

ANNEXE G2

**THE CONTRACTUAL TERMS OF WORK ON WHICH BARRISTERS OFFER
THEIR SERVICES TO SOLICITORS 2001**

THE CONTRACTUAL TERMS ON WHICH BARRISTERS OFFER THEIR SERVICES TO SOLICITORS 2001

(As Authorised By The General Council Of The Bar On 24 March 2001 and amended by authority of The General Council of the Bar on 17 November 2001)

WHEREAS:

1. These terms have been authorised by the General Council of the Bar;
2. These terms are intended to apply in any case where a barrister is instructed by a solicitor, and both the barrister and the solicitor have agreed in writing that the barrister's retainer shall be contractually binding;
3. Any such agreement shall operate in accordance with paragraph 27 of the Terms of Work to exclude paragraphs 1-15 and 25-26 thereof as regards the instructions to which it relates;

AND WHEREAS:

4. By the established custom of the profession a barrister looks for payment of his fees to the solicitor who instructs him and not to his lay client;
5. Except in cases funded by the Legal Services Commission, Community Legal Service or Criminal Defence Service a solicitor is personally liable as a matter of professional conduct for the payment of a barrister's proper fees whether or not he has been placed in funds by his lay client;
6. Where instructions have been given in the name of a firm all partners at that date incur personal liability and remain liable for the payment of counsel's fees incurred on behalf of the firm by a deceased bankrupt or otherwise defaulting former partner of the firm; and
7. The liability of a sole practitioner and of partners for the liabilities of their co-partners is a continuing one and is not cancelled or superseded by any transfer of the practice or dissolution of the partnership;

Application of these Terms

1. These terms apply in any case where a barrister is instructed by a solicitor and where both the barrister and the solicitor have agreed in writing that the barrister's retainer shall be contractually binding subject to the following:-
 - (1) these terms apply to any particular contract only insofar as they have not been expressly varied or excluded by written agreement between the barrister and the solicitor;
 - (2) these terms will apply to briefs and instructions only where they have been accepted by the barrister;
 - (3) these terms do not apply to publicly funded work; and
 - (4) these terms do not apply to any work undertaken by a barrister on a conditional fee basis.

General

2. The solicitor may in his capacity as a director partner member employee consultant associate or other agent of a company firm or other body brief or instruct the barrister.
3. In any case where the barrister accepts a brief or instructions from the solicitor in his capacity as a director partner member employee consultant associate or agent of a company firm or other body:
 - (1) the solicitor warrants that he is authorised by his company firm or other body to instruct the barrister;
 - (2) the obligations of the solicitor under these terms (including in particular his responsibility for the payment of the barrister's fees) shall be the joint and several obligations of him and that company firm or other body.

Instructions

4. The barrister has the duty or the right in certain circumstances set out in the Bar Code of Conduct to refuse to accept a brief or instructions and these terms will apply only where the barrister has accepted the brief or instructions.
5. Notwithstanding that a brief or instructions have been delivered to the barrister he shall not be deemed to have accepted that brief or those instructions until he has had a reasonable opportunity:
 - (1) to peruse them;
 - (2) in the case of a brief, to agree a fee with the solicitor.
6. The barrister accepts a brief or instructions upon the understanding:
 - (1) that he must and will comply with the Bar Code of Conduct;
 - (2) that he will deal with instructions as soon as he reasonably can in the ordinary course of his work;
 - (3) that he may return the brief or instructions in accordance with the Bar Code of Conduct, and that, if he does so, he will incur no liability to the solicitor under these terms as a result of so doing.
7. Where for any reason time is of the essence the solicitor must at the time when he delivers the brief or instructions but separately from the brief or instructions themselves inform the barrister of that fact and of the particular reason for urgency in order that the barrister may decide whether in those circumstances he can accept the brief or instructions. In addition the brief or instructions must be clearly marked "Urgent."

Copies of Briefs and Instructions and Records of Advice

8. The barrister shall be entitled for the purposes of his records (but not otherwise) to retain his brief or instructions or any papers delivered therewith or (if the solicitor requires the return of such brief or instructions and papers) to take and retain a copy of such brief or instructions and papers and of any written advice PROVIDED that nothing shall entitle the barrister to exercise any lien over any brief instructions or papers.

FEES AND INTEREST

9. Subject to the Bar Code of Conduct, the following provisions shall apply:
 - (1) Fees and/or charging rates shall be (a) as agreed between the barrister and the solicitor before the barrister commences work under the brief or instructions; or, in default of such agreement, (b) a reasonable professional rate for the barrister instructed.
 - (2) Subject to paragraphs 11 and 12 below, the solicitor shall pay the barrister's fees in respect of work to which these terms apply within one month after receipt by the solicitor of the barrister's fee note in respect of such fees.
 - (3) In the event that the barrister's fees are not paid in full in accordance with sub-paragraph (2) above, the fees outstanding from time to time will carry simple interest at the stipulated rate from one month after the date of the letter referred to in paragraph 13(1) hereof until payment.
10.
 - (1) The barrister shall submit an itemised fee note not later than three months after the work to which the fee note relates has been done or at the conclusion of the matter in which the barrister is briefed or instructed whichever is the sooner.
 - (2) The barrister shall as soon as reasonably practicable comply with a request by the solicitor for a fee note.
 - (3) Every fee note shall include the solicitor's reference and (where appropriate) the barrister's case reference number.
 - (4) If any fees remain outstanding at the conclusion of a case the solicitor shall as soon as reasonably practicable inform the barrister that the case has concluded.
11. In the case of work the fees for which are to be paid out of a fund but cannot be so paid without an order of the court:
 - (1) The solicitor shall use his best endeavours to obtain such order or orders as may be requisite to enable payment of the fees to be made as soon as reasonably practicable;
 - (2) The solicitor shall as soon as reasonably practicable comply with a request by the barrister for information by informing the barrister of the steps taken by him pursuant to paragraph 11(1) hereof;
 - (3) The barrister unless such information and an explanation for non-payment satisfactory to him is thereupon received from the solicitor shall then report the facts to the Chairman.
 - (4) Subject to paragraph 11(5) below, the barrister's fees shall be payable one month after the making of the order of the court required for the payment of such fees out of the fund.
 - (5) In the event of any breach by the solicitor of his obligations under paragraph 11(1) and/or (2) above, the fees will be payable forthwith and the amount outstanding from time to time will carry simple interest at the stipulated rate from one month after the date of the letter referred to in

paragraph 13(1) hereof until payment if that letter includes a statement to that effect.

12. (1) Any challenge by the solicitor to the barrister's fee (whether giving rise to an issue of competence or a dispute on quantum or otherwise) must be made by the solicitor in writing within three months after the first fee note relating to that fee has been sent to him or within one month after such letter relating to that fee as is referred to in paragraph 13(1) hereof has been sent to him whichever is the later.
 - (2) No challenge to a barrister's fees will be accepted either by the barrister or in the case of a complaint by the barrister to the Bar Council of failure to pay those fees by the Bar Council unless:
 - (a) the challenge was made in accordance with paragraph 12(1) hereof; and
 - (b) the solicitor has within 14 days of being requested to do so either by the barrister or by the Bar Council agreed in writing
 - (i) to submit the issue or dispute giving rise to the challenge to the decision of a Tribunal
 - (ii) to abide by and forthwith give effect to the decision of the Tribunal.
 - (3) If a dispute is referred to a Tribunal in accordance with paragraph 12(2) above:
 - (a) the Tribunal shall act as experts and not as arbitrators and its decision shall be conclusive, final and binding for all purposes upon the solicitor and the barrister.
 - (b) no payment need be made in respect of the fees (unless the Tribunal orders an interim payment) until the Tribunal has made its decision and communicated it to the parties.
 - (c) If the Tribunal determines that any sum is payable in respect of the fees, paragraph 9(3) above shall apply to that sum as if it had become payable when it would have been payable if no challenge had been made, and the Tribunal shall also determine the amount payable in respect of interest thereon under that paragraph.
 - (4) Unless the solicitor has challenged the barrister's fees and agreed to submit the issue or dispute in accordance with paragraphs 12(1) and (2);
 - (a) the fees will be payable in full, without any deductions or set-off whatsoever, in the amount set out in the relevant fee note and at the time specified in paragraph 9(2) above
 - (b) for the avoidance of doubt, it shall not be open to the solicitor to withhold or delay such payment or any part thereof on the grounds that a claim or complaint has been made or maybe made against the barrister arising out of the brief or instruction to which the fees relate or any other ground
13. Save as aforesaid and if and to the extent that his fees have not been previously paid, and without prejudice to any other remedy open to him in order to recover them, the barrister:

- (1) may at any time after the expiration of one month after the first fee note relating thereto has been sent send a reminder substantially in the form of the letter annexed hereto and marked "A" or some reasonable adaptation thereof; and
- (2) unless an explanation for non-payment satisfactory to the barrister has been received, shall at the expiration of three months after the first fee note relating thereto has been sent send a further reminder substantially in the form of the letter annexed hereto and marked "B" or some reasonable adaptation thereof; and
- (3) unless an explanation for non-payment satisfactory to the barrister is thereupon received shall then report the facts to the Chairman.

Withdrawal of Credit

14. (1) In any case where a barrister has made a report to the Chairman in accordance with paragraphs 11(3) or 13(3) hereof, paragraphs 16 to 24 (inclusive) of the Terms of Work shall, so far as applicable, apply to the relationship created between the barrister and the solicitor under these terms.
- (2) Paragraph 22 of the Terms of Work shall also apply to any fee note or letter referred to in paragraphs 9, 10 and 13 above as it does to those referred to in paragraphs 15-18 of the Terms of Work

Definitions and Consequential Provisions

15. For the purpose hereof:
 - (i) "Bar Code of Conduct" shall mean the Code of Conduct of the Bar of England and Wales for the time being in force;
 - (ii) "brief" "instructions" and "lay client" shall have the meanings assigned to them respectively in the Bar Code of Conduct;
 - (iii) "solicitor" shall where the context admits include any solicitor liable for the fees;
 - (iv) "person liable for the fees" shall mean any solicitor liable for the fees and any person company firm or other body responsible by virtue of paragraph 3(2) hereof for the payment of the fees;
 - (v) Section 5(2), (3) and (4) of the Arbitration Act 1996 apply to the interpretation of all references in these Terms to parties having agreed, or made an agreement, in writing;
 - (vi) "Terms of Work" shall mean the Terms of Work on which Barristers offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988 (as amended and in force from time to time)
 - (vii) "Tribunal" shall mean a Tribunal consisting of a barrister nominated by the Chairman and a solicitor nominated by the President of the Law Society;
 - (viii) "the Chairman" shall mean the Chairman of the General Council of the Bar (also referred to as the "Bar Council") and shall include any person

including in particular the Vice Chairman of the General Council of the Bar and the Chairman of the Remuneration and Terms of Work Committee and the Chairman of the Fees Collection Committee to whom the Chairman may have delegated either the whole or any part of his responsibilities hereunder;

- (ix) “publicly funded work” shall mean cases funded and paid directly to the barrister by the Legal Services Commission, as part of the Community Legal Service or the Criminal Defence Service.
- (x) Where the context admits, references to fees include any interest accrued in respect of them under paragraph 9(3) hereof.
- (xi) The “stipulated rate” shall mean 2% above the Bank of England base rate from time to time.

The General Council of the Bar

16. Neither the sending by the solicitor of a brief or instructions to the barrister nor the acceptance by the barrister of a brief or instructions nor anything done in connection therewith nor the arrangements relating thereto (whether mentioned in these Terms or in the Bar Code of Conduct or to be implied) nor these Terms or any agreement or transaction entered into or payment made by or under them shall be attended by or give rise to any contractual relationship rights duties or consequences whatsoever (except between the solicitor and barrister) or be legally enforceable by or against or be the subject of litigation with the General Council of the Bar.

LETTER "A"
(To be sent 1 month after fee note)

Dear Sir

Re: _____

I refer to the Fee Note of [*Name of Barrister*] in respect of the above case which was sent to you on the [*Date*].

My records indicate that this is a privately funded case in which your relationship with [*Name of Barrister*] is governed by the Contractual Terms on which Barristers Offer their Services to Solicitors 2000 (the "Contractual Terms"). Under paragraph 9(2) of those terms, the fees were due and payable within 30 days of the Fee Note.

[Please note that under paragraph 9(3) of the The Contractual Terms, any such fees remaining outstanding within one month after the date of this letter will carry interest at 2% above the Bank of England base rate from time to time from 1 month after the date of this letter until payment.]*

I would be grateful if you could now make arrangements for these fees to be paid.

Yours faithfully

Clerk to [*Name of Barrister*]

**Words substantially in the form of those shown in square brackets must be included if (but only if) it is wished to charge interest on the fees which are the subject of this letter A.*

LETTER "B"
(To be sent 3 months after fee note)

Dear Sir

Re: _____

I have referred to [*Name of Barrister*] the letter I wrote to you concerning the fees in this matter. To date payment has not been made and no explanation for the non-payment has been forthcoming.

As you know Counsel is required as a matter of professional conduct to report to the Chairman of the General Council of the Bar the fact that these fees have been outstanding for more than three months without satisfactory explanation. Unless, therefore, I hear from you within the next 14 days I regret that Counsel will have no alternative other than to make such a report.

I sincerely trust that this will not be necessary and look forward to hearing from you in early course.

Yours faithfully

Clerk to [*Name of Barrister*]