

## **8 New Square Standard Contractual Terms of Business**

It has been possible for a number of years for barristers to accept instructions on contractual terms in place of the traditional practice under which no contract existed when barristers were instructed. The Bar Council intends to make this the standard or "default" practice and is currently consulting on a standard set of terms which will apply across the Bar.

Pending finalisation of the Bar's standard terms, where members of chambers at 8 New Square accept instructions on contractual terms, they do so on the basis of the Bar's New Standard Contractual Terms for the Supply of Legal Services by Barristers to Solicitors 2010, ("the New Terms") which were issued for consultation in April 2010, subject to the following:-

1. The New Terms shall apply to other persons who may instruct counsel (such as Patent Attorneys, Trade Mark Attorneys, lawyers qualified in jurisdictions outside England and Wales and employed barristers), whether they are practising within England and Wales or elsewhere, in the same way as to solicitors.
2. Where instructions are given by an in-house lawyer, the contract shall be between the barrister and the company or other entity on whose behalf the in-house lawyer gives instructions, and not with the in-house lawyer personally, unless the contrary is agreed.
3. Instead of being payable on delivery as provided by clause 12.3 of the New Terms, Invoices (which term includes feenotes) shall be payable 60 days from the date when the Invoice or feenote was posted, faxed, emailed or otherwise transmitted to the Solicitor, and the other time limits in clause 12 are correspondingly extended.

[Version effective from 1st Nov 2010]

**Annexe 4 – Consultation on Contractual Terms for the  
supply of legal services by barristers to solicitors**

**THE (NEW) STANDARD CONTRACTUAL TERMS FOR THE SUPPLY OF LEGAL  
SERVICES BY BARRISTERS TO SOLICITORS 2010 – ANNEXE T1**

**INDEX OF CLAUSES**

| NO. | TITLE   | PAGE NO. |
|-----|---|----------|
| 1.  | DEFINITIONS AND INTERPRETATION .....              | 1        |
| 2.  | APPLICATION AND PRIMACY OF THESE CONDITIONS ..... | 2        |
| 3.  | THE INSTRUCTIONS TO THE BARRISTER.....            | 2        |
| 4.  | RECEIPT AND ACCEPTANCE OF THE INSTRUCTIONS .....  | 3        |
| 5.  | CONFIDENTIAL INFORMATION AND PUBLICITY .....      | 3        |
| 6.  | ELECTRONIC COMMUNICATION .....                    | 4        |
| 7.  | DATA PROTECTION.....                              | 4        |
| 8.  | PROVIDING THE SERVICES .....                      | 4        |
| 9.  | INTELLECTUAL PROPERTY RIGHTS .....                | 5        |
| 10. | LIABILITY .....                                   | 5        |
| 11. | FEES .....  | 5        |
| 12. | BILLING, PAYMENT AND INTEREST .....               | 6        |
| 13. | TERMINATION .....                                 | 6        |
| 14. | WAIVER.....                                       | 7        |
| 15. | SEVERABILITY .....                                | 7        |
| 16. | ENTIRE AGREEMENT .....                            | 7        |
| 17. | GOVERNING LAW AND JURISDICTION .....              | 7        |

**STANDARD CONDITIONS OF CONTRACT FOR THE SUPPLY OF LEGAL SERVICES BY BARRISTERS TO SOLICITORS 2010**

**1. DEFINITIONS AND INTERPRETATION**

1.1 In these Conditions of Contract for the Supply of Legal Services by Barristers to Solicitors (“the Conditions”):

1.1.1 reference to a clause is to the relevant clause of these Conditions;

1.1.2 headings are included for convenience only and do not affect the interpretation of these Conditions;

1.1.3 references to “parties” or a “party” are references to the parties or a party to the Agreement;

1.1.4 references to the masculine include the feminine and references to the singular include the plural and vice versa in each case;

1.1.5 references to a person include bodies corporate (including limited liability partnerships), firms and partnerships, in each case whether or not having a separate legal personality, except where the context requires otherwise;

1.2 In these Conditions, the following words have the following meanings, except where the context requires otherwise:-

“the Agreement”

the agreement between the Barrister and the Solicitor for the Barrister to provide the Services on the terms set out in these Conditions;

“the Barrister”

the barrister, practising as a member of the Bar of England & Wales, who is willing and able to provide the Services in connection with the Case and in accordance with the Instructions from the Solicitor on behalf of the Lay Client;

“the Case”

the particular legal dispute or matter, whether contentious or non-contentious, in respect of which the Barrister is Instructed to provide the Services;

“the Code”

the Code of Conduct of the Bar of England and Wales, as amended from time to time;

“the Instructions”

the written briefs, instructions and requests for work to be done (and all accompanying materials) given by the Solicitor to the Barrister to enable him to supply the Services, and “Instruct” and “Instructing” shall have corresponding meanings;

“Invoice”

includes a fee note not amounting to a VAT invoice

“the Lay Client”

the Lay Client for whose benefit or on behalf of whom the Barrister is Instructed by the Solicitor to provide the Services;

“the Services”

the legal services provided by the Barrister in connection with the Case pursuant to the Instructions provided by the Solicitor;

“the Solicitor”

the sole practitioner or employed solicitor by whom the Barrister is instructed to provide the Services, or the partnership, limited liability partnership or company through or in the name of which an individual instructs the Barrister to provide the Services, and all successors and assignees.

## **2. APPLICATION AND PRIMACY OF THESE CONDITIONS**

- 2.1 The Barrister provides the Services requested by the Solicitor on the terms set out in these Conditions and subject to his professional obligations under the Code.
- 2.2 These Conditions (other than this clause 2.2) may be varied if, but only if, expressly agreed by the Parties in writing.
- 2.3 These Conditions apply in respect of the Services provided by the Barrister notwithstanding any other contractual terms sought to be imposed by any person other than the Barrister.
- 2.4 By instructing the Barrister to provide further Services in relation to the Case, the Solicitor accepts these Conditions in relation to those further Services, as well as in relation to the Services which the Barrister is initially instructed to provide.
- 2.5 These Conditions do not apply in the following circumstances:
  - 2.5.1 the Barrister is paid directly (a) by the Legal Services Commission, as part of the Community Legal Service or as part of the Criminal Defence Service or (b) by the Crown Prosecution Service; or
  - 2.5.2 the Barrister has entered into a Conditional Fee Agreement in relation to the Case that does not specifically incorporate these Conditions.

## **3. THE INSTRUCTIONS TO THE BARRISTER**

- 3.1 The Solicitor must ensure the Instructions delivered to the Barrister are adequate to supply him with the information and documents reasonably required and in reasonably sufficient time for him to provide the Services requested.
- 3.2 The Solicitor must respond promptly to any requests for further information or instructions made by the Barrister.

- 3.3 The Solicitor must inform the Barrister immediately if there is reason to believe that any information or document provided to the Barrister is not true and accurate.
- 3.4 Where the Solicitor requires the Barrister to perform all or any part of the Services urgently the Solicitor must ensure that:
  - 3.4.1 all relevant Instructions are clearly marked “Urgent”; and
  - 3.4.2 at the time the Instructions are delivered the Barrister is informed in clear and unambiguous terms of the timescale within which the Services are required and the reason for the urgency.
- 3.5 Without prejudice to clause 4.2, the Barrister may refuse any Instructions on the ground that he is unable, due to a professional commitment or otherwise, to comply with the timescale for providing the Services requested by the Solicitor.

#### **4. RECEIPT AND ACCEPTANCE OF THE INSTRUCTIONS**

- 4.1 Upon receipt of the Instructions, the Barrister will review the Instructions within a reasonable time and inform the Solicitor whether or not he accepts the Instructions.
- 4.2 The Barrister may accept or refuse the Instructions in the circumstances and for the reasons set out in the Code and the Barrister incurs no liability if he refuses any Instructions in accordance with the Code.
- 4.3 The Barrister is not to be treated as having accepted the Instructions unless and until he has complied with any obligations arising in relation to money laundering.
- 4.4 The Agreement comes into effect upon the Barrister accepting the Instructions.

#### **5. CONFIDENTIAL INFORMATION AND PUBLICITY**

- 5.1 The Barrister will keep confidential all information provided to him in connection with the Case unless:
  - 5.1.1 he is authorised by the Solicitor or the Lay Client to disclose it;
  - 5.1.2 the information is in or comes into the public domain without any breach of confidentiality on the part of the Barrister; or
  - 5.1.3 he is required to disclose it by law, or by the regulatory or fiscal authorities, in which case, to the extent that he is permitted to do so, he will endeavour to give the Solicitor and/or the Lay Client as much advance notice as possible and permitted of any such required disclosure.
- 5.2 The Barrister owes the same duty of confidentiality to other lay clients, and will therefore not disclose or make use of any information that might be given to him in confidence in relation to any other matter without the consent of his other lay client, even if it is material to providing the Services.
- 5.3 Unless the Solicitor expressly informs the Barrister to the contrary in advance in writing, the Barrister may allow the Instructions to be reviewed by another barrister or by a pupil in chambers, on terms that that other barrister or pupil complies with clause 5.1.

- 5.4 Subject to his obligation under clause 5.1, the Barrister may make and retain copies of the Instructions and any written advice provided by him.
- 5.5 To the extent such information is already in the public domain, the Barrister may disclose in his marketing and similar materials, and to prospective clients and publishers of legal directories that he is or has been instructed by the Solicitor and/or for the Lay Client and the nature of the Case. To the extent any such information is not already in the public domain, the Barrister may only refer to it for marketing purposes in a form which sufficiently preserves the Lay Client's privilege and confidentiality.

## **6. ELECTRONIC COMMUNICATION**

- 6.1 Unless otherwise directed by the Solicitor, the Barrister may correspond by means of electronic mail, the parties agreeing hereby:
- 6.1.1 to accept the risks of using electronic mail, including but not limited to the risks of viruses, interception and unauthorised access; and
- 6.1.2 to use commercially reasonable procedures to maintain security of electronic mail and to check for commonly known viruses in information sent and received electronically.

## **7. DATA PROTECTION**

- 7.1 The Barrister is a data controller for the purposes of the Data Protection Act and is bound by the Act. He is entitled to process (which includes obtaining, consulting, holding, using and disclosing) personal data of the Lay Client, the Solicitor and others to enable him to provide the Services, to liaise with the Solicitor in respect of the Lay Client's case or on the Lay Client's behalf, to maintain and update client records, to produce management data, to prevent crime, to publicise his activities as set out in clause 5.5 above, to comply with regulatory requirements and as permitted or required by law. The Lay Client has a right of access and a right of correction in respect of his personal data which the Barrister holds about the Lay Client, in accordance with data protection legislation.

## **8. PROVIDING THE SERVICES**

- 8.1 The Barrister will exercise reasonable skill and care in providing the Services. The Barrister acknowledges the existence of a duty of care owed to the Lay Client at common law, subject to his professional obligations to the Court and under the Code.
- 8.2 The Barrister will provide the Services by such date as may be agreed between the parties, and in any event will do so within a reasonable time having regard to the nature of the Instructions and his other pre-existing professional obligations.
- 8.3 The Barrister may subcontract the provision of any part of the Services but will remain responsible for the acts, omissions, defaults or negligence of any subcontractor as if they were the acts, omissions, defaults or negligence of the Barrister.

## **9. INTELLECTUAL PROPERTY RIGHTS**

- 9.1 All copyright and other intellectual property rights of whatever nature in or attaching to the product of the Services, including all documents, reports, written advice or other materials provided by the Barrister to the Solicitor or the Lay Client belong to and remain with the Barrister. The Solicitor and the Lay Client have the right and licence to use the product of the Services for the particular Case and the particular purpose for which they are prepared. If the Solicitor or the Lay Client wishes to use copies of the product of the Services for purposes other than those for which they are prepared, this will require the express permission of the Barrister. The moral rights of the Barrister in respect of the product of the Services are asserted.

## **10. LIABILITY**

- 10.1 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 Solicitor;
- 10.1.2 for any loss or damage, however suffered, which is caused by inaccurate, incomplete or late Instructions;
- 10.1.3 for any indirect or consequential loss however suffered.
- 10.2 The Services will be provided on the basis of the proper interpretation of laws and court decisions in existence on the date on which the Services are provided. Changes in the law or its interpretation may take place before reliance is placed on the Services, or may be retrospective in effect. The Barrister is not liable for any consequences for the Lay Client of such changes in the law or its interpretation occurring subsequently to the date on which the Services are provided.

## **11. FEES**

- 11.1 The fee for the Services will be calculated as agreed between the Barrister (or his clerk on his behalf) and the Solicitor, whether prospectively or retrospectively.
- 11.2 The Barrister may agree to provide the Services for a fixed fee. If at any stage it becomes impractical to complete the Services for the fee agreed, he will inform the Solicitor and seek to agree a revised fee prior to carrying out any further work.
- 11.3 The Barrister may agree to provide the Services on the basis of an agreed hourly rate. If so:
- 11.3.1 the hourly rate will be subject to periodic review by the barrister, and in addition will be reviewed to reflect any significant changes in the status or seniority of the Barrister;
- 11.3.2 if the hourly rate is varied as a result of a review, the Barrister will notify the Solicitor and the revised hourly rate will take effect from the date of the notification or such other date as agreed.
- 11.4 If no fee or hourly rate is agreed, then the Barrister is entitled to charge a reasonable fee for the Services having regard to all relevant circumstances.
- 11.5 The fee for the Barrister's Services is exclusive of any applicable Value Added Tax (or any tax of a similar nature), which shall be added to the fee at the appropriate rate.

## **12. BILLING, PAYMENT AND INTEREST**

- 12.1 The Barrister shall be entitled to deliver an Invoice to the Solicitor in respect of the Services or any part thereof and any disbursements at any time and in any event within 3 months of a request by the Solicitor.
- 12.2 The Invoice must set out an itemised description of:
- 12.2.1 the Services provided by the Barrister and the fees charged;
  - 12.2.2 any disbursements incurred and the cost thereof; and
  - 12.2.3 VAT (or any tax of a similar nature, if any).
- 12.3 The Solicitor must pay the Invoice upon delivery, time being of the essence, whether or not the Solicitor has been put in funds by the Lay Client. The Invoice must be paid without any set-off, and without any deduction or withholding on account of any taxes or other charges.
- 12.4 Where the Barrister has delivered a fee note, on request by the Solicitor the Barrister will deliver a VAT invoice following receipt of payment.
- 12.5 If the Invoice remains outstanding more than 30 days from the date of delivery, the Barrister is entitled:
- 12.5.1 to the fixed sum and interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998; and
  - 12.5.2 to sue the Solicitor for payment.
- 12.6 The Barrister and the Solicitor may agree in writing to refer any dispute which arises over the Barrister's fees to the Voluntary Joint Tribunal on Barristers' Fees, in accordance with Annex T2 to the Code. If the Voluntary Joint Tribunal's award remains unpaid in whole or part for more than 30 days, the Barrister shall be entitled:
- 12.6.1 to refer the matter to the Chairman of the General Council of the Bar and the Rules relating to the List of Defaulting Solicitors shall thereafter apply; and/or
  - 12.6.2 to sue the Solicitor to enforce any award.
- 12.7 If any judgment against the Solicitor in respect of the Barrister's fees remains unpaid for more than 30 days, in addition to any other steps he may take to enforce the judgment, the Barrister may refer the matter to the Chairman of the General Council of the Bar and the Rules relating to the List of Defaulting Solicitors shall thereafter apply.

## **13. TERMINATION**

- 13.1 The Solicitor may terminate the Agreement by giving notice to the Barrister in writing at any time.
- 13.2 The Agreement will terminate automatically as soon as the Barrister is under an obligation pursuant to Part VI of the Code or otherwise to withdraw from the case or to cease to act and has complied with any requirements of the Code in so doing.

13.3 The Barrister may terminate the Agreement when he is entitled pursuant to Part VI of the Code or otherwise to withdraw from the case or cease to act and has complied with any requirements of the Code in so doing.

13.4 For the avoidance of doubt, termination of the Agreement, whether under this clause or otherwise, does not affect or prejudice any accrued liabilities, rights or and remedies of the parties under the Agreement.

**14. WAIVER**

14.1 Except where expressly stated, nothing done or not done by the Barrister or the Solicitor constitutes a waiver of that party's rights under the Agreement.

**15. SEVERABILITY**

15.1 If any provision of these Conditions is found by a competent court or administrative body of competent jurisdiction to be invalid or unenforceable for any reason, such invalidity or unenforceability shall not affect the other provisions of these Conditions which will remain in full force and effect.

15.2 If any provision of these Conditions is found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question will apply with such deletions as may be necessary to make it valid and enforceable.

**16. ENTIRE AGREEMENT**

16.1 Subject to clauses 2.2 and 11.1, the Agreement, incorporating these Conditions, comprises the entire agreement between the parties to the exclusion of all other terms and conditions and prior or collateral agreements, negotiations, notices of intention and representations and the parties agree that they have not been induced to enter into the Agreement on the basis of any representation.

**17. GOVERNING LAW AND JURISDICTION**

17.1 The Agreement and these Conditions shall be governed by and construed in accordance with English Law.

17.2 Except as otherwise provided in these Conditions or unless any alternative dispute resolution procedure is agreed between the parties, the parties agree to submit to the exclusive jurisdiction of the English Courts in respect of any dispute which arises out of or under this Agreement.