

**THE CHANCERY BAR ASSOCIATION'S CONDITIONAL FEE
AGREEMENT**

**NOTE
(2019)**

1. The Chancery Bar Association's Conditional Fee Agreement is a relatively short agreement ("the Agreement") which incorporates the Chancery Bar Association's Conditional Fee Conditions 2016 ("the Conditions") and the standard terms in Annex T of the Code of Conduct (or such other terms as Chambers have specified for clients). The Agreement will require completion and appropriate amendment to fit the circumstances of the particular case.

2. Please note that the Agreement and the Conditions are intended to operate in conjunction with either Annex T, or alternative terms governing the wider relationship between the parties. It would **not** normally be appropriate to delete the reference to Annex T in clause 2 of the Agreement without substituting appropriate alternative terms. The Agreement and Conditions do not include, for example, provisions for billing and payment (including disbursements), or a data protection clause. Counsel will normally wish either to incorporate appropriate provisions (such as those in Annex T) by reference, or to draft bespoke provisions for insertion into the Agreement. Counsel should give careful consideration to whether it might be appropriate to include express bespoke terms in the circumstances of a particular case. By way of example only, it might be appropriate, in a case which requires Counsel to

travel, for an express agreement about travel costs and any payment in respect of travel time to be included in the Agreement, to avoid any later dispute about whether such costs are recoverable.

3. Counsel contemplating using the Agreement and Conditions are reminded that, as of 1 April 2016, the exemption contained in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 to insolvency proceedings (allowing the continued recovery from the opponent of any success fee due under a conditional fee agreement and the premium payable for ATE insurance) ceased to apply. From 1 April 2016 onwards, the Uplifted Rate in the Agreement and Conditions is no longer recoverable in insolvency proceedings.

4. Clause 2 of the Agreement refers to Parts 1 and 2 or 3 of the Conditions. Parts 1 and 2 are appropriate where no fee is payable if the Action ends in Failure. If a discounted fee is payable in any event, reference should be made to Parts 1 and 3 of the Conditions instead. Please note that, where a discounted fee is payable in any event, there is a potential issue as to whether (in the event of Success) any recovery from the losing party is limited to the discounted fee, or whether the Base Rate can be recovered. (There is no doubt that the Uplifted Rate can no longer be recovered for CFAs entered into after 1 April 2013.) This issue turns on the construction of sections 58(2)(b) and 58A(6) of the Courts and Legal Services Act 1990 (as amended). Although the legislation is not the subject of a definitive ruling, we suggest that the Base Rate is likely to be recoverable, since this appears to be the position at common law: see *Thai Trading Co v Taylor* [1998] QB 781 (CA).

5. In a similar vein, it has been suggested to the Chancery Bar Association that the wording of the statement of truth on Precedent H might represent a difficulty in cases where legal representatives were acting on a CFA (or a partial CFA). Insofar as there was an issue with that wording, it seems to us that it has now been resolved by the amended statement of truth on Precedent H introduced on 22 April 2014: see §3.13.2 of the White Book 2015.
6. Clauses 4 to 10 need completing as the circumstances of the case require.
7. Clause 11 is optional and can be deleted, if desired.
8. Clause 14 should be deleted if Parts 1 and 2 of the Conditions are incorporated but should be completed if Parts 1 and 3 are incorporated in clause 2 of the Agreement.
9. Further clauses, adding provisions or varying the Conditions, can be included after Clause 14, or elsewhere if appropriate. If the Conditions, in particular Condition 16, are altered in any material respect, you may not be fully insured by Bar Mutual Indemnity Fund Ltd and its approval should be obtained to any such alterations.
10. Clause 23 is not intended to contemplate a reference to the Bar Council and Law Society Joint Tribunal. The jurisdiction of that Tribunal may not be wide enough to enable it to deal with all kinds of dispute which might arise.

11. This CFA was drafted by a sub-committee on behalf of the Chancery Bar Association in the light of statutory provisions in force as at 1 April 2016. It is up to those using the Agreement to satisfy themselves as to its appropriateness and legality. In this respect it is stressed that the legislative and regulatory framework is subject to change and any CFA which does not comply with that framework may be unenforceable.

12. The Chancery Bar Association would be grateful for any comments you may have in the light of your experience. It is intended to update the Agreement and the Conditions in the light of experience. If you have any comments these should be addressed to Francesca Compton, Administrator, Chancery Bar Association – admin@chba.org.uk .

13. Finally, the Agreement and the Conditions have been drafted by volunteers with, perhaps, no greater expertise than any counsel using them for the purposes of a conditional fee agreement. As previously stated, you must satisfy yourself that the Agreement and the Conditions are lawful and are appropriate for the particular circumstances of the relevant proceedings. The Chancery Bar Association and the draftsmen of the Agreement and the Conditions assume no responsibility to you or anyone else. The draftsmen will, however, accept responsibility if instructed in the usual way.