

## **Guidelines<sup>1</sup>**

### **Solicitors Advertising Regulations 2019**

The Solicitors Advertising Regulations, 2019 (S.I 229 of 2019) (“the 2019 Regulations”) were introduced pursuant to Section 71 of the Solicitors Act, 1954 as amended by Section 4 of the Solicitors (Amendment) Act, 2002.

The 2019 Regulations replace the Solicitors (Advertising) Regulations 2002 and will be enforced by the Society until responsibility for the regulation of solicitors’ advertising passes to the Legal Services Regulatory Authority (‘the Authority’) under Section 218 of the Legal Services Regulation Act 2015 (provisionally timetabled for the first quarter of 2020).

Regulation 1 revokes The Solicitors (Advertising) Regulations, 2002 (S.I No. 518 of 2002) with effect from 1 June 2019. The 2019 Regulations apply to all advertisements published as and from that date.

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

Any advertisement that was fully compliant with the Solicitors (Advertising) Regulations 2002 will also be compliant with the Solicitors Advertising Regulations 2019.

The prohibitions on non-solicitors advertising services of a legal nature and the prohibitions on unqualified persons from either acting as a solicitor or pretending to be a solicitor remain unchanged.

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<sup>1</sup> This note is for guidance only and does not purport to be a statement of the applicable law. In the case of any conflict between the Guidelines and the Solicitors Acts 1954-2015 (the “Acts”) or the Solicitors Advertising Regulations 2019 (“the Regulations”), the Acts and Regulations will have primacy. In the case of any doubt, please obtain legal advice or consult the Law Society’s Advertisement Vetting Service operated by the advertising regulations executive.

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## 1. Introduction

This is a guide to the Solicitors Advertising Regulations 2019 (“the Regulations”). The purpose of these Guidelines is to make clear to all persons who are advertising legal services the extent of the Regulations and the manner in which they may restrict a person’s ability to advertise legal services. The Society does not impose blanket bans on solicitors’ advertising, but certain restrictions are in place for the benefit of the profession and as a public protection measure.

There are specific sections that set out the statutory basis on which regulatory and/or disciplinary proceedings could be brought against:

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

In addition, there are specific sections on:

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

There are also sections in relation to:

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

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

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

## 2. Definitions

Regulation 2 defines the key terminology used in the 2019 Regulations. Other words and phrases not defined in the 2002 Regulations have the meanings assigned to them by the Solicitors Acts, 1954 – 2015.

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

**“Advertisement”** - this definition is wide and means any communication (whether oral or in written or other visual form and whether produced by electronic or other means) which is intended to publicise or otherwise promote a solicitor in relation to the solicitor’s practice.

Websites are covered by this definition. In addition, the definition covers websites that are published by a third party, if the intention of the website is to promote a solicitor’s practice – for example, a claims service with a particular solicitor’s name mentioned.

The definition also includes various other forms of communication, including any brochure, notice, circular, leaflet, poster, placard, photograph, illustration, emblem, display, stationery directory entry, article or statement for general publication, electronic address, audio or visual recording and/or presentation and/or seminar and/or interview.

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

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

**“Legal services”** – under the Solicitors (Amendment) Act 1994, legal services are defined as being services of a legal or financial nature provided by a solicitor arising from that solicitor’s practice as a solicitor, and includes any part of such services.

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

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

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

**“Claims for damages for personal injuries”** - this is to be read as meaning claims, whether made in court proceedings or otherwise, for damages or compensation for personal injuries suffered or alleged to have been suffered, by a person or persons owing to an act or omission or alleged act or omission, of another person or persons.

**“Contentious business”** - means business done by a solicitor in or for the purpose of or in contemplation of proceedings before a court or tribunal or before an arbitrator appointed under the Arbitration Acts, 1954 to 1998.

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

### 3. Restrictions on advertising on a non-solicitor

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

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

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

Legal services are defined as being services of a legal or financial nature provided by a solicitor arising from that solicitor's practice as a solicitor, and includes any part of such service, offered for or in expectation of a fee, gain or reward that is directly related to the provision of that service.

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

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

#### 3.1: Restricted services that non solicitors are prevented from offering

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

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

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

*(i) real or personal estate, or movable or immovable property, situate or being outside the State and the United Kingdom, or*

*(ii) any legal proceeding, actual or in contemplation, of which the subject-matter is any such estate or property,*

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

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

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

#### **4. Restrictions on advertising on a solicitor (general)**

In general, solicitors cannot advertise in respect of personal injuries to solicit, encourage or induce a litigant into making a claim for damages for personal injury (as per regulations 4(a)(vi)). This regulation is enforced as a public protection measure.

This enforcement policy is not however tantamount to a blanket ban on the advertising of a specific legal sector as solicitors may advertise personal injuries services, but must adhere to certain regulations when doing so. Section 5 of these guidelines deals exclusively with restrictions on advertising specific to personal injury.

The Regulations contain restrictions that are expressly stated and include advertising that:

- is likely to bring the profession into disrepute;
- is in bad taste;
- may reflect unfavourably on other solicitors;
- expressly or impliedly solicit, encourage or offer any inducement to any person or group or class of persons to make claims for damages for personal injuries or to make claims for damages for personal injuries or to contact the solicitor concerned with a view to such claims being made;
- is false or misleading in any respect;
- is published in an inappropriate location.

##### **4.1: What constitutes an advertisement?**

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

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

##### **4.2: Disrepute**

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

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

Examples of such includes banner phrases such as 'where there's blame, there's a claim', services that offer gifts as inducements and services that may be construed as 'ambulance chasing'.

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

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

#### **4.3: Bad taste**

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

Advertisements that may be held as being in bad taste are prohibited. Examples include jokes made in reference to death or disease.

The same objective approach is taken as at 4.2 above.

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

#### **4.4: That would reflect unfavourably on other solicitors**

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

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

The same objective approach is taken as at 4.2 above.

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

#### **4.5: False or misleading advertisements**

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

An advertisement must contain information that is true and accurate.

#### **4.6 An article intended to provide information on the law and an advertisement:**

##### ***The distinction between an article and an advertisement***

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



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

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

Example:

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

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

Online blogs that discuss topical legal matters are generally permitted as commentary. It is common for such legal updates to refer to court decisions in respect of compensation amounts. To ensure that such references are classified under Regulation 11, and are not published in breach of Regulation 4(a)(vi), care must be taken.

The Society recommends that any update that refers to a settlement award is:

1. based on information that already exists in the public domain (e.g. a link to a newspaper article);
2. does not expressly or impliedly induce the reader to make a claim of a similar nature (e.g. 'if you have been affected in a similar way, contact us today...').

### **Legal advice columns**

When deciding whether a legal advice column constitutes an advertisement, the advertising exemption as set down by Regulation 11 must be considered. Under this test, a publication is not considered to be an advertisement but is rather a communication primarily intended to provide information on the law where;

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

Where a legal advice column satisfies this test, the exemption under Regulation 11 shall apply and the article would be considered to be a communication primarily intended to give information on the law. Where an article does not satisfy this test, i.e. if it has been paid for, by or on behalf of the solicitor or where it has enjoyed repeated publication, the article is subject to the Regulations in the normal way.

An example of how the regulations would apply to a legal advice column that falls outside the Regulation 11 exemption would be where the column relates to medical negligence. As with all other types of advertising, Regulation 8(b) requires that any reference to any

subcategory of personal injury must also carry an asterisk that correlates with the disclaimer *“\*In contentious business, a solicitor may not calculate fees or other charges as a percentage or proportion of any award or settlement”*. Therefore to be fully compliant with the Regulations, any legal advice column that has medical negligence as its subject matter, that does not fall under the Regulation 11 exemption, must make clear reference to the abovementioned disclaimer in connection with contentious business.

#### **4.7: The distinction between an oral presentation and an advertisement**

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

- relate to a legal topic where no part of it is paid for or on behalf of the solicitor,
- not be a repetition of an oral presentation given by a solicitor on the same or substantially similar legal topic. If this is the case, rather than it being viewed as a communication which is primarily intended to give information on the law it is instead considered as being intended to publicise or otherwise promote the solicitor in relation to the solicitor’s practice. As such, the Regulations would apply to the presentation in the normal way.

#### **4.8 Accepting referrals from persons acting in contravention of the Regulations**

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

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

### **5. Restrictions on advertising specific to personal injury**

#### **5.1 Personal injury advertising<sup>2</sup>**

The Solicitors Advertising Regulations 2019<sup>3</sup> state that<sup>4</sup> a solicitor’s advertisement shall not:

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<sup>2</sup> This note is for guidance only and does not purport to be a statement of the applicable law. In the case of any conflict between these Guidelines and the Solicitors Acts 1954-2011 (the “Acts”) or the Solicitors Advertising Regulations 2019 (“the Regulations”), the Acts and Regulations will have primacy. In the case of any doubt, please obtain legal advice or consult the Law Society’s Vetting Service operated by the advertising regulations executive.

<sup>3</sup> SI No. 229/2019

<sup>4</sup> Regulation 4(a)(vi)

*expressly or impliedly solicit, encourage or offer any inducement to any person or group or class of persons to make claims for damages for personal injuries or to contact the solicitor concerned with a view to such claims being made*

Solicitors' websites sometimes contain pages focussing on a large variety of potential accidents or injuries. This is permitted where the contents of these pages contain factual information on the legal services provided by the solicitor or factual information on the area of law to which those services relate. What is not permitted is for these webpages to also contain an express or implied inducement to persons to make a similar claim for damages for personal injury. Examples of a prohibited inducement include:

*If you have been affected by a similar type of injury, and feel you are entitled to compensation, contact us today to discuss your award...*

*Large compensation awards likely following free, no obligation assessment*

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

*Have you made your claim? You could be owed thousands*

## **5.2 The Regulation 8 disclaimer in respect of personal injuries:**

Where an advertisement refers to personal injuries it must comply with Regulation 8 of the Solicitors Advertising Regulations 2019 which states that any reference made to personal injury must carry with it an asterisk that correlates with the following wording to be displayed adjacent to the reference:

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

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

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

**John Smith & Co. Solicitors**

**30 years legal experience**

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

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

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

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

#### **John Smith & Co. Solicitors**

##### **What We Do**

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

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

### **5.3 Prohibition on 'No Win No Fee'**

Although the regulations permit the advertising of personal injury legal services, an advertisement shall not, according to Regulation 8(c), contain words or phrases such as:

*"no win no fee", "no foal no fee", "free first consultation", or other words or phrases of a similar nature which could be construed as meaning that legal services involving claims for damages for personal injuries would be provided by the solicitor at no cost to the client.*

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

### **5.4 Claims calculator / compensation estimator**

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

The PIAB Book of Quantum is available at:

<http://www.injuriesboard.ie/eng/Forms-Guidelines/Book-of-Quantum.pdf?gclid=CIDykaHw1cgCFUKe2wodRWAP6Q&gclsrc=aw.ds>

Notwithstanding this policy, the phrase 'claims calculator' is not appropriate, and in deference to the spirit and purpose of Regulation 4(a)(vi), a phrase such as 'compensation estimator' would be more appropriate. Further, a solicitor's advertisement must not state that

they could secure a higher award for a client than that offered by PIAB, as such a claim would be a breach of regulation 4(a)(vi).

## 5.5 Content relating to legal costs

Under Regulation 9, a solicitor is not permitted to publish an advertisement that suggests that legal services involving contentious business can be provided without any risk of having to pay costs, unless that is actually the position. Examples of advertisements prohibited under this regulation include:

*'Compensation paid to you at no cost whatsoever'*

*'Let us handle your case from beginning to end, free of charge'*

*'Pay nothing!'*

## 6. Restrictions on advertising in respect of content

Regulation 4(a) prohibits advertising that may be construed as being:

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

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

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

### 6.1 Prohibited wording:

Subject to Regulation 8(c) an advertisement shall not contain words or phrases such as "no win no fee", "no foal no fee", "free first consultation", or other words or phrases of a similar nature which could be construed as meaning that legal services involving contentious business would be provided by the solicitor at no cost to the client.

## 6.2 Use of cartoons:

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

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

A cartoon may be permitted where it does not depict a person in a state of distress and/or trauma, or is capable of being considered:

- in bad taste;
- likely to bring the profession into disrepute;
- to reflect unfavourably on other solicitors.

## 6.3 Dramatic or emotive pictures

Dramatic or emotive pictures

The publication of dramatic or emotive pictures may be prohibited in circumstances where they are capable of being considered:

- in bad taste;
- likely to bring the profession into disrepute;
- to reflect unfavourably on other solicitors.

Examples of such 'dramatic' or 'emotive' pictures would be images that depict a person in a state of distress and/or trauma, or the scene of a catastrophic event.

**Examples of permitted images:**





#### **6.4 Dramatic or emotive words**

As per 6.3 above, the publication of dramatic or emotive words may be prohibited in circumstances where they are capable of being considered:

- in bad taste;
- likely to bring the profession into disrepute;
- to reflect unfavourably on other solicitors.

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

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

When interpreting whether advertising content is considered dramatic or emotive the Society takes an objective approach. An investigation of this nature would begin with the Society's advertising regulations executive notifying the solicitor concerned of Regulations 4(a)(i)-(iii) and inviting their response. If the matter cannot be resolved through correspondence, it is then referred to the Advertising Regulations Division of the Regulation of Practice Committee for further adjudication.

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

#### **6.5 The Law Society crest**

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

A permitted crest can be obtained via the Society's vetting service of the members' section of the Law Society website [www.lawsociety.ie](http://www.lawsociety.ie).

## 7. Prohibition on words permitted for use in domain names

Domain names may contain the words:

- injury
- personal injury
- claims

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

Where a website is "powered" by a firm of solicitors, and its domain name is separate and distinct from that of the firm, the actual name of the firm must carry equal prominence to that of the trading name of the website on its webpages. Regulation 13(a) requires all advertisements commissioned by a solicitor to clearly indicate the name of the solicitor.

The same restrictions apply to domain names regarding:

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

## 8. Prohibitions on unsolicited approaches made to non-clients

Regulation 12 makes clear that a solicitor is prohibited from making:

"a direct unsolicited approach to any person who is not an existing client...with a view to being instructed to provide legal services, where such direct unsolicited approach is made:

- a) *at an inappropriate location; or*
- b) *at or adjacent to the scene of a calamitous event or situation affecting that person"*

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

Under Regulation 12 a solicitor is prohibited from making an unsolicited approach to a person with a view to being instructed to provide legal services.

Such approaches must not be made:

- at an 'inappropriate location'; meaning a hospital, clinic, doctor's surgery, funeral home, cemetery, crematorium or other location of a similar character;
- at or adjacent to the scene of a calamitous event or situation affecting that person.

A complaint alleging that a solicitor has acted in breach of Regulation 12 can trigger an application by the Law Society to the Solicitors Disciplinary Tribunal, as set out in Regulation 14(g)(iii).

Breaches of the Solicitors Acts or any Regulations made thereunder fall within the statutory definition of misconduct [Section 3 of the Solicitors (Amendment) Act 1960 as amended]. In the event of a finding of misconduct by the Disciplinary Tribunal, it can impose sanctions



which include censures, fines, costs and in more serious cases, it can recommend to the President of the High Court that the solicitor be suspended from practice or struck off the Roll of Solicitors.

## **9. An advertisement must make clear on its face published the advertisement**

Under Regulation 13(a) an advertisement published or caused to be published by a solicitor must make clear on its face that it is published or caused to be published by such a solicitor.

See Section 12 for further.

## **10. Permitted use of business cards**

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

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

## **11. Social media**

Although the 2019 Regulations make no explicit reference to social media, the definition of advertisement is inclusive of all online advertising:

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

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

## **12. Google**

Regulation 10 states that when an electronically accessible advertisement links to other information that is also available electronically, the solicitor is responsible for all published information.

The use of search engines such as Google to source legal services is particularly pertinent in this regard, as such search engine technology has replaced traditional business listings such as the Golden Pages as the preferred way for solicitors to attract new business.

Care should be taken when putting together a Google / Google AdWord campaign as Google listings constitute advertisements and as such are subject to the Regulations in the normal way. If a solicitor is unsure whether their Google marketing campaigns are compliant with the regulations, they can submit same to the Society's vetting service for review and approval.

## **13. Procedural Section**

### **13.1: The Society's powers of enforcement:**

Under Regulation 14(a) the Society is tasked with investigating any possible breach of the Regulations by any solicitor made by either members of the public or profession.

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

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

#### **Regulation of Practice Committee:**

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

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

#### **Sanctions:**

##### **LEVY**

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

##### **REPRIMAND**

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

##### **APPLICATION TO THE DISCIPLINARY TRIBUNAL**

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

##### **PRACTISING CERTIFICATE**

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

## **PUBLISH FINDINGS**

Pursuant to the provisions of Regulation 14(i) of the Solicitors (Advertising) Regulations, the Society is entitled to publish to the solicitors' profession the imposition of a penalty by the Society on a solicitor.

### **13.2 The obligations of our members**

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

## 14. Practical Help.

### 14.1 Vetting Service:

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

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

### 14.2 FAQ:

**Q.** I have had my advertising approved by the Society's vetting service under the 2002 regulations. Will I require fresh approval under the 2019 regulations?

**A.** Provided the advertisement is unchanged, any advertisement that was compliant with the 2002 regulations, will also be compliant with the 2019 regulations.

**Q.** Which parts of the 2019 regulations should I pay most attention to?

**A.** Under Regulation 13(b) it is a solicitor's responsibility to ensure that they are compliant with all sections of the regulations. The sections that are most commonly breached are to be found under Regulations: 4), 8) and 9). If as solicitor is unsure of any content they should contact the Society's vetting service for guidance, as at 14.1 above.

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

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

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

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

**A.** Under Section 14 of the Regulations, the Society is entitled to:

- issue a reprimand in such terms as the Society deem appropriate and reasonable (Regulation 14(g)(ii)),
- make an application to the Disciplinary Tribunal for an inquiry into the conduct of the solicitor on the ground of alleged misconduct (Regulation 14(g)(iii)).

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

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

**A.** If you are unsure as to what content is permitted you can submit same to be reviewed by the Society's advertising regulations executive as part of the Society's vetting service. Please see 14.1 above.

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

**A.** As per Regulation 13(b) it is the responsibility of a solicitor to ensure that any advertisement published or caused to be published by him or her complies with the Regulations.

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

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

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

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

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

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

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

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

**A.** Domain names may contain the words:

- injury
- personal injury
- claims

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

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

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

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

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

**Q.** Am I permitted to use the Law Society crest on my advertisement?

**A.** No. In order to protect the Society's 'brand integrity', the Law Society of Ireland logo is reserved for the exclusive use of the Society. Members should not use the logo for any purpose, including on their firm's website, within their email signature, on social media, on letterhead or any other printed material.

A permitted crest can be obtained via the Society's vetting service of the members' section of the Law Society website [www.lawsociety.ie](http://www.lawsociety.ie).

**Q.** What constitutes an express and/or an implied inducement as per Regulation 4(a)(vi)?

**A.** Express inducement:

An example of how a solicitor may expressly solicit, encourage or offer any inducement to any person to make a claim relating to damages for personal injuries would be to advertise their professional services on a 'no win no fee basis'.

Implied inducement:

As per 5.4 above, 'claims calculators' may be held as representing an implied inducement to persons seeking damages for personal injury. As a result, where a solicitor wishes to indicate to clients the gradient value of damages, they are prohibited from using terms such as 'claims calculator', and must refer instead to a 'compensation estimator' in their advertising. By extension, such an estimator must be either based on or taken from the PIAB Book of Quantum, or provide a web link to same.

**Q.** The 2019 Regulations appear to relax the existing regime and provide solicitors with an opportunity to publish advertising that is tantamount to 'ambulance chasing'. Is this the case?

**A.** This is not the case. Not alone do the proposed 2019 regulations retain the restrictions on advertisements that are 1) likely to bring the profession into disrepute, 2) in bad taste, 3) reflect unfavourably on other solicitors, they also contain specific restrictive provisions on types of personal injury advertising that directly prevent any

'ambulance chasing' type advertising. Furthermore, these sections are mirrored by Section 218 of the Legal Services Regulation Act 2015 and have been approved by the Commission. Sections 4(a)(vi), 8(a)-(c) and 9 should be considered in this regard.

- Q.** Are solicitors permitted under the 2019 regulations to advertise professional services on the 'side of a van'?
- A.** Yes, such advertising would be permitted under the 2019 regulations, provided it is compliant with all other regulations.
- Q.** Are images of car crashes now permitted?
- A.** Under the old regime a photograph of a car accident could be used where a person was not depicted in a state of distress, e.g. an image of smashed headlamps was permitted, but an image of a driver slumped over a steering wheel was not. This continues to be the case, and shall be enforced under Regulation 4(a)(ii).
- Q.** Understanding that the 2002 regulations emerged from the Army Deafness controversy, and the manner in which solicitors advertised in respect of same, is it wise to remove the prohibition on 'calamitous events or situations' under regulation 9(a)(iv)?
- A.** While the Society is sensitive to the concerns of the profession in respect of the potential reputational damage caused by an infringement of regulation 9(a)(iv) of the 2002 regulations, the EU Commission has been emphatic in its request that all absolute prohibitions that it classifies as disproportionate are removed from the regulatory regime. Regulation 9(a)(iv) was one such prohibition.

The restriction was therefore removed on the basis that any grossly offensive advertisement which refers to a calamitous event could be captured by 4(a)(i) and (ii).