

CHANCERY BAR ASSOCIATION

**GENERAL TERMS FOR BARRISTERS CONTRACTING WITH INSTRUCTING SOLICITORS
TO PROVIDE PROFESSIONAL SERVICES**

Terms

1. Where a solicitor or other person or entity qualified to instruct a barrister otherwise than under the Licensed Access or Public Access schemes (“the Instructing Professional”) seeks to instruct a barrister (“the Barrister”) and the Barrister agrees to accept those instructions, these General Terms shall apply to those and any subsequent instructions relating to the same lay client in the same matter or case.
2. Where the Instructing Professional is an individual working as a member, director, consultant, employee or partner or a firm, LLP or corporate body that is itself qualified so to instruct a barrister (“an Entity”), he instructs the Barrister on behalf of the Entity.
3. Any Special Terms supplementing or varying these General Terms shall be agreed in writing (which here and elsewhere includes agreement by exchange of e-mails) between the Instructing Professional and the Barrister. These General Terms shall not be varied or waived save by such agreement in writing made by the Instructing Professional and the Barrister.
4. Unless otherwise agreed, the basis of payment of the Barrister will be the standard basis of payment below.

Formation of contract

5. Where the standard basis of payment applies, the contract is made when, in accordance with rule rC22.1 of the Bar Standards Board Handbook (“the Handbook”), the Barrister notifies the Instructing Professional that he accepts the instructions or, if earlier, when the Barrister starts to provide the services required by the instructions.
6. Where an alternative basis of payment applies, the contract is made upon the later of the Barrister doing either of those matters and the monies agreed for the Barrister’s fees being received by the receiving person.

Performance of contract

7. Save where otherwise agreed in writing and save where the instructions are a brief to appear at a hearing on a particular date, the Barrister will provide the services within a reasonable time of accepting the instructions.
8. The Barrister will carry out the instructions with reasonable skill and care.
9. The Instructing Professional will co-operate with and assist the Barrister to provide the services in accordance with this contract by providing adequate and timely instructions, as reasonably required by the Barrister.
10. The Instructing Professional will promptly forward to the lay client the information provided by the Barrister pursuant to rC99 of the Handbook explaining how the lay client may make a complaint against the Barrister.
11. The Barrister acknowledges the existence of a duty of care at common law owed to the Barrister's and his Instructing Professional's lay client, which duty is subject to (among other things) the Barrister's duty to the Court and his professional duties under the Handbook.
12. The Barrister does not assume any duty of care or responsibility to any person other than the Instructing Professional or the Entity and the lay client.
13. In order to comply with rules rC76 and rC77 of the Handbook and in view of the limitations on cover imposed by the Bar Mutual Indemnity Fund Limited and top-up insurers, it is agreed that:
 - a. To the extent that the Barrister might incur any liability under this contract to any person, which liability would not have arisen had the Barrister provided services pursuant to the instructions on a non-contractual basis, such liability shall be limited to £100,000 in respect of any breach on the part of the Barrister and/or all breaches attributable to –
 - i. The same act or omission,
 - ii. A series or group of related acts or omissions,
 - iii. A series or group of similar acts or omissions or
 - iv. The same originating case; and
 - b. Save as aforesaid, the Barrister excludes any and all liability beyond that which would arise at common law had the Barrister provided the services on a non-contractual basis.

Remuneration

14. The Barrister will be entitled to such fees and disbursements as may be agreed between the Instructing Professional and the Barrister. If no fee is agreed, the Barrister will be entitled to a reasonable fee for the services provided, based on time spent in performing the instructions and the Barrister's usual hourly rate for such work.

15. Unless otherwise agreed in writing, the Barrister's hourly rate may be reviewed at reasonable times during the contract and the Instructing Professional will not unreasonably refuse to agree an increase in the Barrister's hourly rate.
16. Unless otherwise agreed in writing, the Barrister's fees are exclusive of any applicable VAT or other similar tax, and such taxes will be added to and are payable with the Barrister's fees.
17. The Instructing Professional will inform the Barrister if the instructions are being funded by any person other than the lay client and if so whether they are being funded on a commercial basis or otherwise.

Standard basis of payment

18. In the absence of any agreement in writing on an alternative basis of payment or the Barrister receiving his fees before he accepts the Instructions under rC30.9.b of the Handbook, the Instructing Professional or the Entity, as the case may be, will be responsible for payment of the Barrister's fees.
19. The Instructing Professional or the Entity will pay the Barrister's fees and any disbursements and VAT or other tax within 60 days of receipt of the Barrister's first fee note or on such date as may be otherwise agreed in writing.
20. Where fees have been outstanding for more than 60 days, the Barrister may by notice claim interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 from the date of the notice onwards.

Alternative basis of payment

21. Where it is reasonable to do so, the Barrister may require his fees to be paid before he accepts the Instructions (rC.30.9.b of the Handbook).
22. The Barrister and the Instructing Professional may agree in writing, at the outset of the contract, an alternative basis for payment of the Barrister's fees during the contract, namely payment of sufficient monies into the [client account of the Instructing Professional or Entity or into the] escrow account of the Bar Services Company Limited ("Barco") with [irrevocable instructions] to pay sums to the Barrister upon the Barrister performing the instructions [and certifying that he has done so and the amount of his fees].
23. Where monies are paid to Barco, the Instructing Professional shall inform the Barrister when the monies have been so paid and received by Barco.
24. [Where monies are paid into the Instructing Professional's or Entity's client account, the Instructing Professional warrants that he has received irrevocable instructions to pay the monies to the Barrister on performance of the instructions and that he holds the monies on trust for that purpose only

and will make such payment within 14 days of submission of the Barrister's first fee note.]

Termination of contract

25. The Instructing Professional may terminate this contract by giving written notice to the Barrister at any time. Such termination will not affect the Barrister's rights or liabilities in relation to work previously done or any fees that have been incurred.
26. The Barrister may terminate this contract or refuse to carry out particular instructions in the following cases:
 - a. Where the Barrister is obliged or entitled to do so under the Handbook;
 - b. Where fees cannot be agreed;
 - c. Upon 10 working days' prior written notice, where fees which should have been paid remain unpaid
 - d. [where the Barrister believes in good faith that for proper reason he should not act or act further in the matter or should not perform particular instructions].

Confidentiality

27. Subject to the next clause, the Barrister will keep confidential all information provided to the Barrister in connection with his instructions.
28. The Barrister may only disclose information contained in his instructions in the following circumstances:
 - a. Where such disclosure is required by law or by the Bar Standards Board or under the terms of the Handbook;
 - b. Where such disclosure is authorised by the Instructing Professional or by the lay client;
 - c. Where and to the extent that the information is already in the public domain, otherwise than as a result of unauthorised conduct of the Barrister;
 - d. To a pupil, mini-pupil or secondee of the Barrister who has signed a confidentiality agreement with the Barrister or his chambers;
 - e. To another member of chambers who with the agreement of the Professional Client is assisting the Barrister with the services requested in the instructions.

Intellectual property rights

29. Copyright and other intellectual property rights of any kind in or attaching to the Barrister's work product belong to and remain with the Barrister. The Instructing Professional and the lay client have the right to use the Barrister's work product for the case and/or the particular purpose for which it was prepared and not otherwise without the written agreement of the Barrister.
30. The Barrister asserts his moral rights in connection with the work product provided pursuant to the instructions.
31. The Barrister is permitted to use the materials supplied with his instructions for the purpose of providing the services requested, but may not use the materials for other purposes without the written agreement of the Instructing Professional or such other third party as may have intellectual property rights in any such material.

Assignment, etc.

32. No person other than the Barrister, the Instructing Professional or the Entity (as the case may be) [and the lay client] has rights under or may enforce this contract.
33. The benefit of this contract may not be assigned by the Barrister, the Instructing Professional, the Entity or the lay client without the agreement in writing of all such persons.

Jurisdiction

34. All obligations arising from this contract or arising as a result of the instructions are governed by the law of England and Wales and any dispute arising shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

Interpretation

35. In these General Terms, the masculine includes the feminine and the singular includes the plural.
36. References to "the Handbook" are to the Bar Standards Board Handbook as amended from time to time.

Special Terms

37. The Barrister and the Instructing Professional may agree in writing any other terms in addition to or by way of variation of the General Terms.

38. The following Special Terms shall only apply to this contract if the Barrister and the Instructing Professional have expressly so agreed in writing at the outset of the contract:

- a. Limitation of liability
- b. Devilling?
- c. Right to require further fees to be paid on account, where alternative basis of payment is agreed?