & Sligo Railway Company v Collum*⁴ it was stated:-

“the lien of a solicitor, while on one hand is a general lien, and therefore of a beneficial kind, is on the other hand a passive lien, and all the solicitor can do is to retain the documents and wait until they are called for by the owners, who can only get them by paying their debt”.

A lien is personal and cannot be assigned, therefore if a solicitor purchases a practice and the lien was held by the former owner of the practice, the lien is lost. However the personal representatives of a deceased solicitor can continue to exercise a lien over a file.

In the case of *Bentley v Gaisford*⁵ the file had been given to the second solicitor on the basis that the first solicitor’s lien was preserved. The second solicitor copied the file and sent it to the client. It was held by the court that the second solicitor could not use the documents so as to render the first solicitor’s lien meaningless and found that it was improper to copy the entire file to the client.

A lien cannot be enforced against property that came into a Solicitors possession if the Solicitor did not have authority from the client to accept that property.

A solicitor cannot enforce a lien against property held in trust or for a third party.

A lien will not give a solicitor a better title to property than that of his client.

⁴ [1892] 29 LRI421

⁵ [1997] QB627

A lien may be asserted even if the documents came into the solicitor's possession as a result of a matter unconnected to the matter for which the costs were incurred.

The property must come into the solicitor's possession in his professional capacity. For example, it was held that a lien did not attach where fees were owed in a situation where the solicitor acted as a land agent⁶.

A solicitor's right to exercise a lien over a client's property includes documents and money in a client's account⁷.

The Law Society Accounts Regulations provide;-

Nothing in these Regulations shall deprive a solicitor of any legal recourse or right, whether by way of lien, set-off, charge or otherwise, against moneys standing to the credit of a client account⁸

The exercise of this right will depend on the purpose of the money held in the account. For example, a solicitor may not be able to enforce a lien over the monies if the money has been paid into the account as a result of a court order to protect a claimant against the risk of dissipation of assets, a solicitor is unlikely to have a claim to the money ahead of the claimant himself⁹ or if the money paid into the account was subject to a primary purpose trust, such as when the money was provided to the solicitor for a particular purpose which then fails¹⁰.

Section 68(3) of the Solicitors Amendment Act 1994 limited a solicitor's lien over the proceeds of damages arising out of contentious business in that a solicitor is not allowed to deduct charges from damages arising out of contentious business.

Pursuant to the Attorney and Solicitors Act 1870 the Court has Jurisdiction to direct delivery of documents subject to whatever orders the Court considers appropriate.

⁶ Re Walker [1893] 68 LT 517

⁷ Loescher v Dean (1950) Ch 491

⁸ Regulation 32 of the Solicitors Accounts Regulations 2001

⁹ Withers LLP v Langbar International Ltd [2011] EWCA Civ 1419

¹⁰ Stumore v Campbell [1892] 1 QB 314

3 Electronic Data

In a recent UK decision of *Your Response v Datateam Business Media*¹¹ the Court of Appeal in the UK held that a common Law Lien cannot be exercised over data. This is particularly significant in this time of case management and Solicitors' databases. In the particular case a data hosting service provider tried to exercise a lien over a database that it hosted for a customer when the customer failed to pay its fees under contract. The question that arose before the court was whether the database could be regarded something that could be the subject of a lien. The Court posed the following question "what at common law is understood by actual possession, whether it is possible to have actual possession of an intangible thing, whether it is open to this court to recognise the existence of a possessory lien over intangible property and if so, whether it would be right for it to do so." Moore-Brick LJ said

"Before he can exercise a lien at common law a bailee must have obtained a continuing right of possession which he is entitled to exercise against the bailor. Although the contract in the present case contained no express provision for the publisher to have access to the data, neither did it contain any provision, express or implied, excluding him from it and the fact that the data manager did in fact make access to it freely available by the provision of a password is in my view inconsistent with the conclusion that he was in fact exercising the kind of exclusive control that would equate to the continuing possession required for the exercise of a lien. In view of the other conclusions to which I have come it is not necessary to reach a final decision on this point, but if necessary I would hold that in this case the data manager did not exercise the degree of control necessary to entitle it to exercise a lien. In those circumstances it is unnecessary to discuss at any length the question whether, if it were open to us to do so, it would be desirable extend the reach of the common law lien to electronic data. In *Scarfe v Morgan Parke B.* expressed the view that particular liens "being consistent with the principles of natural equity, are favoured by the law, which is construed liberally in such cases." That may be so, but I cannot see any basis on which the extension of the right to exercise a lien over intangible property could rationally be confined to electronic databases and for my

¹¹ [2014] EWCA Civ 218

own part I am not persuaded that it is necessary or desirable to extend this form of self-help, based on control rather than possession, to intangible property generally. The majority view in *OBG v Allan* suggests the contrary. Transfers of intangible property, whether in electronic or other forms, will almost invariably be covered by contracts which, if the parties so wish, may provide expressly for situations of the kind that arose in this case.

For the reasons I have given I would hold that the data manager was not entitled to exercise a common law lien on the database. It may well be that a fuller understanding of the background to the contract would support the conclusion that the parties intended the publisher to have access to the database at will, but whether that is so or not, it must have been implicit in the contract that when it came to an end the data manager was under an obligation to send the publisher by electronic means a copy of the database in its latest form. (We are not concerned with any term that might be implied in relation to the removal of the copy of the database remaining in the data manager's own systems.) It was therefore in breach of contract in refusing to do so, unless the contract impliedly gave it a right to withhold that information from the publisher and to exclude the publisher from its systems until it had received payment of any outstanding fees. For my part I do not think that there is a sufficient basis for implying a term of that kind."

Floyd LJ said

"An electronic database consists of structured information. Although information may give rise to intellectual property rights, such as database right and copyright, the law has been reluctant to treat information itself as property. When information is created and recorded there are sharp distinctions between the information itself, the physical medium on which the information is recorded and the rights to which the information gives rise. Whilst the physical medium and the rights are treated as property, the information itself has never been."

4 Time limits

A lien has no limitation period and may be continued to be exercised even after the debt become statute barred¹², however a lien cannot arise or be created over a debt that is already statute barred, as it is not a debt which is lawfully due.

The Lien crystallises on the termination of the retainer. In *Ring v. Kennedy*¹³ a decision of Ms Justice Laffoy having referred to the general nature of a solicitor's lien, went on to say :

“As a matter of law, the extent of the defendant's general lien on the title deeds to the premises had crystallised on the termination of the defendants' retainer in July, 1989, and in my view, nothing which occurred after that date could have varied the extent of the defendant's general lien.”

In general a lien does not arise until the work is completed¹⁴ but if the client prevents the work being completed then a lien arises for the work already done.

¹² *Curry v Rea* [1937] NI1

¹³ [1999] 3 I.R. 316

¹⁴ *Kelly v Scales* [1994] 1 IR 42

5 The Solicitor terminates the Retainer

In *In re Faithfull*¹⁵ the Court refused to order the applicant's former solicitors to deliver up papers required for pending litigation where the client had himself terminated the solicitor's retainer.

"... the law seems to me to be clear, that if a solicitor chooses to discharge himself he cannot leave his client in the lurch in the middle of a matter, because his client cannot supply him with money, or by reason of any other difficulty; if he does, he must produce (but not give up) to the new solicitor all papers necessary to enable him to prosecute or defend the matter in litigation."

The general principle is that a solicitor who discharges himself in the midst of litigation may not exercise his lien so as to interfere with the course of justice. The solicitor will be ordered to deliver the file to the client or the client's new solicitor.

However the situation is changed where the Solicitor terminates the retainer for good cause. The problem for the court is a practical one of doing justice between the solicitor and the client: to protect the interests of the solicitor, a court is likely to order that he deliver the papers to the client or the client's new solicitors on terms that the new solicitor undertakes to return the papers once the litigation is completed so that the lien may be maintained.¹⁶

Ms Justice Laffoy commented in *Treacy v Roche*

"where the solicitor for good cause terminates the retainer...there is a long established equitable jurisdiction under which the Court, in order to enable the client's litigation to proceed, orders the solicitor to hand over the client's papers to the client's new solicitor, provided the new solicitor undertakes to preserve the former solicitor's lien and to return the papers to the former solicitor, for what they are worth, at the end of the litigation."

This distinction, was recognised by the Court of Appeal of England and Wales in *Gamlen Chemical Limited v. Rochem Limited*¹⁷

¹⁵ [1868] LR 325

¹⁶ *Gamlen Chemical Co (UK) v Rochem* [1980] 1 WLR 614

The basic principles were explained in the following passage from the judgment of Templeman L.J.¹⁸

“... This appeal illustrates the difficulties which arise when a client and a solicitor part company in the midst of litigation. A solicitor who accepts a retainer to act for a client in the prosecution or defence of an action engages that he will continue until the action is ended, subject however to his costs being paid. ...

If before the action is ended, the client determines the retainer, the solicitor may, subject to certain exceptions not here material, exercise a possessory lien over the client's papers until payment of the solicitor's costs and disbursements. ...

The solicitor himself may determine his retainer during an action for reasonable cause, such as the failure of the client to keep the solicitor in funds to meet his costs and disbursements; but in that case the solicitor's possessory lien, i.e. his right to retain the client's papers of any intrinsic value or not, is subject to the practice of the court which, in order to save the client's litigation from catastrophe, orders the solicitor to hand over the client's papers to the client's new solicitors, provided the new solicitors undertake to preserve the original solicitor's lien and to return the papers to the original solicitor, for what they are worth, at the end of the litigation.”

Ms Justice Laffoy issued 3 judgements in 2008 and 2009 dealing with disputes as to who terminated the relationship between the solicitor and the client.

In *Mulheir v Gannon*¹⁹ the solicitors recommend that the client retain alternative solicitors, effectively terminating the retainer. The solicitors had argued that the relationship between the solicitor and the client had deteriorated owing to the client's behaviour and they were left with no alternative but to adopt that course of action. Laffoy J held that it was impossible to resolve that conflict on the basis of Affidavit evidence but she proceeded to deal with the case on the basis of the rule that applies where it is the solicitor who has determined the

¹⁷ [1980] 1 W.L.R. 614.

¹⁸ at p. 624

¹⁹ [2009] 3IR433

retainer. Laffoy J followed the English authority to the effect that where the retainer is determined by the solicitor, the general rule is that the court will order the papers to be handed over and that in return the solicitor gets an undertaking from the new solicitor to preserve the lien and to hand back the papers at the end of the case. In that case the solicitor had not issued a Bill of Costs and she directed that the first solicitor hand over the file to the new solicitor subject to there being reimbursement of outlay and to the second solicitor returning the file when the litigation had concluded.

In the case of *Aherne v Minister for Agriculture*²⁰ the solicitors argued that it had been the client who had caused the termination of the relationship. Ms Justice Laffoy concluded that on the basis of the Affidavits filed, she could not conclude that it was the client who had discharged the former solicitor's retainer. There was no evidence of an express discharge and whether or not there was an implied or constructive discharge is not something which could be determined on the basis of the Affidavit evidence and she adopted the approach she had adopted on *Mulheir v Gannon* and dealt with the matter on the basis that it was the former solicitors who had terminated the retainer, but they did so for reasonable cause. In her judgement she stated:-

“it is crucial that the client, the former solicitors and the current solicitors understand the purpose and effect of the Order I propose to make. It is an Order which will facilitate the client in prosecuting his claim in these proceedings, while at the same time preserving the former solicitor's lien on the files, for what it is worth”.

The use of the phrase “for what it is worth” discloses the reality of the Order in that in effect the solicitor may be left with no security whatsoever.

The third case considered by Ms Justice Laffoy was *Tracey v Roche*²¹ where she followed her approach in the earlier cases and delivered the quotation above. On the facts of the case she decided that the retainer had been determined by the solicitor, but was willing to assume it had been determined for good reason. She ordered the solicitor to hand over the file without prejudice to their lien, such files to be returned at the conclusion

²⁰ [2008] IEHC 286

²¹ [2009] IEHC 103

of the case. She acknowledged in this case that getting back the file at the end of the case may be worthless when she said:-

“While I accept that, in reality, the entitlement to get the papers back at the end of the litigation may be worthless, as I emphasised in my judgment in the *Ahern* case, a direction to hand over papers on the basis of preserving a solicitor’s lien does not in any way affect the liability of the client for the costs which have accrued to the former solicitor.”

The difficulty with releasing the file is an undertaking might not provide sufficient protection to solicitors. In *Bentley v Gaisford*²², new solicitors agreed to hold the documents to the order of the former solicitors. On receipt of the documents and their consideration, the new solicitors became concerned about the manner in which the arbitration had been handled and faxed copies of all the documents to the client. The Court of Appeal held that the solicitors were in breach of the undertaking since the photocopying of the documents effectively destroyed the lien, but that since the breach had been committed under the (albeit erroneous) impression that they were protecting their client's interests, they were not ordered to pay any compensation to the former solicitors.

The English Courts have had a more flexible approach as set out in the case of *A v B*²³. In that case it was held that the usual practice would not inevitably be followed and could be changed to meet the justice of a particular case. The court held that the solicitors had behaved throughout with the utmost propriety, whereas the clients were simply trying to avoid paying the fees, which they clearly owed. In addition, by the time the application came before the court, the solicitors had already obtained a default judgment against the client for the costs in question. In the court's view, the "balance of hardship" would be far greater on the solicitors if the lien were not enforced, while the clients could continue the litigation if they paid what they owed. The solicitors were, therefore, entitled to keep the papers until payment of their fees.

This line of reasoning was followed by Moore-Bick J. in *Ismail v. Richards Butler*²⁴. Having found, on the facts, that it was the solicitors who had discharged the retainer for reasonable cause,

²² [1997] QB 627

²³ [1983] Com LR 226

²⁴ [1996] 3 W.L.R. 129

by requiring payment of outstanding fees as a pre-condition to continuing to act, he outlined the position as follows²⁵:

“In these circumstances the plaintiffs would in the ordinary way be entitled as of course to an order that papers required for the conduct of pending litigation be delivered to their new solicitors against an undertaking, which those solicitors are willing to give, to restore them at the end of the litigation and without being required to provide any further security in respect of the costs. However, it was recognised in *Gamlen Chemical Co. (U.K.) Ltd. v. Rochem Ltd.* that the Court can, and in exceptional circumstances will, attach conditions to such an order to meet the overall justice in the case.

I can see no basis for criticising [the solicitors’] conduct in this matter, and such indications as there are suggest that in some respects the plaintiffs’ attitude may owe more to negotiating tactics than to a real sense of grievance. I accept that the plaintiffs require the immediate delivery of the papers in the three matters mentioned in their summons which remain fully live, but if [the solicitors] are required to hand over the papers on the usual terms their lien is likely to prove of little value when the papers are returned to them. It has not been suggested, on the other hand, that the plaintiffs are likely to suffer any real hardship if they are required to provide security of another kind other than the general effect on their cashflow of having to fund a payment into Court. That is a difficulty which can probably be largely overcome by providing security in some other recognised form. Taking all these matters into account I am satisfied that the interests of justice in this case require that the plaintiffs provide some security for [the solicitors’] claim.”

The court ordered the solicitors to hand over the documents to the client as they were needed in ongoing litigation, subject to the client providing security for the entire sum allegedly owed. The security could be by way of payment into court, bank guarantee or by any other means agreed by the parties. The order was considered to be in the interests of justice as the value of the lien would be considerably diminished if the documents were handed over and no hardship would be caused to the client by an order requiring them to provide security in respect of the outstanding claim for costs.

²⁵ at p. 145

In effect even though the Solicitor terminated the retainer the Client was required to put in place security for the entire account before the file was to be handed over.

Ms Justice Laffoy referred to the Ismail case in her Judgement in Tracey v Roche and did not expressly follow or reject the rationale but found that :-

“The dispute between the client and the solicitors in the Ismail case related to the level of fees which the solicitors should be entitled to charge on a time cost basis in a context in which the solicitors had been acting for some time for the plaintiffs in commercial transactions and litigation in connection with their business of importing potatoes from Egypt, where the disputes involved shippers, owners, hauliers and others involved in the carriage and handling the potatoes, a context far removed from that of these proceedings.”

One could assume that Ismail may be followed in a particular case where the Client is a wealthy commercial entity.

In Ireland it has been held that the Solicitor can terminate the retainer by neglect.

Mr Justice Ryan in the case of Reilly and Kidd v O’Ceallaigh ²⁶ in a judgement delivered in 2013 accepts that the Solicitor can by his conduct and lack of diligence implicitly terminate the relationship.

Mr Justice Ryan stated:-

“A solicitor can be held to have implicitly terminated the retainer where the circumstances give rise to the implication. One of those circumstances is where the solicitor has not carried out his work with due diligence on behalf of his clients.

The following legal principles apply to the application.

1. "If before the action is ended, the client determines the retainer, the solicitor may, subject to certain exceptions not here material, exercise a possessory lien over the clients papers until payment of the

²⁶ [2013] IEHC 565

solicitors costs and disbursements." - Gamlen Chemical Limited v. Rochem Limited [1980] W.L.R. 614 at 624 per Templeman L.J.

2. "Where the [solicitor] has himself discharged his retainer, the court then will normally make a mandatory order obliging the original solicitor to hand over the client's papers to the new solicitor against an undertaking by the new solicitor to preserve the lien of the original solicitor."- ibid
3. "In exceptional circumstances, the court may impose terms where justice so requires, for example, if the solicitor has admittedly paid out reasonable and proper disbursements which must be repaid, the court might make an order for the handing over the papers to the new solicitor providing the sum paid out by the original solicitor was repaid. This is a discretionary matter for the court to consider when making an order."- ibid 624/5
4. "Applying those principles, the following questions arise in the present case: first, did the solicitor discharge the client or did the client discharge the solicitor? Secondly, if the solicitor discharged the client, was there reasonable cause for the solicitor to do so? Thirdly, if there was reasonable cause for the solicitor to discharge the client, and the solicitor did so, should the court impose terms on the delivery of the client's papers and documents by the solicitor to the new solicitor, other than the term which requires the new solicitor to undertake to preserve the lien of the original solicitor?" - ibid at 625
5. In *Mulheir v. Gannon* [2009] 3 I.R. 433, Laffoy J. followed *Gamlen v. Rochem* ordering delivery of the file to the new solicitors on conditions (a) that the plaintiffs reimburse the outlay incurred by the defendant (b) the new solicitors give an undertaking to hold the files subject to the original solicitor's lien and to return them to him on the conclusion of the proceedings (c) the delivery of the files was without prejudice to the solicitor's claim for costs against the plaintiffs. The court proceeded on the assumption that the defendant solicitor had discharged himself for reasonable cause. It was not in dispute in that case that the original solicitor had recommended that

the clients retain alternative legal representation thereby, as the court held, effectively terminating his retainer. There was conflict as to whether or not the solicitor had good reason to terminate the retainer because of the behaviour of the plaintiffs.

6. In *Ahern v. Minister for Agriculture and Food and Others* [2008] IEHC 286 (Unreported Laffoy J., High Court, 11th July, 2008) the court made a similar order to *Mulheir v. Gannon* and rejected an application by the client applicant that payment of the taxed costs and outlay of the former solicitors should be deferred to the successful outcome of the claim, subject to an undertaking being given by the new solicitors to "discharge the same following that outcome". Laffoy J. said:

"The former solicitors' entitlement to recover costs from the client and the client's liability therefore are matters of contract between the client and the former solicitors' which the Court has no jurisdiction to adjudicate on in an application of this nature."

7. The Court of Appeal in *Gamlen* and Laffoy J adopted the observations of Lord Cottenham LC in *Heslop v Metcalf* (1837) 3 My. & C. 183 in a part of his judgment at 188-190 that concluded "I think the principle should be, that the solicitor claiming the lien, should have every security not inconsistent with the progress of the cause."
8. "Once proceedings are under way, the claimant's solicitor has a duty to prosecute the action with reasonable diligence."- Jackson and Powell on Professional Liability 7th Ed. citing as authority *The Flowerbole (a Firm) v. Hodges Menswear Limited*, the Times, June 14th 1988, CA.
9. If a solicitor fails to act with all due diligence and care on behalf of his client, the latter is no longer obliged to continue the retainer. When a dissatisfied client terminates the relationship without proper grounds and instructs a new solicitor, the original solicitor is not bound by any agreement to accept only such costs as may be recovered from the other party in the litigation. See *McHugh v. Keane*, (Unreported, Barron J., High Court, 16th December,

1994). In that case the court was concerned with a 'no foal no fee' agreement between solicitor and client and the question arose on the termination of the relationship by the client. The court held that where a solicitor accepted instructions on that basis, there was a corresponding obligation on the client not to withdraw his instructions until the proceedings concluded.

10. In a situation where the client unreasonably left the solicitor, but the solicitor had issued an unreasonable bill of costs to the plaintiff, the court (Barron J.) measured a sum which was in that case approximately 50% above the amount of the outlay that had been claimed in the bill of costs. - *McHugh v. Keane*. That case illustrates how the court will adopt a flexible attitude to what is just and reasonable in circumstances where the relationship of solicitor and client has broken down.
11. The court in *Gamlen* was careful to allow for exceptional cases where the application of a general rule would not be appropriate or just. The circumstances might call for special conditions to be applied to the transfer of papers depending on the nature of the case and other features of the relationship."

Mr Justice Ryan then concluded

"In those circumstances, having regard to the delay and the utter inadequacy of (The Solicitor's) response, the conclusion is irresistible that he was in breach of his duty of diligence. It follows that the plaintiffs are entitled to consider that he has by neglect implicitly terminated his retainer. In the result, there must be an order for the transfer of the file in this case to the plaintiffs' new solicitor. The question then arises as to the terms and conditions upon which the transfer should be directed. "

He directed that the file should be handed over subject to the new solicitors giving an undertaking that they will retain out of the award of costs that is made in the event that the plaintiffs are successful, a sum sufficient to discharge the first solicitor's bill of costs in respect of this action up to the point of termination of the retainer that the plaintiffs pay the first Solicitor's outlay to date.

He then concluded

“By this means, the papers representing Mr. McDonnell's file will be handed over to the new solicitors who will then be able to progress the action and except for such further fees as he might have earned in this case Mr. McDonnell will be in no worse a position than he would have been if he had continued to act.”

6 The Client terminates the Retainer

The following is a statement of the law made in Halsbury's Laws of England,²⁷

"In the event of a change of solicitors in the course of an action, the former solicitor's retaining lien is not taken away but his rights in respect of it may be modified according to whether he discharges himself or is discharged by the client. If he is discharged by the client otherwise than for misconduct he cannot, so long as his costs are unpaid, be compelled to produce or hand over the papers even in a divorce case.

If the retainer was terminated by the client (otherwise than for neglect or misconduct), the court is generally not willing to interfere with the exercise of a retaining lien even where the documents concerned are needed by the client for pending litigation. The reason for this is that the only impediment is the client's failure or refusal to pay the bill of costs which the documents are intended to secure.

In the case of *Kidd v O'Ceallaigh* discussed above the effect of the Courts decision where there was a finding the breach of duty of diligence was that the Solicitor hand over the file without payment until the conclusion of the case.

Just as the Courts have found that a solicitor can implicitly terminate a retainer so too can a client.

Ms Justice Laffoy addressed the issue of a client failing to accept the advice of a solicitor in the case of *Tracey v Roche*²⁸ stated:-

"I do not accept as correct the submission made on behalf of the former solicitors that, once they had given advice in good faith, the quality of the advice was irrelevant, and the failure to follow the advice amounted to constructive termination."

She went on to say that having regard to the limited information available to her it was not possible to form any view as to whether it was in the client's interest or the solicitor's interest that she follow the advice given to her. She further stated, even if it were possible she would be extremely reticent

²⁷ 5th edition, vol. 66, at paragraph 1003:

²⁸ [2009] IEHC103

to express a view on the quality of the advice, given that the proceedings were ongoing.

However in an English case of *Richard Buxton v Mills-Ownes*²⁹ the client sought to advance points which were wholly unarguable and his solicitors considered that their position was untenable and ceased to act with reasonable notice. The court held that the solicitor had good reason to terminate the retainer and in the words of Dyson J

“whether to terminate is a fact sensitive question”. The solicitors were “as officers of the court.... under a professional duty (i) not to include in court documents.... any contention which they did not consider to be properly arguable. (ii) not to instruct Counsel to advance contentions which they did not consider to be properly arguable.

None of the cases cited to us contains a statement of the legal basis for the principle that, where a solicitor terminates his retainer for good reason, subject to any relevant provision contained in the agreement between the parties, he is entitled to be paid his profit costs and disbursements for work done prior to the termination. One possible analysis is that, at any rate in a case such as the present, where the client insists on the solicitor putting forward contentions which the solicitor does not consider to be properly arguable, the client repudiates the retainer and the solicitor accepts the repudiation by terminating. The solicitor may then elect to claim the fees due (if any) under the agreement or on a quantum meruit. It is, however, unnecessary to consider this further, since the common law rule that a solicitor is entitled to be paid for all the work he has done prior to termination if he terminates for good reason has been part of our law for almost 200 years. It follows that the appellants are entitled to be paid their profit costs and disbursements for the work done prior to the termination. There should in principle be no difficulty in calculating these, since the basis for charging was clearly defined in the appellants; terms of business”

In the case of *French v Carter-Lemon*³⁰ the client instructed solicitors to act for her in a claim against an insurance company.

²⁹ [2008] EWHC1831(QB)

³⁰ [2012] EWCA CIV 1188

She was unhappy with the quality of service and made a complaint to the Senior Partner. Following a meeting the Senior Partner suggested to her that as she wished to pursue her complaint there was clearly a lack of trust and confidence and they could not continue to act for her. This meeting was following by an inflammatory email from the client. The client sought to continue the case as a lay litigant and the solicitors sought to exercise a lien over the file. In the particular circumstances the Judge held that the client had terminated the retainer and the solicitor was entitled to exercise their lien.

As the Law Society's guide to good professional conduct (3rd edition) states that

"A solicitor may be compelled to cease to act for a client because the client refuses to accept and act upon the advice which the solicitor has given him and the circumstances are of such importance as to destroy the basis of the relationship of solicitor and client. A solicitor should cease to act for a client where the client refuses or fails to give the solicitor further instructions."

"If the express instructions given to the solicitor give rise to a situation in which the inclusion or exclusion of evidence on the one hand and his duty to the court on the other hand conflict, he should, unless his instructions are varied, withdraw from the case after seeking the court's approval to that course, but without disclosing matters which are protected by the client's privilege."

"A solicitor must decline to act further in any proceedings where a solicitor has knowledge that the client has committed perjury or has misled the court in relation to those proceedings unless the client agrees to make a full disclosure of his conduct to the court"

In such situations it is difficult to see a Court coming to any other conclusion than that the client had in effect terminated the retainer.

7 Mortgaged Property

A lien cannot be exercised over property that belongs to another. This is particularly relevant in conveyancing transactions where the Solicitor has undertaken with a lending institution to lodge title deeds with them.

In *Galdan Properties Limited*³¹. Galdan was the owner of the property which was mortgaged to I.C.C. who had the title deeds. Galdan instructed a firm of solicitors to act in connection with a planned sale. For that purpose, the solicitors obtained the title deeds on accountable receipt. Work was done by the solicitors but the property did not sell and the company went into liquidation. The solicitors claimed a lien over the deeds in respect of their fees. Mr Justice McCarthy at p. 216 of the judgment stated:

“I am satisfied, not without regret that the claim of lien fails. In my view, a lien, general or otherwise, ordinarily only arises by operation of law in circumstances appropriate to create such a lien. This is so whether or not the lien be that of a solicitor or a broker or a craftsman; a lien may be waived even in advance but, in the absence of any such agreement, implied or otherwise, a lien is not created by unilateral act but rather by operation of law. It is true that the solicitors did the work, did so at Galdan’s request and were entitled to be paid their proper charges at a time when they had possession of the title deeds. Their problem is that their possession was a highly qualified one. Quite apart from the very rigorous requirement on a solicitor to comply to the letter with an undertaking of the kind given to I.C.C., their possession of the title deeds was entirely conditional and, expressly, as trustees for I.C.C.”

In *Martin v Colfer*³² Finnegan P held:-

“In these circumstances I am satisfied that at the time the Plaintiff claimed a lien on the Defendant’s title deeds the deeds were held by her subject to the trust created by the accountable receipt of 1999 and not as agent of the Defendant. No lien in these circumstances could have arisen. The deeds did not after redemption of the mortgage come into possession of the Plaintiff and it is

³¹ [1988] I.R. 213

³² [2006] IEHC 124

unnecessary to consider whether a lien could have arisen had they done so. Pursuant to the agreement between the parties the rights of the Plaintiff pursuant to her lien if one existed attached to the purchase money: as no such lien existed the purchase money is not affected by the agreement. Accordingly I find that the Plaintiff had no lien on the Defendant's title deeds in respect of costs due to her and whether by way of a general or retaining lien or a special lien."

8 Wills

While The Law Society Guide to good Professional Conduct states that “No solicitor’s lien exists over a will”. It has long been held that a lien cannot be held over a will since the decision in *Georges v Georges*³³ and *Balch v Symes*³⁴. These decisions are almost 200 years old and it has not been followed or overruled in this Jurisdiction yet. These decisions predated the first major Act in Relation to Wills namely the Wills Act of 1837. However the law in relation to the making and changing of wills has moved on considerably in 200 years and it remains to be seen if these decisions will be followed in this jurisdiction.

In Canada *Balch v Symes* has been overruled in *Szabo Estate v Adelson*³⁵ when Justice David Brown concluded

“...[as] a matter of principle I have difficulty differentiating a Will from any other document that a Solicitor might possess as a result of a retainer. No doubt a Will is an important document, but so too are many other documents over which a Solicitor may exercise a Lien. The utility and efficacy of a Lien rests on the fact that a Solicitor may withhold important documents needed by a client. In my view, an original Will stands in no different position than any other document in the possession of a Solicitor, and a Solicitor may assert a Lien over it for unpaid fees”.

The Australian Courts have continued to apply the rule that you can have no lien over a will and Walter J. in *In re Aebly's Will*³⁶ stated

“The mere fact of death works important changes. There is no longer a bailor. The thing bailed is transformed from an ambulatory instrument into a muniment of title to property. The bailment, as such, is at an end. The persons entitled to the testator's property then have a right to demand production and probate, not of the ambulatory instrument that was bailed, but of the muniment of their title, and the custodian thereof is under a duty to comply with that demand, but that right and that duty are a new right and a new duty which

³³ *Georges v Georges* (1811) 18 Ves Jun 293, 34 ER 249

³⁴ [1823] Turn & R 37 ER 1028

³⁵ (2007) 32 ETR (3d) 239

³⁶ (1941) 29 NYS 2d 929, at pp 931-932

arise by operation of law and spring from the State's jurisdiction over decedents' estates."

A will can be changed or revoked at any time and it appears that except in unusual circumstances such as the loss of capacity, a lien over the will of a living person is of little or no benefit to a Solicitor.

In relation to the will of a deceased person where the executors have not instructed the Solicitor it seems to me that the policy of The Law Society is correct and would be followed in the Irish Courts for the following reasons.

- a) It is wrong to say that an original will is no different to any other document. It is different because it is a will by which a deceased person devolves his entire worldly belongings to his beneficiaries and is therefore of paramount importance to the deceased's family and beneficiaries.
- b) The will is the means by which the Executors can gather in the assets of and discharge the debts of the Deceased and withholding the will prevents the discharge of those debts including any to the Solicitor.
- c) Consequently a Solicitor by exercising a lien is demanding payment while at the same time he is in effect frustrating the payment of the debt due to him.
- d) If the Solicitor was allowed to exercise a lien he would in effect be demanding that an executor or beneficiary discharge the outstanding account of the deceased and therefore asking a third party to discharge a debt which was not lawfully due by them.
- e) On the death of the testator the executors become potential clients of the Solicitor but unless the Solicitor is instructed in the estate they are not yet clients.
- f) The Rules of the Superior Courts³⁷ provide a mechanism for the production of an original will where an application can be made to the High Court for the production of an original will or alternatively a Subpoena can be issued by the Probate Officer directing a person in possession of an original will to lodge it in the Probate Office.
- g) In my view a Solicitor who makes a will and retains it for safekeeping retains it with an implied duty to produce it to the executors on the death of the deceased.
- h) Arguably a will lodged with a Solicitor for safekeeping is holding the will for the client but on the death of the

³⁷ Order 79 of the Rules of the Superior Courts.

client he is holding the will in trust for the executors, and therefore cannot exert a lien over it.

- i) Arguably the original will of the deceased is no longer the property of the deceased and an executor is obliged to lodge the original with the Probate office where it will be retained and arguably becomes the property of The High Court.
- j) For the foregoing reasons it appears to me that a Solicitor who seeks to assert a lien over a will, putting his own interests first and thereby prevent the estate of the Deceased being devolved to his or her family would be engaging in “conduct tending to bring the solicitors’ profession into disrepute”³⁸ and therefore guilty of misconduct.

The situation however changes when a Solicitor is instructed by the executors as they now become clients of the Solicitor, and they have accepted their appointment as executors. The Solicitor is instructed to extract a grant of probate and completes work for that purpose. In such circumstances it would be wrong for the retainer to be terminated by the executors and “walk away” with the will without discharging the fees properly due and owing to the Solicitor. A Solicitor in those circumstances ought to be able to exercise a lien over the entire file including the original will.

³⁸ S.3 Solicitors Act of 1960 as amended by S.24 Act of 1994 and S.7 Act of 2002

9 Company documents

A lien cannot be claimed over books or documents of a registered company. The requirements of Section 202 of the Companies Act 1990 are clear and require every company to keep proper books of account at the registered office of the company or such other place as the Directors think fit. The purposes of keeping such books of account are so that they can be inspected by the Directors or such other persons entitled pursuant to the Companies Act to inspect the books of account of the company. It accordingly seems to me that if originals of the books of account of the company are transferred to a Solicitor then they must be returned to be held in accordance with the provisions of the Act and cannot be subject to any lien.

In *re Capital Fire Insurance Association*³⁹ concerned a solicitor's lien on his client's documents. An order having been made for winding up a company, applications were made by the official liquidator against the solicitor employed by the company before the winding-up, that the solicitor be ordered to deliver up the share register and minute book, which were in his hands before the commencement of the winding-up together with documents relating to allotments of shares which had come into his possession before the presentation of the petition. The Judge ordered that all the documents should be delivered to the liquidator as the Directors had no power to create any lien on them which could interfere with their being used for the purposes of the company.

³⁹ (1883) 24 Ch D 408

10 Losing a Lien

A solicitor's right to a Retaining Lien may be waived, or deemed to be waived in certain situations, such as a solicitor voluntarily parts with retained documents without reserving a Lien, a solicitor takes security that is inconsistent with the Lien, including the accepting of an Undertaking, a company goes into Liquidation, if the solicitor receives payment of his costs in full, following a complaint to the Law Society, a solicitor enters into a credit agreement with a client, the solicitor takes a security for costs which is inconsistent with the retention of the lien.⁴⁰

In addition, as set in Chapter 11, a solicitor may lose a Lien, either in whole or in part following a direction of the Law Society.

In *Slatter v Ronaldsons*⁴¹, it was held (obiter) that representations made by solicitors that debts would not be pursued in the future coupled with the difficulties that not having access to the documents might cause to a client could provide grounds for a court interfering with the Solicitor's common law lien. The decision makes clear, however, that if solicitors write off costs, this will not, in itself, extinguish the contractual liability of the client in respect of those costs. The reason is that writing-off is a self-contained internal exercise for accounting and fiscal purposes.

⁴⁰Re Taylor, Stileman & Underwood [1891] 1 Ch 590

⁴¹[2002] 2 Costs LR 267

11 Law Society

Complaints of Inadequate Professional Services are defined as services that are- “inadequate in any material respect and were not of the quality that could reasonably be expected ...” They can only be made “by or on behalf of” a client. The Society is obliged to take “all appropriate steps to resolve the matter by agreement between the parties”. Complaints of IPS must be made within 5 years. The Society may have regard to the existence of any civil remedy available to the client, to whether proceedings seeking such remedy have not been commenced and whether it is reasonable to expect the client to commence such proceedings.⁴² Where proceedings are in being in connection with a matter relating to a complaint of IPS, the Society may adjourn their investigation until the proceedings are determined.⁴³

If having made a finding of Inadequate Professional Services the Society may determine that the solicitor is not entitled to any costs, or is only entitled to a specified amount,⁴⁴ direct rectification at the solicitor’s expense,⁴⁵ direct the solicitor to take “such other action in the interests of the client”,⁴⁶ direct that the file be handed over, even where a lien exists,⁴⁷ impose a formal reprimand,⁴⁸ direct the payment of compensation to the client⁴⁹ or uphold the complaint but take no action

Where a complaint of Excessive fees is upheld the Society may direct the solicitor to refund or waive the fees, either wholly or to any specified extent.⁵⁰ But where the bill, the subject of a complaint, is subsequently taxed, the Society’s direction shall cease to have effect.

Unlike the provision made in S 8, (Inadequate Professional Services) the Act does not provide that, on a subsequent taxation, the bill shall be limited to the amount determined by the Society.

In *Treacy v Roche*⁵¹ Ms Justice Laffoy said:

⁴² [S.8 of the Solicitors Amendment Act of 1994]

⁴³ [S.13 Act of 1994]

⁴⁴ [S.8(1(a)) Act of 1994]

⁴⁵ [S.8(1(c)) Act of 1994]

⁴⁶ [S.8(1)(d) Act of 1994]

⁴⁷ [S.8 (1)(e) Act of 1994]

⁴⁸ [S. 12(1)(c) Act of 1994 as substituted by S.14 Act of 2002]

⁴⁹ [S.8(1)(da) Act of 1994 as amended by S.39 Act of 2008]

⁵⁰ [S.9 (1) Act of 1994]

“The plaintiff’s response was to make a complaint to the Law Society about the conduct of her affairs by the former solicitors. A considerable amount of documentation in relation to the processing of the complaint has been put before the Court on this application but it is not clear to me that the Court can get the full picture from that documentation. The Law Society’s perspective, as disclosed in a letter of 15th January, 2009 to the former solicitors, is that it received two distinct complaints from the plaintiff between December 2007 and May 2008. The first complaint related to the manner in which the former solicitors acted for the plaintiff in connection with the issues arising in these proceedings. The second was treated by the Law Society as an additional complaint under s. 9 of the Act of 1994 in connection with the amount of the charges of the former solicitors, the complaint being that their fees were excessive, that there was duplication of certain charges and that the former solicitors had failed to give credit for payments previously made on account.

As regards the second complaint, it appears that the Complaints and Client Relations Committee (the Committee) to which both complaints were referred, at its meeting on 25th June, 2008 determined that the question of the fees should be taxed, if they could not be agreed. Accordingly, the Committee agreed with the former solicitors’ submission that the bill of costs should be referred to taxation..... The important point which emerges from the Law Society’s involvement in the matter as regards this application, in my view, is that it was the Law Society’s view that any issues in relation to the quantum of the bill of costs submitted by the former solicitors was a matter for a Taxing Master on taxation. That is what I would have expected. “

⁵¹ [2009] IEHC 103

12 No foal no fee

When a dissatisfied client terminates the relationship without proper grounds and instructs a new solicitor, the original solicitor is not bound by any agreement to accept only such costs as may be recovered from the other party in the litigation. In the case of *McHugh v. Keane*,⁵² the court was concerned with a 'no foal no fee' agreement between solicitor and client, or as Mr Justice Barron put it "The retainerwas on the basis that he would be remunerated out monies recovered in the action or not at all".

Mr. Justice Barron noted that if the Solicitor breached the terms of the Agreement by failing to act with all due diligence and care on behalf of a client, then his client would no longer be bound not to withdraw his instructions. Likewise, he found that if the client was dissatisfied with the Solicitor without proper grounds, he was in breach of his Contract to retain the Solicitor until the conclusion of the case and his former Solicitor was no longer bound to look only to damages and costs for his remuneration. He found that there was no good reason why the client should have left the Solicitor and it followed that the client was in breach of his Contract with the Solicitor and the Solicitor became entitled to reasonable remuneration for the work done on the client's behalf. He expressed the view that the Solicitor was entitled to his outlay, a reasonable instruction fee and to be released from any Undertakings given by him, but he was not entitled to the fee charged by the Cost Accountant for preparing the Bill of Costs. He made an Order that the Papers be handed over on payment to the Solicitor of sum of £1,500.00 and on receipt of an Undertaking in writing to pay such further costs as would be taxed in default of Agreement.

⁵² Unreported, Barron J., High Court, 16th December, 1994

13 Criminal Proceedings

Where a client is legally aided normally no issue of a lien will arise as there is no obligation on the client to discharge fees and costs. Where they are not legally aided the normal rules apply subject to the interests of justice.

In *R v Storer*⁵³ an Australian case, a solicitor who remained in possession of files relating to the defendant's defence to charges of false accounting following the solicitor's withdrawal for non-payment. The court held that the right of the solicitor to rely upon his lien for unpaid fees had to give way where the interests of justice required. The Court ordered that the file be transferred upon the undertaking of the second Solicitor that they would be held subject to the first solicitor's lien.

Similarly in *Re Dunstan*⁵⁴ Miles CJ said:

"Solicitors are of course entitled to be paid by the clients for whom they act, but it is a mistake to assume that they have an unfettered right to keep clients' documents until they get paid. *Storer's* case is only one example of the principle that, at least when the interests of an accused person in criminal proceedings are concerned, the solicitor's right to rely on a lien might have to give way. Indeed the existence of a lien over documents held by a solicitor previously acting for an accused person might not be as clear as has been thought. No case was cited in which it has been held, after argument to the contrary, that a solicitor has a lien over documents relating to criminal proceedings of a former client. "

In the U.K in a case of *R V Onuigbo*⁵⁵ Lord Justice Pitchford said

"We have access to no authority as to whether different principles apply to the exercise of a lien over papers required in criminal rather than civil proceedings. We suspect that this is because solicitors engaged in a criminal matter do not usually exert a lien over trial papers. In criminal proceedings, unlike civil proceedings (in which the client has a financial interest in the matter at issue against which the lien can be enforced), the issue

⁵³ [1993] 111 FLR 243

⁵⁴ [2000] 155 FLR 189

⁵⁵ [2014] EWCA Crim 65

at stake is liability to a criminal conviction leading to possible imprisonment and confiscation of assets. The client does not have a free choice whether to continue participation in the proceedings. It seems to us that the interests of justice test as it affects criminal proceedings points heavily in favour of an order for production. “

14 Insolvency

In Bankruptcy, Section 3 of The Bankruptcy Act 1988 defines a secured creditor as one who holds a lien.

Similarly the 2012 Personal Insolvency Act defines a secured debt as including the holder of a lien. Additional protection is provided to a secured creditor in such circumstances.

The relevant Statutory Provisions relating to a liquidator is Section 244A of the Companies Act 1963,⁵⁶

“Where the court has appointed a provisional liquidator or a company is being wound up by the court or by means of a creditors' voluntary winding up, no person shall be entitled as against the liquidator or provisional liquidator to withhold possession of any deed, instrument, or other document belonging to the company, or the books of account, receipts, bills, invoices, or other papers of a like nature relating to the accounts or trade, dealings or business of the company, or to claim any lien thereon provided that—

- (a) where a mortgage, charge or pledge has been created by the deposit of any such document or paper with a person, the production of the document or paper to the liquidator or provisional liquidator by the person shall be without prejudice to the person's rights under the mortgage, charge or pledge (other than any right to possession of the document or paper),
- (b) where by virtue of this section a liquidator or provisional liquidator has possession of any document or papers of a receiver or that a receiver is entitled to examine, the liquidator or provisional liquidator shall, unless the court otherwise orders, make the document or papers available for inspection by the receiver at all reasonable times.”

In the case of *Luby v O'Connor (Macks Bakery In Liquidation)*⁵⁷ Mr Justice Kelly decided that:-

⁵⁶ as inserted by s. 125 of the Companies Act 1990

⁵⁷ [2003] 2 IR 396

“On the 11th December, 2002 Mr Luby was appointed liquidator of Macks Bakeries Limited. That was done pursuant to a resolution of the members passed at an extraordinary general meeting of the company. That appointment was confirmed at a meeting of the creditors held later that day. On the 13th December, 2002 the liquidator wrote to the respondent asking for details of all matters in respect of which the respondent had acted as solicitor for the company. He also requested details of title deeds, outstanding fees due to the respondent and *"confirmation or any lien or other security which you claim"*.

On the 20th December, 2002 the respondent provided the details requested. The fees payable by the company amounted to a total of €32,307.70. On the 29th January, 2003 the respondents claimed fees in respect of work done in relation to the liquidation of the company amounting to a total of €2,625.70.

The respondent asserted and continues to assert a solicitor's common law retaining lien over folio MY20399 Co. Mayo and files and documents relating to the company in the respondent's possession as security for those fees.”

Mr Justice Kelly concluded:-

“I have come to the conclusion that the language which is used in s.244 (A) is clear and unambiguous and allows of no other interpretation but that the legislature intended that the holder of a lien would not be entitled to claim such as against a liquidator in the position of the applicant. I do not think that it can be said that the legislature had brought about this result by inadvertence or oversight. In fact it appears to me that s.244 (A) demonstrates a quite sophisticated approach to the issue because of, in particular, the saver which is to be found in subsection (a) thereof in respect of the holder of a mortgage charge or pledge.

It appears to me to be clear and unambiguous that the legislature intended that the rights of holders of consensual securities would be preserved in the manner specified. On the other hand the holder of a lien which comes into effect by operation of law and not by the consent of the parties is not so protected.

There is little doubt but that this section has brought about a change in the law of insolvency insofar as the holders of liens are concerned. However, having regard to the clear wording used ("no person shall be entitled as against the liquidator ... to claim any lien thereon") such a change cannot be regarded as unintended. Neither is it ambiguous. This conclusion is, in my view, fortified by the legislative protection or comfort given to holders of consensual securities.

In these circumstances I am of opinion that the effect of the section is to render it impossible for the respondent solicitors to retain the title documents of the company in liquidation as security for payment of fees. Accordingly there will be the appropriate declaration and order."

The relevant legislation relating to an Examiner is Section 5(2)(d) Companies (Amendment) Act 1990 as amended ⁵⁸

"where any claim against the company is secured by a mortgage, charge, lien or other encumbrance or a pledge of, on or affecting the whole or any part of the property, effects or income of the company, no action may be taken to realise the whole or any part of that security, except with the consent of the examiner."

Accordingly where a Company is in Examinership a Solicitor may not take any action to enforce his lien, presumably by withholding a file or documents, without the consent of the Examiner.

An Examiner has the right of access at all reasonable times to the books, accounts and vouchers of the company. He or she has the power to require all officers and agents of the company, including the company's bankers, solicitors and auditors, to make available all documents relating to the company in their custody or power, to attend before the examiner and give sworn evidence and otherwise give all reasonable assistance. ⁵⁹

⁵⁸ As amended by S 14 of the Companies (Amendment) (No. 2) Act, 1999

⁵⁹ Section 7 Companies (Amendment) Act, 1990.

15 Receiver

In *Bank of Scotland v O'Connor* ⁶⁰Mr Justice Ryan held;-

“The receiver is the agent of the company. There are of course many practical implications and consequences of an appointment and the management of a business will be very pleased to have a receiver removed but that does not change the legal status of the imposed controller. The company's assets do not change on an appointment or on a removal, such as happened in this case. A receiver and manager take over the company, supplanting the existing directors and management, but not extinguishing the company. Therefore, the company's property does not change. It may be sold and the mortgagee or debenture holder may receive the money. But the position is as if the company sold its own property and paid off the debt. Instead of the company doing that through its management, the creditor puts in its own nominee to do just that in place of the previous management. “

In those circumstances where the Receiver steps into the shoes of the Directors of the Company it appears that any lien against the Company will continue against any receiver.

Property Receivers are usually appointed under a Mortgage Deed. The relevant legislation goes back to the Conveyancing Act 1881 and more recently contained in the Land Conveyancing Law Reform Act 2009. In most situations where debts are not paid to the Lender following a demand by the Lender, the Receiver can be appointed by way of a Deed of Appointment under the Deed of Mortgage. Once appointed the Receiver acts as an Agent for the borrower but owes a duty to the Lender who appoints him. As the receiver is acting as agent for the borrower any lien the Solicitor has against the client/borrower would be enforceable against the Receiver. However as the Receiver would have been appointed pursuant to a mortgage deed a solicitor would not be entitled to exercise a lien over the title deeds and only over the file.

NAMA appointed Receivers are provided for in the 2009 NAMA Act which provides that a lien for drawings by an architect is void against NAMA but no such rule applies to Solicitors liens.

⁶⁰ [2014] IEHC 36

16 Preserving lien

A preserving (or equitable) lien is a right to ask the court to order that personal property recovered under a judgment obtained with the solicitor's assistance stand as security for his costs. Recovery by way of negotiation and without litigation will not give a right to exercise this type of lien. It is more in the nature of equitable relief to prevent the Solicitor from being deprived of his costs, rather than a lien.

It is necessary to obtain a court order to assert a preserving lien.⁶¹ A preserving lien can only be asserted in respect of the costs debt that relates to the property recovered. It does not attach to all forms of property (for example, it does not attach to maintenance payments and real property). Nevertheless, it may offer wider protection than a retaining lien, in that it covers property not in the solicitor's possession and provides him with an equitable right to have the property transferred into his possession and to apply to the court for a charge⁶².

A party with notice of the solicitor's preserving lien is not under an obligation, following a settlement as to costs, to pay any settlement monies directly to the solicitor. However, he might be liable to the solicitor if both of the following apply:

- He had knowledge of the existence of the lien.
- There is evidence of collusion with the solicitor's client to defeat the lien.

In *Khans Solicitors v Chifuntwe and SSHD*⁶³ *Khans* a firm of Solicitors compromised judicial review proceedings on terms that the SSHD would pay its reasonable costs. It then sought costs of £9,497 and were offered £6,000. The client then wrote to the defendant to say he had terminated his retainer with his solicitors and accepted the £6,000 and asked the cheque to be made payable to him and sent to him which they duly did. The solicitors wrote to the defendant seeking to prevent the £6,000 being released to their client as there was no valid compromise of the costs, and that the costs should be paid to them. The defendant paid the £6,000 to the client who promptly went abroad.

The solicitors argued that the SSHD knew that they had a lien over the costs and that the lien bound the costs, even if they had

⁶¹ *James Bibby Ltd v Woods and Howard* [1949] 2 KB 449

⁶² *Euro Commercial Leasing v Cartwright & Lewis* [1995] 2 BCLC 618

⁶³ [2012] EWHC 2108 (QB).

been paid over. In support of the argument, they relied on two cases, *Ross v Buxton*⁶⁴ and *Re Margaretson and Jones*⁶⁵. The principle said to emerge from the cases was that, where a receiving client and the paying party, knowing of the lien and intending to defeat it, compromise proceedings, then this is not permitted. The solicitors lost on the short point that there was no evidence of collusion or an intention to defeat the lien.

It seems that the solicitors failed to recognise that costs are the client's costs not the solicitors'. Proceeding from that misunderstanding, they failed to understand the importance and nature of their lien and to take steps that were open to them to preserve the position.

In *Fitzpatrick V Galvin*⁶⁶ Mr. Justice Gilligan allowed a lien over the costs and outlays involving debt collection proceedings, against a Liquidator.

Barry C. Galvin & Son Solicitors had been acting for the Company in a number of different court proceedings, largely related to debt collection, which were instituted prior to the commencement of the voluntary liquidation and which were still in being when the Company entered into voluntary liquidation.

Mr Justice Gilligan concluded:-

“In my view, the solicitor's lien runs with the costs recoverable from a third party for outlays and work as done by the respondent Solicitors up to the date of the presentation of the petition to wind up the company. This is true regardless of whether that lien is of an equitable or a common law nature and therefore there is no need for this Court to distinguish between authorities which point towards the common law source for such a lien such as s. 3 of the Legal Practitioners (Ireland) Act 1876, and those which point towards an equitable source for such a right such as *Re Galden Properties* or *Halvanon Insurance Co. v. Central Reinsurance Corporation*, both of which were relied upon by Counsel for the respondents in his submissions. Costs not recoverable will be admitted in the liquidation, in the

⁶⁴ [1889] LR 42 Ch 190

⁶⁵ [1897] 2 Ch 314

⁶⁶ [2012] IEHC 521

normal course, as a debt owing to an unsecured creditor.

The liquidator, however, is obliged to honour the respondent solicitor's lien since, despite the fact that the respondent is clearly no longer entitled to a lien over the documents in question, he maintains an equitable or Common law lien over any costs which are recovered from a third party in any debt collection proceedings brought on behalf of the Company by the liquidator which relate directly to outlays and costs expended by him and recovered in respect of legal services provided by him and which are directly attributable to his professional work up to the date of the presentation of the petition to wind up the Company.

Accordingly, the respondent solicitor's costs and outlays must rank before the secured creditors interests due to the existence of a lien, whether equitable or Common Law in nature, over any outlay and professional fees which the liquidator recovers on behalf of the Company from the debt collection proceedings, in reliance on the expertise and exertions of the respondent, with the balance of the respondent's fees ranking as an unsecured creditor in the liquidation. "

17 Charging Lien

A charging (or statutory) lien arises under Section 3 of The Legal Practitioners (Ireland) Act 1876 which provides that where a solicitor is employed to prosecute or defend a case in court, then the court can declare the solicitor entitled to a charge on the property recovered or preserved.

Mr. Justice Barrington in the Supreme Court in *Lismore Buildings Limited (In Receivership) v. Bank of Ireland Finance Limited & Others*⁶⁷ stated:-

“There is no doubt that a solicitor, whose fees and outlay have not been paid by his client, will normally have a lien on a property or fund recovered by his efforts to secure professional costs and outlay incurred by him....For the same reason it is proper for a court to protect the solicitor's position by granting him a charge on property or costs recovered or preserved as a result of his efforts. Section 3 of the Act of 1876, also contemplates that the charging order should be made by the court which made the order under which the claim to costs arises... the primary purpose of the lien and the charging order is to protect the solicitor against his client though the existence of the charging order or lien may have adverse consequences for other people.”

Section 3 provides:-

“In every case in which a solicitor shall be employed to prosecute or defend any suit, matter or proceeding in any court of justice, it shall be lawful for the court or judge before whom any such suit, matter or proceeding has been heard or shall be pending to declare such attorney or solicitor entitled to a charge upon the property recovered or preserved, and upon such declaration being made such attorney or solicitor shall have a charge upon and against and a right to payment out of the property, of whatsoever nature, tenure or kind the same may be, which shall have been recovered or preserved thorough the instrumentality of any such attorney or solicitor, for the taxed costs, charges, and expenses of or in reference to such suit or matter or proceeding; and it shall be lawful for such court or judge to make such order or orders for taxation of and for raising and payment of such costs charges and

⁶⁷ [2000] 2 IR 316

expenses out of the said property as to such court or judge shall appear just and proper; and all conveyances and acts done to defeat or which shall operate to defeat such charge or right shall, unless made to a bona fide purchaser for value without notice, be absolutely void and of no effect as against such charge or right: Provided always that no such order shall be made by any such court or judge in any case in which the right to recover payment of such costs, charges and expenses is barred by any Statute of Limitations.”

The High Court has made it clear in a Judgement of Mr Justice Ryan in the case of *The Merrow Ltd (In Liquidation) v Bank of Scotland and O’Connor*⁶⁸ that the work done must relate to the retention or preservation of property.

This case concerned a public house and restaurant known as Foleys Bar/O’Reillys. The company that owned and operated the business is The Belohn Ltd. Merrow owns all the shares in The Belohn Ltd. The shareholders of Merrow Ltd are Sean Foley, (a Solicitor) the applicant in this motion,(as Solicitor) and his wife.

Mr Justice Ryan in his Judgement said;

“On the 10th October, 2012, the bank appointed the second named respondent David O’Connor to be the receiver and manager. On the 20th December, 2012, the company namely Merrow Ltd brought proceedings under s. 316 of the Companies Act challenging the appointment of the receiver on a number of grounds. One of the challenges succeeded....

In the proceedings to unseat the receiver, Gilligan J made an order for costs in favour of Merrow Ltd but they have not yet been taxed or ascertained.

Mr Foley’s case on the motion is as follows. He was the solicitor acting for Merrow Ltd, the sole member of The Belohn Ltd, (which owns the properties at No. 1 Merrion Row and No. 17 Upper Merrion Street) in the s.316 proceedings, which were successful. (It may have some relevance that the decision of this court is under appeal to the Supreme Court.) The applicant in that case was Merrow Ltd and it was awarded costs on a party and party basis in the normal way of litigation...By his efforts

⁶⁸ [2014] IEHC 36

in the action, he has affected the retention or preservation of valuable property for his client or clients. Even if the actual owner of the property whose retention or preservation he has secured is not his client, his right to charge it with his costs still subsists because the Act does not restrict his entitlement to a client. He has, in a word, fulfilled all the requirements of section 3.

The plaintiff in the proceedings sought to free itself from its bank appointed receiver and succeeded in doing so. But what property was recovered or preserved? The answer is none; the alteration that took place temporarily was in the control of the company but all of its assets and liabilities remained unchanged. Its interest in The Belohn did not alter; that company's property was still mortgaged to the bank, just as it was before the case....There was of course a change in the position of the directors of Merrow Ltd in that they were temporarily, as it turned out, back in business. But the result of the case did not effect an alteration by way of recovery or preservation of property.....The company's assets do not change on an appointment or on a removal, such as happened in this case."

Mr Justice Ryan then went on to consider the discretionary nature of the relief and stated:-

"Let me now look at the question of discretion that would arise for consideration if Mr Foley had satisfied the essential requirement of s.3 of the 1876 Act....In relation to discretionary considerations, it seems to me that matters involving dispute or implying disreputable behaviour should not be taken into account because they have not been the subject of full hearing, evidence or debate, even if they might give rise to some unease. An example is failing to reply to the issues raised by Mr Simons in his letter.

The position is different, however, in regard to other points such as the entitlement, potentially at least, of the previous solicitors Messrs Costello and Co to be paid their fees and perhaps themselves to claim under s.3 that by initiating the proceedings the property was preserved or recovered through their instrumentality; uncertainty as to how and by whom the quantum of fees sought by Mr Foley is to be determined; similarly as to priority and also set-off. If they do not arise now for decision, when and

before whom and how are relevant questions. This category of concerns does not involve any decision as to turpitude or even criticism of the applicant but they are relevant in my view to the exercise of discretion.

Another important element is the close connection of the applicant to the Client Company or companies. In *Mount Kennett Investment Co & Anor. v. Patrick O'Meara & Others*⁶⁹, Clarke J. said that it "would be unreal to disregard the fact that the relationship between the client and the solicitor in this case was less than at arm's length. As pointed out, Mr. O'Brien was the beneficial owner of the client and one of the only two equity partners in the firm of solicitors. This is not a case where there was an entirely independent relationship between a firm of solicitors and a client with whom that firm had no direct connection."

I also hold that if the applicant were to be able to claim that he had by his efforts recovered or preserved property, it would be subject to the mortgagee's prior interest and liable to be set off.

My conclusions accordingly are that the application fails because the solicitor has not satisfied the requirement of the statute and that, if he had done so, it would be proper in the exercise of the court's discretion to refuse a declaration."

In *McGowan v Manley*⁷⁰ Ms Justice Laffoy held that it was not necessary for the costs to have been taxed before the making of an order.

"Section 3 of the Act of 1876 provides that the solicitor shall be entitled to a charge "for the taxed costs, charges and expenses of or in reference to such suit, matter or proceeding". In *O'Callaghan on The Law on Solicitors in Ireland* (at para. 9.96) it is suggested that it is not necessary, or a precondition, that the costs be taxed before s. 3 operates; otherwise, it is suggested, the property which is the subject matter of the charging order might disappear before the order is made. The making of a charging order under s. 3 merely declares the right to a

⁶⁹ [2012] IEHC 167

⁷⁰ [2011] IEHC 317

charge. The extent of the charge can be determined by the taking out of a summons for taxation.”

18 Contractual Lien.

A lien may be created and defined by contract. Arguably as a lien arises as of right a contractual lien is not a lien at all and is more in the nature of a contractual pledge.

Where a lien arises by contract different considerations apply as it is a matter of interpretation of the contract.

The Law Society's precedent terms of engagement contains the following clauses relevant to liens:-

We hope to reach a successful result on your behalf. But if you decide for any reason to transfer to another solicitor's firm, we will require payment for any work done up to that point.

Once you have paid us for our services and we have done everything we promised to do, you can take your original file. We are entitled to copy this file to comply with solicitors' regulations. Usually we keep a client's file for at least six years and then destroy it. However, we never destroy deeds and wills

At the beginning of your case, as required by law, we will give you information, in writing, about our fees and other expenses that may be incurred. If we fail to agree the fees for our services with you, we will not act on your behalf.

The law allows us to keep a client's file as security for any costs until we have been paid for our services. We will issue our bill of costs to you without delay.

Contract has been said to supersede lien and to limit the rights of the person claiming under contract to those for which provision has been made in the contract.⁷¹

A contract which purports to create a general lien will be strictly construed⁷².

Just as a contract may supersede the lien, so a course of dealing inconsistent with the lien may destroy it.⁷³

⁷¹ *Seka Pty Ltd (in provisional liquidation) v Fabric Dyeworks (Aust) Ltd* (1991) 4 ACSR 455, Aust Fed Ct.

⁷² *Squamish Terminals Ltd v Price-Waterhouse Ltd* (1980).

19 Transferring a file to a new Solicitor

The Law Society in its Guide to Professional Conduct (3rd edition) states “a courteous request for files and a prompt response are the keys for a smooth handover of files between solicitors”⁷⁴. Unfortunately the smooth handover of files between solicitors can be difficult to achieve.

The guide continues “when a file is transferred to another firm, the solicitor may opt to accept an undertaking in respect of the payment of costs as alternative security to the solicitor’s common law lien”. It goes on to recommend that the second solicitor should qualify his/her undertaking, making it conditional on him/her not being discharged by the client and further conditional on sufficient monies coming into the solicitor’s control to pay the costs.

It makes clear that once the fees and outlays of the solicitor have been paid, the file belongs to the client. A copy may be kept for the purposes of complying with the Solicitors Accounts Regulations and this copying should be at the solicitor’s own expense.

It further recommends that at the conclusion of a litigation case that if the second solicitor recovers costs which include the costs of work done by the first solicitor, he is accountable to the first solicitor for the appropriate portion of those costs, even if they are solicitor/client costs properly payable and these exceed the total amount of the party and party costs recovered. It recommends not proceeding without the file and states that the second solicitor should ensure in his/her initial discussions with the client, that the client fully appreciates and understands the client’s obligations to pay all costs for work properly done by his/her first solicitor.

⁷³ Fisher v Smith (1878 4 App Cas 1, HL).

⁷⁴ At Page 59

20 Practice Note Law Society Gazette December 1996

The Guidance & Ethics Committee of the Law Society published a practice note in the December 1996 Law Society Gazette. It was a joint publication with what is now called the Regulation of Practice Committee. It recognises that the solicitor has a right at common law to exercise a lien on files and other documents until he/she is paid and that this right must be fully recognised.

It acknowledges that the relationship of a client and a solicitor may be terminated at will but where the solicitor has undertaken a personal liability on behalf of the client, for instance if a solicitor was given an undertaking, the client cannot determine the retainer without the first solicitor's consent.

It acknowledges the common law position that allows the solicitor to exercise a lien on a client's file until his/her costs and outlays have been paid. The solicitor can exercise his/her lien on all files, documents and monies received, even if his bill has been paid on a particular file. It acknowledges that he/she cannot exercise a lien on a will or documents held on accountable receipt.

It acknowledges that a lien can be set aside by Order of a court under the Solicitors & Attorneys Act, requiring the production of the file of papers and further that a lien may be set aside by direction of The Law Society.

It further is of the view that where clients decide to transfer their business to a new solicitor, it is in their interest that their affairs proceed without delay and the expenses of an application to court to resolve disputes arising on the transfer of the file. There is no objection to a solicitor first instructed in the matter approaching the client to seek an explanation for the reasons of the transfer of the file.

The Guidance & Ethics Committee of The Law Society seek to resolve disputes arising out of the transfer of files, which is in the best interest of the client, the solicitors involved and the profession as a whole.

21 Data Protection

On making an access request any client about whom you keep personal data is entitled to:

- a copy of the data you are keeping about him or her;
- know the categories of their data and your purpose/s for processing it;
- know the identity of those to whom you disclose the data;
- know the source of the data, unless it is contrary to public interest;
- know the logic involved in automated decisions;
- data held in the form of opinions, except where such opinions were given in confidence and even in such cases where the person's fundamental rights suggest that they should access the data in question it should be given.

To make an access request the client must:

- apply to you in writing (which can include email);
- give any details which might be needed to help you identify him/her and locate all the information you may keep about him/her e.g. previous addresses, customer account numbers;
- pay you an access fee if you wish to charge one. You need not do so, but if you do it cannot exceed €6.35.

In response to an access request you must:

- supply the information to the client promptly and within 40 days of receiving the request;
- provide the information in a form which will be clear to the ordinary person, e.g. any codes must be explained.

In his list of Case Studies the Data Protection Commissioner lists the following as his case study in relation to "Access requests to Solicitors for files"

"My Office received a number of complaints in relation to the failure of solicitors to comply with access requests from former clients. Often the reason cited by the solicitor for not complying with the access request is that they have a common law lien on all documents and papers that constitute work carried out on the client's behalf for which payment remains outstanding.

This issue, where a common law lien on a client's file is considered to apply, is one that we have dealt with and we are not in any way unsympathetic to the scenario for the solicitor in question where a former client is seeking not to pay outstanding fees which are the subject of a dispute. Equally, in the context of a file handled by a solicitor's practice, it is undoubtedly the case that there is far more information on a file than what could be considered to be the requester's personal data and no requirement to provide any information which is not strictly the personal data of the requester arises. However, the Data Protection Acts, which transpose the EU Directive on Data Protection, do not provide any exemption to the provision of the personal data of a person in these circumstances.

A solicitor who has been engaged by an individual is a data controller of that individual's personal data which is subsequently processed. Personal information held by a data controller falls to be released in response to an access request unless a valid exemption as provided for under Sections 4 and 5 of the Data Protection Acts can be relied upon.

The complaints were resolved to the satisfaction of the complainants and the solicitors concerned on the basis of the following guidance from my Office:

- The exemption provided for under Section 5(1)(g) of the Data Protection Acts, which relates to personal data "in respect of which a claim of privilege could be maintained in proceedings in a court in relation to communications between a client and his professional legal advisers or between those advisers" applies to personal information held in respect of a solicitor's capacity as legal adviser to its clients (not the requester) rather than information held in their capacity, or former capacity, as legal representative for the requester.
- In relation to letters from the solicitor acting for another client, it is possible that the restriction to the right of access in Section 5(1)(g) of the Data Protection Acts may apply to any personal data of the requester contained within them.
- Regarding letters generated by a solicitor on behalf of the requester who was a client, a large number of which may have already been sent to them in the normal course of events, i.e. when generated, it's difficult to see how a claim of privilege under Section 5(1)(g) would apply where the letters have previously been sent to the requester.

- It is difficult to anticipate that Section 5(1)(g) would apply to attendance notes created by the solicitor in relation to their client. Where notes relate specifically to the client and were created in that context, we would deem the personal data contained in those notes to be valid for release.”

22 Securing payment

On receipt of an Authority from another Solicitor to take over the file, whilst a solicitor is not obliged to accept an Undertaking from the second solicitor, it may well be in the first Solicitor's interest, the client's interest and the second Solicitor's interest that the file is handed over by agreement and without delay so that they can all recover whatever charges or damages each are lawfully entitled to.

Where the file relates to the Defence of a claim or some other non-contentious business where it is unlikely that any damages or costs will be recovered, it is not unreasonable to insist on payment of your costs prior to transferring the file.

The following are some suggestions with a view to securing the smooth transfer of the file.

1. A solicitor should furnish to the client a detailed Bill, outlining the fees, charges and disbursements and details regarding the work completed. Consideration should be given, if necessary to preparing a detailed Bill of Costs complying with the Rules of the Superior Courts⁷⁵, allowing the costs to be taxed if necessary.
2. A solicitor should make it clear to the client and the second solicitor that he is exercising a Retaining Lien by withholding delivery of the client's property, including files.
3. A solicitor should attempt to reach agreement on the transfer of the retained property or documents and consideration should be given to the following:-
 - a. The immediate payment of all disbursements;
 - b. The immediate payment of fees, charges and disbursements;
 - c. Payment of a certain percentage of fees, charges and disbursements;
 - d. Agreement on what percentage of the recovered costs would be payable to the first solicitor;

⁷⁵ Order 99 Rule 29(5)

- e. An agreement that upon resolution of the Proceedings, the file would be submitted to an independent Solicitor, or Cost Accountant to determine what percentage of fees, charges and disbursements are due to each Solicitor;
- f. The acceptance of an Undertaking from the second Solicitor not to disburse any settlement or costs until your entitlement has been determined;
- g. Consider what might happen in the event of the second solicitor being discharged;
- h. A solicitor may wish to submit his Bill for Costs for Taxation