

THE CHANCERY BAR ASSOCIATION'S CONDITIONAL FEE CONDITIONS 2005.

PART 1

1. The following expressions used in these Conditions have the following meanings:

the Action	the action or proposed action referred to in the Agreement including any appeal or proceedings to enforce judgment or any other order but not any counterclaim
the Agreement	the agreement between Counsel and the Solicitor incorporating these Conditions
the Base Rate	the rate of Counsel's fees described in the Agreement which would be payable if there was not a conditional fee agreement
Becomes Insolvent	(1) in the case of an individual, when the individual is made bankrupt or an individual voluntary arrangement is approved in respect of the individual,

- (2) in the case of a corporation, when a winding up order or an administration order is made against the corporation, or a resolution is passed for its voluntary winding up, or administrative receivers are appointed over the property of the corporation or a company voluntary arrangement is approved in respect of the corporation, and
- (3) in the case of a partnership, when a winding up order or partnership administration order is made against the partnership or when a partnership voluntary arrangement is approved in respect of the partnership

the Client

the client referred to in the Agreement

Condition

a particular condition of these Conditions

these Conditions

the Chancery Bar Association's Conditional Fee Conditions 2005

Counsel

the barrister defined as Counsel in, and who is a party to, the Agreement

Failure	the Action is concluded without qualifying under the head of Success
Normal Litigation Practice	the normal practice adopted in litigation in the Chancery Division which is not carried out under a conditional fee agreement
the Opposing Party	the other party or parties to the Action identified in the Agreement
Other Acceptable Counsel	counsel other than Counsel whom the Solicitor has agreed or does agree is acceptable for the purposes of the Agreement
Solicitor	the solicitor or firm of solicitors defined as the Solicitor in, and who or which is <u>a</u> party to, the Agreement
the Solicitor's Conditional Fee Agreement	the conditional fee agreement entered into between the Solicitor and the Client
Success	the Client becoming entitled, whether pursuant to a decision of the Court or agreement between the

parties, to the relief referred to in the Agreement and where the Client's entitlement to that relief is pursuant to a decision of the Court, the Opposing Party, or, in the case of multi party litigation, any Opposing Party is not allowed to appeal against the Court decision or has not appealed in time or has entered into a settlement agreement

the Uplift the percentage by which the Base Rate is to be increased under the Agreement

the Uplifted Rate means the Base Rate as increased by the Uplift

2. The relationship between Counsel and Solicitor shall be governed by the Terms of Work under which barristers offer their services to solicitors and the Withdrawal of Credit Scheme as authorised by the General Council of the Bar as from time to time amended and set out in the Code of Conduct of the Bar of England and Wales, save that where such Terms of Work and such Scheme are inconsistent with the terms of the Agreement the latter shall prevail.

3. Subject to Conditions 4 and 5, Counsel will diligently perform in accordance with his/her instructions any tasks in or related to the Action which in Normal Litigation Practice would be performed by a barrister of his/her seniority.

4. In particular, Counsel is not bound:
 - (1) to appear at any interlocutory hearing for which he/she reasonably believes that:
 - (a) counsel of lesser experience and seniority would ordinarily be instructed; or
 - (b) the Court would conclude that the hearing was not fit for the attendance of one or, in the case where two or more Counsel are instructed, two or more Counsel;
 - (2) to draft documents such as schedules, letters, summonses or witness statements or
to advise orally or in writing or perform any other task if such would not be expected of counsel in Normal Litigation Practice;
 - (3) to accept instructions outside the scope of the Agreement; or
 - (4) to accept any brief or instructions where he/she is required or permitted to refuse such brief or instructions.

5. If Counsel is, in accordance with the Bar's Code of Conduct, obliged or permitted to return any brief or instructions in the Action to another barrister or not to accept any brief or instructions in the Action, then:
 - (1) it will not be a breach by Counsel of the Agreement to return or not to accept such brief or instructions, and

- (2) in the event of Success, Counsel shall still be entitled to his/her fees in accordance with the Agreement at the Uplifted Rate on all work done.

6. Subject to subcondition (5) below, the Solicitor will perform any tasks in or related to the Action which in Normal Litigation Practice would be performed by a solicitor. Without prejudice to the generality of the foregoing, the Solicitor will:
 - (1) prosecute and prepare the Action promptly, diligently and carefully and take all necessary procedural steps in time;
 - (2) provide Counsel with, or make available to Counsel, copies of all documents relevant to the Action as soon as possible after they become available to the Client or the Solicitor;
 - (3) inform Counsel of all material developments and information relevant to the Action as soon as possible after they become known to the Client or the Solicitor;
 - (4) acquire and provide Counsel with or make available to Counsel any other documents or information relevant to the Action which Counsel reasonably requests and which are available to or known to the Client or the Solicitor;
 - (5) consider with Counsel the need for Counsel to advise on evidence, merits and quantum or to perform any other tasks and the need for any further procedural steps which Counsel may consider necessary at, at least, each of the following stages of the action:
 - (a) on first instructing Counsel,

- (b) upon service of any statement of case or application by the Opposing Party,
 - (c) upon completion of disclosure and inspection of documents,
 - (d) the preparation of witness statements, affidavits, instructions to experts and/or expert's reports,
 - (e) upon exchange or service of any witness statement or affidavit,
 - (f) upon exchange or service of any expert's report, and
 - (g) at any other time when Counsel considers it expedient,
- and shall instruct Counsel to advise or to act accordingly, provided that such advice or task would be given or performed by Counsel in Normal Litigation Practice;
- (6) communicate Counsel's advice on, at least, the following matters to the Client forthwith at whatever stage the Action has reached:
- (a) the merits or quantum of the Action, including in particular that the Action is not likely to end in Success,
 - (b) the appropriate terms, if any, under which the Action ought to be settled, and whether any Part 36 Payment into court or offer or analogous type of offer should be made or accepted,
 - (c) the likelihood that the value of any recovery in the Action likely to be made by the Client together with the costs recoverable on Success are such that they are not likely to exceed the Client's legal costs and disbursements likely to be allowed following an assessment of such costs and disbursements,

- (d) the expenditure which should or should not be incurred instructing leading counsel or a more senior or specialised barrister, or instructing experts or otherwise obtaining evidence or preparing the Action;
- (7) agree (where possible) with Counsel's clerk in good time the date, place and time of any hearing fixed in the Action or otherwise inform Counsel's clerk in good time of such matters, and instruct Counsel and provide all necessary papers for the hearing within a reasonable time before the hearing or, where appropriate, within a reasonable time before the date on which Counsel's skeleton argument is due to be lodged and/or exchanged;
- (8) deliver the brief (and, where appropriate, agree stage accrual of brief fees) for any hearing within a reasonable time before the hearing;
- (9) forthwith upon receipt of any Part 36 or other offer to settle the Action or any issues in it, communicate immediately the terms of the offer to Counsel and seek his/her advice on whether to accept or reject the offer or as to the appropriate terms, if any, under which the Action or issues ought to be settled;
- (10) forthwith upon receipt of notice of a Part 36 payment into court, inform Counsel of such payment in and seek his/her advice on whether to accept or reject the Part 36 payment;

- (11) give to any other party to the Action such information relating to the Agreement as required by the Civil Procedure Rules and/or any Practice Direction; and
 - (12) in any case where the amount of Counsel's fees falls to be assessed by the Court, notify Counsel immediately of any appointment or hearing when the amount of Counsel's fees falls to be assessed, take reasonable steps to assist Counsel in preparation of his/her argument in support of his/her fees, including obtaining information reasonably required by Counsel for that purpose and otherwise use best endeavours to ensure that Counsel's fees are allowed.
7. The Solicitor confirms that he/she/they has/have brought the terms of the Agreement to the attention of the Client and has explained to the Client the Client's responsibilities and liabilities under the Agreement and the Client has consented to the terms and conditions of and incorporated in the Agreement in so far as they relate to the Client.
8. Subject to clause 9 below, the Solicitor may terminate Counsel's retainer at any time
- (1) without cause, or
 - (2) if the Solicitor has good reason to believe the relationship of trust between the Solicitor and Counsel has irretrievably broken down,

then, in either of those events, Counsel shall be entitled, at his/her option, to one of the following, namely, either:

- (a) his/her fees accrued to the date of termination at the Base Rate in full, or
- (b) in the event only of Success, his/her fees at the Uplifted Rate.

- 9. The Solicitor shall not have the right to terminate Counsel's retainer on any ground once Counsel has fully performed his/her obligations under the Agreement.
- 10. Counsel may terminate his/her retainer if
 - (1) he/she reasonably believes that the relationship of trust between the Solicitor and Counsel or between Counsel and any other Counsel instructed in the Action has irretrievably broken down;
 - (2) the Solicitor and/or the Client and/or more senior Counsel instructed in the case rejects Counsel's advice about the appropriate terms under which the Action ought to be settled and/or any Part 36 payment into court or any Part 36 offer should be made, accepted or rejected;
 - (3) the Solicitor has failed to comply with any obligation under the Agreement;
 - (4) Counsel is informed of or discovers the existence of an actual or likely defence or counterclaim or of information which is not correct or has not been provided which he/she reasonably believes materially affects the likelihood of Success in the Action and/or the amount or value of any

recovery likely to be made by the Client in the event of Success but of which he/she was not aware and which he/she could not reasonably have anticipated from the information before him/her at the date of his/her entry into the Agreement;

- (5) the Client dies;
- (6) the Client Becomes Insolvent; or
- (7) the Opposing Party Becomes Insolvent;

and must terminate his/her retainer if:

- (8) funding is granted to the Client by the Legal Services Commission in respect of the Action; or
- (9) the Solicitors Conditional Fee Agreement is terminated before the conclusion of the Action;

then, in any of those events, Counsel shall be entitled, at his/her option, to one of the following, namely, either:

- (a) his/her fees accrued to the date of termination at the Base Rate in full, or
- (b) in the event only of Success, his/her fees at the Uplifted Rate.

- 11. If the Solicitor or Counsel terminates Counsel's retainer, they must do so by notice in writing giving the reasons, if any, relied upon.
- 12. Where the Uplift becomes payable as a result of the Action then, if any fees subject to the Uplift are assessed and Counsel, the Solicitor or the Client is

required by the Court to disclose to the Court or to any other person the reasons for setting the Uplift at the level stated in the Agreement, that person may do so.

13. Subject to Condition 14 below, upon Success Counsel will be entitled to be paid his/her fees at the Uplifted Rate.
14. If the amount of damages and interest awarded by the Court qualifies as Success but is less than a Part 36 payment into Court or effective Part 36 offer then:
 - (1) if Counsel advised its rejection he/she is entitled to his/her fees at the Uplifted Rate for the work done up to the receipt of the notice of the Part 36 payment into Court or offer but fees at the Base Rate only for subsequent work;
 - (2) if Counsel advised its acceptance, or did not advise whether it should be accepted or rejected, he/she is entitled to his/her fees at the Uplifted Rate for all work done.
15. If the action is dismissed for want of prosecution or because the Client fails to provide security for costs or otherwise ends in Failure as a result of a breach by the Solicitor but not by Counsel of any of the terms of the Agreement or a procedural default by the Solicitor and/or the Client but not by Counsel, the Solicitor shall pay Counsel's fees within three months of the date of dismissal or the ending of the Action at the Base Rate.

16. If, because of a breach by Counsel but not the Solicitor of his/her duty to the Client, the Action is dismissed for want of prosecution or otherwise ends in Failure, Counsel shall, subject to subconditions (1) to (3) below, pay the Solicitor such basic costs, excluding any element of uplift, as would have been recoverable from the Client under the Solicitors Conditional Fee Agreement with the Client but

- (1) no payment shall be made under this Condition in respect of any breach by Counsel which would not give rise to a claim for damages if an action were brought by the Client,
- (2) in the event of a disagreement as to whether or not there has been an actionable breach by Counsel, or as to causation, or as to the amount payable under this Condition, that disagreement shall be referred to arbitration pursuant to the procedure set out in Conditions 25 to 28 below, and
- (3) the amount payable in respect of any claim under this Condition shall be limited to a maximum of £25,000.

17. The Solicitor has the right to challenge Counsel's fees, but not the agreed rates, in accordance with the Terms of Work referred to in Condition 2 above.

18. In the event that Counsel may be entitled (including after termination) to payment in the event of Success, the Solicitor must keep Counsel reasonably informed of

the progress of the Action and must promptly inform Counsel of Success if it occurs.

19. If costs are ordered to be paid or are agreed to be paid forthwith to the Client in respect of any interlocutory hearing, Counsel can elect to be paid his/her fees of the application at the Base Rate and the Solicitor will promptly conclude by agreement or assessment the amount of any such costs and enforce such order for costs or such agreement as to costs in respect of any such interlocutory hearing and within one month after receipt of any such costs will pay to Counsel the amount recovered in respect of his/her fees. If costs are not ordered to be paid or are not agreed to be paid to the Client in respect of any interlocutory hearing, or Counsel does not elect to be paid his/her fees at the Base Rate, in the event of Success, Counsel shall be entitled to his/her fees in accordance with the Agreement at the Uplifted Rate.

20. If any fees subject to the Uplift are assessed and any amount in respect of the Uplifted Rate is disallowed on assessment on the ground that the level at which the Uplift was set was unreasonable in view of facts which were or should have been known to Counsel at the time it was set, such amount ceases to be payable under the Agreement, unless the Court is satisfied it should continue to be so payable.

21. Where Condition 20 does not apply, if Counsel agrees with any person liable as a result of the Action to pay his/her fees subject to the Uplift that a lower amount than the amount payable in accordance with the Agreement is to be paid instead, then the amount payable under the Agreement in respect of those fees shall be reduced accordingly, unless the Court is satisfied that the full amount should continue to be payable under it.
22. In the event that Counsel's fees are not paid in due time under the Agreement, the Solicitor will pay Counsel interest on those fees at the rate specified in the Agreement.
23. Whenever Counsel is entitled to payment under this Agreement, payment must be made within the period specified in the Agreement.
24. The Solicitor will pay Counsel's fees in accordance with this Agreement whether or not the Solicitor is or will be paid by the Client or the Opposing Party.
25. Any dispute arising out of or in connection with the Agreement shall be referred to arbitration by a panel consisting of a barrister nominated by the Chairman of the Bar Council and a solicitor nominated by the President of the Law Society, who shall act as arbitrators in accordance with the Arbitration Act 1996. The arbitrators so appointed shall have power to appoint an umpire.

26. The arbitrators so appointed and where applicable the umpire shall be entitled to act with or without charge. In the event that any one or more of them choose to charge for their services, the fees and expenses of such arbitrator (s) and/or umpire shall be paid by one or both of the parties as the panel, in their discretion, shall direct. The panel shall not have power to make any order in respect of the costs of the parties.
27. In the event of a reference to arbitration pursuant to paragraph 16 above, Counsel alleged to be in breach of duty shall be entitled to argue that the claim in the Action would not have succeeded in any event. The panel shall resolve such issue on the balance of probabilities and, if satisfied that such claim would not have succeeded in any event, shall not make any order for payment of the Solicitor's fees or costs incurred in relation to the Action.
28. The right to refer any dispute to arbitration must be exercised promptly by either the Solicitor or Counsel. In the event of termination it must be exercised at the latest within three months of
- (1) receipt of notice of such termination or
 - (2) receipt of the fee note for the fees being subjected to challenge,
- failing which the right of challenge shall become irrevocably barred.

PART 2

29. Subject to Condition 9 above, the Solicitor may terminate Counsel's retainer with cause in any of the following circumstances:

- (1) Counsel becomes unavailable for the trial of the Action, or
- (2) the Solicitor has good reason to believe that Counsel, in breach of his/her duty to the Client, has manifested such incompetence so as to justify the termination of his/her retainer,

then, in either of those events, Counsel shall be entitled to be paid any fees which he/she has elected to receive at the Base Rate pursuant to Condition 19 and (in the event only of Success) his/her fees accrued to the date of termination at the Uplifted Rate.

30. Counsel may terminate his retainer in any of the following circumstances:

- (1) Counsel is required to cease to act by the Code of Conduct of the Bar of England and Wales or Counsel's professional conduct is impugned;
 - (2) Counsel becomes Queen's Counsel during the course of the Agreement;
- and must terminate his/her retainer in the following circumstances:

- (3) Counsel accepts a full time judicial appointment; or
- (4) Counsel ceases to practice as a barrister;

then, in any of those events, Counsel shall be entitled to be paid any fees which he/she has elected to receive at the Base Rate pursuant to Condition 19 and (in the event only of Success) his/her fees accrued to the date of termination at the Uplifted Rate.

31. In the event that the Action ends in Failure no fees will be payable to Counsel other than in the circumstances referred to in conditions 8, 10,15 or 19 above,

PART 3

32. In this Part of these Conditions the following expression shall have the following meaning:

the Reduced Rate the rate of Counsel's fees specified as such in the Agreement.

33. Subject to Condition 9 above, the Solicitor may terminate Counsel's retainer with cause in any of the following circumstances:

- (1) Counsel becomes unavailable for the trial of the Action, or
- (2) the Solicitor has good reason to believe that Counsel, in breach of his/her duty to the Client, has manifested such incompetence so as to justify the termination of his/her retainer,

then, in either of those events, Counsel shall be entitled to be paid any fees which he/she has elected to receive at the Base Rate pursuant to Condition 19 and both of the following, namely:

- (a) his/her fees accrued to the date of termination at the Reduced Rate,
and
- (b) in the event of Success, the difference between the Reduced Rate and the Uplifted Rate.

34. Counsel may terminate his retainer in any of the following circumstances:
- (1) Counsel is required to cease to act by the Code of Conduct of the Bar of England and Wales or Counsel's professional conduct is impugned;
 - (2) Counsel becomes Queen's Counsel during the course of the Agreement;
- and must terminate his/her retainer in the following circumstances:
- (3) Counsel accepts a full time judicial appointment; or
 - (4) Counsel ceases to practice as a barrister;
- then, in any of those events, Counsel shall be entitled, to both of the following, namely:
- (a) his/her fees accrued to the date of termination at the Reduced Rate,
and
 - (b) in the event of Success, the difference between the Reduced Rate
and the Uplifted Rate.
35. In the event that the Action ends in Failure Counsel will be entitled to his/her fees only at the Reduced Rate other than in the circumstances referred to in conditions 8, 10, 15 or 19 above.
36. The Solicitor will every three months during the Action pay
- (1) Counsel's fees for work done at the Reduced Rate to that date;

- (2) the difference between his/her fees already paid at the Reduced Rate and his/her fees at the Uplifted Rate, whenever Counsel is entitled pursuant to the Agreement to be paid his/her fees at the Uplifted Rate; and
- (3) the difference between his/her fees already paid at the Reduced Rate and his/her fees at the Base Rate, whenever Counsel is entitled pursuant to the Agreement to be paid his/her fees at the Base Rate.