

Schedule of variations to the Bar's new standard contractual terms for the supply of legal services by barristers to authorised persons

The Agreement comprises the (New) Standard Contractual Terms for the Supply of Legal Services by Barristers to Authorised Persons 2012 published by the Bar Council, subject to the following amendments:

[Please select the clause variations required from the options below and delete all alternative variations from the draft. Please enclose schedule of variations with instruction letter to the clerk/barrister]

Clause 4.3: receipt and acceptance of the instructions

Variation 1:

'Notwithstanding acceptance of Instructions in accordance with Clause 4.1 above, the Barrister shall be entitled to carry out any customer due diligence required by the Money Laundering Regulations 2007. The Barrister shall carry out such due diligence at his sole cost and using his own resources and shall not seek any assistance from the Authorised Person in respect of the same'.

Variation 2:

'Notwithstanding acceptance of Instructions in accordance with Clause 4.1 above, the Barrister shall be entitled to carry out any customer due diligence required by the Money Laundering Regulations 2007. Upon request by the Barrister the Authorised Person may, in its sole discretion, provide reasonable assistance to the Barrister to carry out any necessary customer due diligence including (if requested to do so) consenting to the Barrister relying upon the Authorised Person under Regulation 17 of the Money Laundering Regulations 2007'.

Variation 3:

'Notwithstanding acceptance of Instructions in accordance with Clause 4.1 above, the Barrister shall be entitled to carry out any customer due diligence required by the Money Laundering Regulations 2007. Upon request by the Barrister the Authorised Person may, in its sole discretion, provide reasonable assistance to the Barrister to carry out any necessary customer due diligence. For the avoidance of doubt, such reasonable assistance shall not include the providing of consent pursuant to Regulation 17 of the Money Laundering Regulations 2007'.

Clause 9.1: intellectual property rights

Variation 1:

'The Barrister hereby assigns to the Authorised Person, with full title guarantee, the intellectual property rights of whatever nature in or attaching to the Barrister's work product including (but not limited to) all documents, reports, written advice or other materials forming all or part of the Services and provided by the Barrister to the Authorised Person or the Lay Client.'

Variation 2:

'All copyright and other intellectual property rights of whatever nature in or attaching to the Barrister's work product, including (but not limited to) all documents, reports, written advice or other materials forming all or part of the Services and provided by the Barrister to the Authorised Person or the Lay Client, belong to and remain with the Barrister. The Authorised Person and the Lay Client have the right and licence to use the Barrister's work product for:

9.1.1 the particular Case;

9.1.2 the particular purpose for which it is prepared; and

9.1.3 inclusion in the knowledge management system(s) of the Authorised Person's firm for internal purposes or use.'

Clause 10: liability

Variation 1:

'10.1 Subject to Clause 10.2 below, the Barrister is not liable:

10.1.1 for any loss or damage, however suffered, by any person other than the Lay Client and/or the Authorised Person; or

10.1.2 for any loss or damage, however suffered, which is caused by inaccurate, incomplete or late Instructions; or

10.1.3 for any indirect or consequential loss however suffered.

10.2 Nothing in Clause 10.1 shall operate so as to exclude liability where such exclusion is prohibited by law'.

Variation 2:

'10.1 Subject to Clause 10.2 below, the Barrister is not liable:

10.1.1 for any loss or damage, however suffered, by any person other than the Lay Client or the Authorised Person; or

10.1.2 for any indirect or consequential loss however suffered.

10.2 *Nothing in Clause 10.1 shall operate so as to exclude liability where such exclusion is prohibited by law.*

Clause 11.2: fees

Variation 1:

'The Barrister may agree to provide the Services for a fixed fee or may agree to provide the Services on the basis of an agreed hourly rate or on such other basis as may from time to time be agreed. If an hourly rate is agreed, the Barrister shall not be entitled to review the agreed hourly rate under any circumstances during the term of the Agreement.'

Variation 2:

'11.2 The Barrister may agree to provide the Services for a fixed fee or may agree to provide the Services on the basis of an agreed hourly rate or on such other basis as may from time to time be agreed. If an hourly rate is agreed:

11.2.1 the agreed hourly rate will be subject to reasonable periodic review by the Barrister;

11.2.2 any variation of the agreed hourly rate and the date on which it shall take effect shall be subject to the consent of the Authorised Person. The Barrister shall not be entitled to any such variation where consent has not been provided by the Authorised Person pursuant to this Clause 11.2.2.'

Variation 3:

'11.2 The Barrister may agree to provide the Services for a fixed fee or may agree to provide the Services on the basis of an agreed hourly rate or on such other basis as may from time to time be agreed. If an hourly rate is agreed:

11.2.1 the agreed hourly rate will be subject to reasonable periodic review by the Barrister;

11.2.2 any variation of the agreed hourly rate and the date on which it shall take effect shall be subject to the consent of the Authorised Person (such consent not to be unreasonably withheld or delayed). The Barrister shall not be entitled to any such variation where consent has not been provided by the Authorised Person pursuant to this Clause 11.2.2.'

Clause 12: billing, payment and interest

Clause 12.1

Variation 1:

'The Barrister shall not be entitled to deliver an Invoice to the Authorised Person except in accordance with Clause 12.2 below.'

Variation 2:

'The Barrister shall be entitled to deliver an Invoice to the Authorised Person in respect of the Services or any completed part thereof and any disbursements at any time after supplying the Services or the relevant part thereof providing always that the Authorised Person has consented to the same.'

Clause 12.2

Variation 1:

'The Barrister shall deliver an Invoice to the Authorised Person in respect of the Services or any part thereof and any disbursements as soon as reasonably practicable after and not more than [x] [(xxx)] months from the earliest of: (a) a request by the Authorised Person; (b) notification by the Authorised Person that the Case has settled or otherwise concluded; or (c) termination of the Agreement.'

Clause 12.4

Variation 1:

'The Authorised Person must pay the Invoice within [30] days of delivery.'

Variation 2:

'The Authorised Person must pay the Invoice within [30] days of delivery. The Authorised Person shall be entitled to set-off any amounts owed to it by the Barrister against any amounts payable by the Authorised Person to the Barrister and the Authorised Person shall be entitled to make any deduction or withholding on account of any taxes or other charges.'

Additional Clauses for Consideration (please refer to part 2 of the Annex for more information)

'Where a charging rate and an estimated time for the work have been agreed, the Barrister shall notify the Authorised Person promptly if more work than had been estimated is required, and shall give the firm a reasonable opportunity, taking into account the urgency of the matter, to accept or refuse the performance of such additional work.' **Please see section 3.2.1 of the practice note.**

'If the Barrister and the Authorised Person expressly agree in writing that the Authorised Person shall not be liable for the Barrister's fees until the Authorised Person has been put in funds by the Lay Client, the payment provisions of the Agreement shall apply only from the date upon which the Authorised Person has been put in funds by the Lay Client in respect of the Barrister's fees.' **Please see section 3.2.2 of the practice note.**

'The Barrister shall not be entitled under any circumstances to exercise any lien over all or part of his Instructions.' **Please see section 3.2.3 of the practice note.**

'Where the Lay Client has made a complaint to the Legal Ombudsman or any other regulatory body or has indicated that he will be issuing proceedings against the Barrister in respect of all or part of the service that is the subject of this Agreement, the fees charged in the fee note in respect of that service shall not be payable to the Barrister until the complaint, proceedings or pre-action process have been resolved by agreement, disciplinary proceedings, arbitration award, or court order, have been withdrawn or confirmed by the Authorised Person to have been abandoned, or, following the giving of a formal written notice, the pre-action process, complaint, or proceedings have not been brought or commenced within 4 (four) months after the date of such notice, whichever is the earlier.' **Please see section 3.2.4 of the practice note.**

'If a fee note or part of it is the subject of a challenge, the Authorised Person shall be under no obligation to pay to the Barrister all or any of the fees specified (save for those fees not the subject of the challenge) or all of any interest on such fees until payment is ordered by a tribunal or the challenge is withdrawn, abandoned or compromised by the Authorised Person.' **Please section 3.2.5 of the practice note.**