

ChBA Suggested Amendments to Combar/COLLS Basis B (July 2013)

(1) Undertaking to serve on lay client bill of costs covering the barrister's fees

9.10 – insert after first sentence: “The Solicitor will in any event serve on the Lay Client a bill of costs in relation to the Barrister’s fees that complies with section 69 of the Solicitors Act 1974.”

(2) Warranty that solicitor is not aware of any facts that may reasonably give rise to a cross-claim by the client against the solicitor and undertakings to advise barrister if solicitor becomes aware of such facts or of any insolvency proceedings against the lay client

9.11 – substitute: “(a) The Solicitor warrants that the Solicitor is not aware of any facts that might reasonably entitle the Lay Client to defend or raise a cross-claim against a claim for the Barrister’s or Solicitor’s fees.

(b) The Solicitor will advise the Barrister promptly if the Solicitor becomes aware of any such facts or if the Solicitor receives a refusal to pay the Solicitor’s or Barrister’s fees or is notified by the Lay Client of a possible claim against the Solicitor or Barrister.

(c) The Solicitor will advise the Barrister promptly if the Solicitor becomes aware of any insolvency process started against the Lay Client or if the Solicitor has reason to believe that the Lay Client will be unable to pay the Barrister’s fees.”

(3) Agreement to provide retainer documents and lend name to any action for fees

9.12 – add “...and with such assignment the Solicitor shall provide to the Barrister a copy of all documents amounting to or recording the retainer or retainers of the Solicitor by the Lay Client for the matter or matters in which the Barrister was instructed on behalf of the Lay Client.

9.12A – “If following such assignment or otherwise the Barrister issues proceedings against the Lay Client in relation to the Barrister’s fees to which the Solicitor is made a defendant, the Solicitor will not seek to defend the Barrister’s claim or make any claim against the Barrister unless a substantive claim is made against the Solicitor by the Barrister in those proceedings.”

(4) Agreement to obtain sums on account of barrister's fees

9.1A - "If the Barrister and the Solicitor agree that payment is to be made to the Barrister on Basis B and the Solicitor has requested or obtained from the Lay Client sums on account of the Solicitor's own fees for acting on that matter, the Solicitor will endeavour to collect from the Lay Client sums on account of the Barrister's fees in the same manner as the Solicitor endeavours or has endeavoured to collect sums on account of the Solicitor's own fees, and will promptly inform the Barrister of any such endeavour and of its result; and in the event that any such endeavour does not meet with success, the Barrister shall be entitled to receive payment on account before undertaking any or any further Services, whether or not this has previously been agreed."

(5) Liability of Solicitor in case where cross-claim against the Solicitor results in fees not being payable.

9.12B - "If the Barrister's claim to be paid the Barrister's fees fails in whole or in part, or probably would have failed if pursued by the Barrister, on account of a defence or cross-claim of the Lay Client, the Solicitor shall promptly pay any balance of the Barrister's fees outstanding save where the basis of the defence or cross-claim is alleged non-performance or defective performance of the Services."