

# **Annexe G1 - Services to solicitors, withdrawal of credit**

Whereas:

1. These Terms have been authorised by the General Council of the Bar and are intended to apply (save as hereinafter provided) in any case where a barrister is instructed by a solicitor;
2. Any solicitor who sends a brief or instructions to a barrister will be deemed to instruct that barrister on these Terms unless and to the extent that the barrister and the solicitor have agreed in writing in relation to the particular matter or generally (a) that the Contractual Terms on which Barristers Offer their Services to Solicitors 2000 shall apply, or (b) to exclude or vary these Terms;

and Whereas:

3. By the established custom of the profession a barrister looks for payment of his fees to the solicitor who instructs him and not to his lay client;
4. Except in publicly funded cases a solicitor is personally liable as a matter of professional conduct for the payment of a barrister's proper fees whether or not he has been placed in funds by his lay client;
5. Where instructions have been given in the name of a firm all partners at that date incur personal liability and remain liable for the payment of counsel's fees incurred on behalf of the firm by a deceased bankrupt or otherwise defaulting former partner of the firm; and
6. The liability of a sole practitioner and of partners for the liabilities of their co-partners is a continuing one and is not cancelled or superseded by any transfer of the practice or dissolution of the partnership;

## **General**

1. A solicitor may in his capacity as a director partner member employee consultant associate or other agent of a company firm or other body brief or instruct a barrister.
2. In any case where a barrister accepts a brief or instructions from a solicitor in his capacity as a director partner member employee consultant associate or agent of a company firm or other body:
  - (1) the solicitor warrants that he is authorised by his company firm or other body to instruct the barrister;

(2) the obligations of the solicitor under these Terms (including in particular his responsibility for the payment of the barrister's fees) shall be the joint and several obligations of him and that company firm or other body.

### **Instructions**

3. A barrister has the duty or the right in certain circumstances set out in the Bar Code of Conduct to refuse to accept a brief or instructions and these Terms will apply only where the barrister has accepted the brief or instructions.

4. Notwithstanding that a brief or instructions have been delivered to a barrister the barrister shall not be deemed to have accepted that brief or those instructions until he has had a reasonable opportunity:

(1) to peruse them;

(2) in the case of a brief to agree a fee with the solicitor.

5. A barrister accepts a brief or instructions upon the understanding:

(1) that he must and will comply with the Bar Code of Conduct;

(2) that he will deal with instructions as soon as he reasonably can in the ordinary course of his work

(3) that he may return the brief or instructions in accordance with the Bar Code of Conduct, and that, if he does so, he will incur no liability to the solicitor under these terms as a result of so doing.

6. (1) Where for any reason time is of the essence the solicitor must at the time when he delivers the brief or instructions but separately from the brief or instructions themselves inform the barrister of that fact and of the particular reason for urgency in order that the barrister may decide whether in those circumstances he can accept the brief or instructions. In addition the brief or instructions must be clearly marked "Urgent".

(2) In the case of publicly funded work, the solicitor must at the time when he delivers the brief or instructions (or if any relevant certificate is not then available to him as soon as reasonably practicable thereafter) supply the barrister with copies of any relevant public funding certificates.

### **Copies of Briefs and Instructions and Records of Advice**

7. A barrister shall be entitled for the purposes of his records (but not otherwise) to retain his brief or instructions or any papers delivered therewith or (if the solicitor requires the return of such brief or instructions and papers) to take and retain a copy of such brief or instructions and papers and of any written advice PROVIDED that nothing shall entitle a barrister to exercise any lien over any brief instructions or papers.

## **Fees**

8. Save in the case of publicly funded work or in the case of a Notified Solicitor a barrister and solicitor may (subject to any rules regarding contingent fees) make such agreement or arrangement between them as to the time or times whether at the time of delivery of the brief or instructions or subsequently thereto or otherwise at which the barrister's fees shall be paid as they may think fit and the barrister's fees shall be paid by the solicitor accordingly PROVIDED that every such agreement or arrangement shall be in writing.

9. Save in the case of publicly funded work or in the case of work the fees for which are to be paid out of a fund but cannot be so paid without an order of the court a barrister may and in the case of fees payable by a Notified Solicitor a barrister (unless and except as otherwise previously authorised in writing by the Chairman) must require his fees to be agreed and paid before he accepts the brief or instructions to which the fees relate.

10. (1) Fees and/or charging rates shall be (i) as agreed between the barrister and the solicitor before the barrister commences work under the brief or instructions; or, in default of such agreement, (ii) a reasonable professional rate for the barrister instructed

(2) The barrister shall submit an itemised fee note not later than three months after the work to which the fee note relates has been done or at the conclusion of the matter in which the barrister is briefed or instructed whichever is the sooner.

(3) The barrister shall as soon as reasonably practicable comply with a request by the solicitor for a fee note.

(4) Every fee note shall include the solicitor's reference and (where appropriate) the barrister's case reference number, the barrister's relevant account number for the purpose of receiving payment in publicly funded cases and (if known to the barrister) any relevant public funding certificate number and date of issue.

(5) If any fees remain outstanding at the conclusion of a case the solicitor shall as soon as reasonably practicable inform the barrister that the case has concluded.

11. In the case of publicly funded work:

(1) The solicitor and barrister shall respectively take such steps as may be open to each of them to take under the applicable Regulations for the time being in force for the purpose of obtaining payment of the barrister's fees as soon as reasonably practicable;

(2) The solicitor shall as soon as reasonably practicable comply with a request by the barrister for information by (i) notifying the barrister of the date of issue and number and supplying the barrister with copies of any relevant public funding certificates (ii) notifying the barrister of the date of any order for assessment of costs under the relevant certificate or other event giving rise to a right to such assessment (iii) informing the barrister of the steps taken by him pursuant to paragraph 11(1) hereof;

(3) The barrister unless such information and an explanation for non-payment satisfactory to him is thereupon received from the solicitor shall then report the facts to the Chairman.

12. In the case of work the fees for which are to be paid out of a fund but cannot be so paid without an order of the court:

(1) The solicitor shall use his best endeavours to obtain such order or orders as may be requisite to enable payment of the fees to be made as soon as reasonably practicable;

(2) The solicitor shall as soon as reasonably practicable comply with a request by the barrister for information by informing the barrister of the steps taken by him pursuant to paragraph 12(1) hereof;

(3) The barrister unless such information and an explanation for non-payment satisfactory to him is thereupon received from the solicitor shall then report the facts to the Chairman;

(4) Subject to paragraph 12(5) below, the barrister's fees shall be payable one month after the making of the order of the court required for the payment of such fees out of the fund.

(5) In the event of any breach by the solicitor of his obligations under paragraph 12(1) and/or 12(2) above, the fees will be payable forthwith and the amount outstanding from time to time will carry simple interest at the stipulated rate from one month after the date of the letter referred to in paragraph 15(1) hereof until payment.

13. (1) Subject to any such agreement or arrangement as is referred to in paragraph 8 hereof the barrister's fees if and to the extent that such fees have not been previously paid shall unless challenged by the solicitor as hereinafter provided be paid by the solicitor within one month after the fee note relating thereto has been sent to the solicitor whether or not the solicitor has been placed in funds by his client and whether or not the case is still continuing.

(2) In the event that the barrister's fees are not paid in full in accordance with sub-paragraph (1) above, the fees outstanding from time to time will carry simple interest at the stipulated rate from one month after the date of the letter referred to in paragraph 15(1) hereof until payment if that letter includes a statement to that effect.

14. (1) Any challenge by a solicitor to a barrister's fee (whether giving rise to an issue of competence or a dispute on quantum or otherwise) must be made by the solicitor in writing within three months after the first fee note relating to that fee has been sent to him or within one month after such letter relating to that fee as is referred to in paragraph 15(1) hereof has been sent to him whichever is the later.

(2) No challenge to a barrister's fees will be accepted either by the barrister or in the case of a complaint by the barrister to the Bar Council of failure to pay those fees by the Bar Council unless:

(a) the challenge was made in accordance with paragraph 14(1) hereof; and

(b) the solicitor has within 14 days of being requested to do so either by the barrister or by the Bar Council agreed in writing (i) to submit the issue or dispute giving rise to the challenge to the decision of a Tribunal and (ii) to abide by and forthwith give effect to the decision of the Tribunal.

(3) If a dispute is referred to a Tribunal in accordance with paragraph 14(2) above:

(i) The Tribunal shall act as experts and not as arbitrators and its decision shall be conclusive, final and binding for all purposes upon the solicitor and the barrister.

(ii) No payment need be made in respect of the fees (unless the Tribunal orders an interim payment) until the Tribunal has made its decision and communicated it to the parties.

(iii) If the Tribunal determines that any sum is payable in respect of the fees, paragraph 13(2) above shall apply to that sum as if it had become payable when it would have become payable if no challenge had been made, and the Tribunal shall also determine the amount payable in respect of interest thereon under that paragraph.

(4) Unless the solicitor has challenged the barrister's fees and agreed to submit the issue or dispute in accordance with paragraphs 14(1) and (2), the fees will be payable in full, without any set-off whatsoever, in the amount set out in the relevant fee note and at the time specified in paragraph 13(1) above.

15. Save as aforesaid and subject to any such agreement or arrangement as is referred to in paragraph 8 hereof the barrister if and to the extent that his fees have not been previously paid:

(1) may at any time after the expiration of one month after the first fee note relating thereto has been sent send a reminder substantially in the form of the letter annexed hereto and marked "A" or some reasonable adaptation thereof;

(2) unless an explanation for non-payment satisfactory to the barrister has been received shall at the expiration of three months after the first fee note relating thereto has been sent send a further reminder substantially in the form of the letter annexed hereto and marked "B" or some reasonable adaptation thereof; and

(3) unless an explanation for non-payment satisfactory to the barrister is thereupon received shall then report the facts to the Chairman.

### **Withdrawal of Credit**

16. In any case where a barrister has made a report to the Chairman in accordance with paragraphs 11(3) 12(3) or 15(3) hereof or under the equivalent terms of any contract and in any other case in which he is satisfied that it is appropriate to do so, the Chairman may write a letter in the form of one of the letters annexed hereto and marked "C" or some reasonable adaptation thereof.

17. (1) This paragraph applies where the following conditions are satisfied namely where:

(a) such a letter as is referred to in paragraph 16 hereof has been sent and no explanation for non-payment satisfactory to the Chairman has been received; and

(b) either (i) any fees referred to in such letter which are in the opinion of the Chairman properly payable remain unpaid or (ii) in the event that all such fees have been paid not more than twelve months have elapsed since payment; and

(c) circumstances have arisen in which the Chairman would otherwise have occasion to send to any person liable for the fees or to any connected person a further letter such as is referred to in paragraph 16 hereof.

(2) In any case in which paragraph 17(1) hereof applies the Chairman shall write to such person or persons (as the case may be) to the effect that unless written representations received by him within 14 days after the date of such letter or within such extended period as he may allow justify an exceptional departure from the following course he will and unless persuaded by such representations not to do so the Chairman whether or not any fees remain unpaid shall:

(a) issue a direction that no barrister may without the written consent of the Chairman (which consent may be sought urgently in exceptional cases) knowingly accept instructions from any person or firm named in such direction or from any person who or firm which is or has at any time since the direction was issued been a connected person unless his fees are to be paid directly by the Legal Services Commission or such instructions are accompanied by payment of an agreed fee for such work or unless he agrees in advance to accept no fee for such work; and

(b) cause the names of the persons or firms named in such direction to be included in a list of persons and firms named in such directions to be circulated by pre-paid first-class post to all such persons and firms to all the Clerks and Heads of Chambers in England and Wales to the Master of the Rolls and to the President of the Law Society notifying them of such direction.

18. Notwithstanding anything to the contrary herein if in any case the Chairman is satisfied that it is appropriate to issue a direction such as is referred to in paragraph 17(2)(a) hereof in respect of any person or firm named in such direction and to circulate a list such as is referred to in paragraph 17(2)(b) hereof including the names of the persons or firms named in such direction he may after giving such persons and firms due notice of why he considers it appropriate to take such course and after considering any written representations and after consultation with the Law Society issue a direction in respect of and cause the list to include the names of such persons and firms as may be appropriate.

18.A Upon issuing a direction pursuant to either paragraph 17(2)(a) or paragraph 18 hereof, the Chairman shall report the facts to the OSS and shall request the OSS to commence proceedings before the Solicitors' Disciplinary Tribunal against the persons, the firms, or the partners in the firms named in such direction.

19. The list referred to in paragraphs 17 and 18 hereof shall be circulated monthly unless there have been in the meantime no additions to or deletions from the list.

20. Any Notified Solicitor and any barrister may at any time after the expiration of six months after the name of any person or firm was first included in such a list seek the revocation of any relevant direction and the amendment of the list and the Chairman after considering any written representations and after consultation with the Law Society shall be empowered (but shall not be obliged) to accede to such application upon such terms as he considers appropriate.

### **Definitions and consequential provisions**

21. For the purpose hereof:

(1) "Bar Code of Conduct" shall mean the Code of Conduct of the Bar of England and Wales for the time being in force;

(2) "brief" "instructions" and "lay client" shall have the meanings assigned to them respectively in the Bar Code of Conduct;

(3) "solicitor" shall where the context admits include any solicitor liable for the fees;

(4) "person liable for the fees" shall mean any solicitor liable for the fees and any person company firm or other body responsible by virtue of paragraph 2(2) hereof for the payment of the fees;

(5) Section 5(2), (3) and (4) of the Arbitration Act 1996 apply to the interpretation of all references in these Terms to parties having agreed, or made an agreement, in writing;

(6) "connected person" shall mean any person who from time to time is either

(a) a partner employee consultant or associate of any firm of which any person liable for the fees or any Notified Solicitor is a partner employee consultant or associate;

(b) the employer of any person liable for the fees or of any Notified Solicitor;

(c) an employee of any person liable for the fees or of any Notified Solicitor;

(d) a firm of which any person liable for the fees or any Notified Solicitor is a partner employee consultant or associate;

(7) "Notified Solicitor" shall mean any person or firm whose name is for the time being included in the list referred to in paragraphs 17 and 18 hereof and any person who or firm which is or has at any time since the direction was issued been a connected person;

(8) "Tribunal" shall mean a Tribunal consisting of a barrister nominated by the Chairman and a solicitor nominated by the President of the Law Society;

(9) "the Chairman" shall mean the Chairman of the Bar Council and shall include any person including in particular the Vice-Chairman of the Bar and the Chairman of the Remuneration and

Terms of Work Committee and the Chairman of the Fees Collection Committee to whom the Chairman may have delegated either the whole or any part of his responsibilities hereunder;

(10) "the OSS" shall mean the Office for the Supervision of Solicitors;

(11) "publicly funded work" shall mean cases funded and paid directly to the barrister by the Legal Services Commission, as part of the Community Legal Service or the Criminal Defence Service.

(12) Where the context admits, references to fees include any interest accrued in respect of them under paragraph 13(2) hereof.

(13) The "stipulated rate" shall mean 2% above the Bank of England base rate from time to time

(14) Any letter written by the Chairman to any person pursuant to or which would otherwise have been effective for the purposes of either the Withdrawal of Credit Scheme which came into effect on 2 March 1987 or the Withdrawal of Credit Scheme 1988 as originally enacted or in force from time to time shall in relation to such person be deemed to be such a letter as is referred to in paragraph 16 hereof.

22. (1) Subject to sub-paragraph (2) below, any fee note and any such letter as is referred to in paragraphs 15(1) 15(2) 16 17(2) or 18 hereof may be sent and shall be treated as having been properly and sufficiently sent to each and every person liable for the fees and to each and every connected person (as the case may be) if posted by pre-paid first-class post or sent through any Document Exchange or by facsimile transmission addressed to:

(a) any person liable for the fees; or

(b) if any person liable for the fees is either a partner of or consultant to or associate of or employed by another or others to the person liable for the fees or to his employer or to his senior partner (as the case may be); or

(c) if any such person practises (whether on his own or in partnership with others or otherwise) under a name other than his own, to the firm under whose name he practises;

and addressed to any place at which such person or his employer or any partner of his carries on practice.

(2) Where a firm or a sole proprietor is liable for the fees, if any letter under paragraphs 15(2), 16, 17(2) or 18 hereof is addressed to some person other than the senior partner of the firm or the sole proprietor, a copy must also be sent to the senior partner or sole proprietor at the same time.

23. Any such letter as is referred to in paragraphs 17(2) or 18 hereof shall:

(1) identify any relevant earlier matters of complaint;



(2) state the Chairman's proposed course of action; and

(3) enclose a copy of this document provided that any accidental omission or failure to enclose such a copy may be remedied by the sending of a separate copy as soon as the Chairman is made aware of such omission or failure.

24. Any such direction as is referred to in paragraphs 17 or 18 hereof may contain or be amended so as to add or include any or all of the names and addresses:

(1) of any person liable for the fees;

(2) of any connected person; and

(3) if any such person practises (whether on his own or in partnership with others or otherwise) under a name other than his own, of the firm under whose name he practises.

### **Status of these Terms**

25. Neither the General Council of the Bar in authorising these Terms nor a barrister in offering his services to a solicitor on these Terms has any intention to create legal relations or to enter into any contract or other obligation binding in law.

26. Neither the sending by a solicitor of a brief or instructions to a barrister nor the acceptance by a barrister of a brief or instructions nor anything done in connection therewith nor the arrangements relating thereto (whether mentioned in these Terms or in the Bar Code of Conduct or to be implied) nor these Terms or any agreement or transaction entered into or payment made by or under them shall be attended by or give rise to any contractual relationship rights duties or consequences whatsoever or be legally enforceable by or against or be the subject of litigation with either the barrister or the General Council of the Bar.

### **Exclusion or variation**

27. A solicitor who sends a brief or instructions to a barrister will be deemed to instruct that barrister on these Terms unless and to the extent that the barrister and the solicitor have agreed in writing in relation to the particular matter or generally (a) that the Contractual Terms on which Barristers Offer their Services to Solicitors 2000 shall apply, or (b) to exclude or vary these Terms.

### **Transitional**

28. Unless otherwise agreed in writing:

(1) Any amendment to these Terms has effect only with regard to briefs and instructions accepted on or after the date the amendment is expressed to take effect; and

(2) As regards briefs and instructions accepted before that date, these Terms continue to have effect in the form in which they stood before the amendment.