**COBDEN HOUSE TERMS**

**FOR USE IN PERSONAL INJURIES AND CLINICAL NEGLIGENCE CASES**

**WHERE COUNSEL AGREES TO ACT UNDER A CONDITIONAL FEE AGREEMENT**

# Introduction and short form CFA

# These standard terms (‘the Terms’) will be incorporated into the short form conditional fee agreement (‘the Short Form Agreement’) which will be sent to the Solicitor in each case. The Terms and the Short Form Agreement comprise the contact of retainer (‘the Agreement’) that governs the relationship between Counsel and the Solicitor.

# The parties to the Agreement, the work to be covered, the fees to be charged by Counsel, and other such matters are set out in the Short Form Agreement.

# Save where the contrary is obvious from the context, the definitions used in the Short Form Agreement apply to these Terms and *vice versa*.

# Definitions

# The following words have the following meaning in both the Short Form Agreement and in these Terms:

# ‘Agreement’, the means the contract of retainer formed by the Short Form Agreement and the Terms.

# ‘Claim’, the means that claim or contemplated claim that is described in the Short Form Agreement.

# ‘Client’, the means Counsel’s lay client (namely, the person who has instructed the Solicitor in the Claim), and will, where appropriate, include any such person who is acting as a litigation friend or a personal representative of the person for whose benefit the Claim is brought.

# ‘CPR’ means the Civil Procedure Rules 1998 (as amended).

# ‘Counsel’ means that barrister who has entered into the Short Form Agreement relating to the Claim, but where the context so requires, will also include any other barrister (either from Cobden House Chambers or otherwise) who signs the Short Form Agreement and who provides legal services in the Claim.

# ‘Expenses’ means those out-of-pocket expenses incurred by Counsel for the purposes of the Claim.

# ‘Fail’, ‘Failed’, etc means that the Claim is finally decided (whether by adjudication, discontinuance, abandonment or otherwise) such that the person for whose benefit the Claim was brought has received no damages (or other benefit of financial value in lieu of damages); in this regard, ‘finally’ means that the Opponent is not allowed to appeal against the court decision, has not appealed in time, or has lost any appeal.

# ‘Fixed Costs’ means any costs that, as between opposing parties, are fixed by the operation of the CPR (usually CPR, Part 45) or their association Practice Directions, but only to the extent that such fixed costs relate to the work done by Counsel.

# ‘Normal Fees’ means those fees that Counsel would have charged had Counsel been instructed privately (namely, on a basis that was not a conditional fee basis).

# ‘Opponent’, the means any person against whom the Claim is brought (or against whom it is contemplated that the Claim might be brought), including (but not limited to) any person who is described in the Short Form Agreement as being the Opponent.

#  Where the context so required, ‘Opponent’ will mean any person who is ordered to pay costs (or who agrees to pay costs) to the Client in the Claim.

# ‘Relevant Details’ means the track, band or any other such case details that are used (or may be used) for the purposes of determining the amount of Fixed Costs.

# ‘Short Form Agreement ‘ means the case-specific short form conditional fee agreement prepared by Counsel relating to the Claim.

# ‘Solicitor’, the means Counsel’s instructing solicitor in the Claim (as described in the Short Form Agreement).

# ‘Success’, ‘Succeed’, etc means that the Claim is finally decided in the Client’s favour (whether by adjudication or otherwise) such that the person for whose benefit the Claim was brought receives damages (or other benefit of financial value in lieu of damages); in this regard, ‘finally’ means that the Opponent is not allowed to appeal against the court decision, has not appealed in time, or has lost any appeal.

# ‘Terms’, the means these terms and conditions.

# Formation of the Agreement

# Counsel will not be bound to act on a conditional fee basis unless and until:

# the Short Form Agreement has been completed and sent to the Solicitor; and

# the terms of that agreement have been agreed (either expressly or impliedly) in accordance with the provisions set out below.

# The Solicitor will be at liberty to challenge the terms of the Short Form Agreement, but any such challenge must be made within 14 days of receipt and must be in writing. If no written challenge is made within that period, then (regardless of whether or not the Solicitor signs the Short Form Agreement) the Solicitor will be taken to have instructed counsel on the terms stated in the Short Form Agreement, and this will be so even where Counsel has not been asked to carry out any work during that period.

# In the event that Counsel is instructed to carry out work within the 14-day period referred to in clause 3.2 above, counsel will be at liberty not to carry out the work until such time as the terms of this Agreement have been agreed.

# Unless the Solicitor raises a challenge in accordance with clause 3.2 above, the Solicitor will be deemed to have agreed and approved the Normal Fees as set out in the Short Form Agreement (and the terms set out in the Agreement in general); specifically, the Solicitor will be deemed to have agreed and approved of those fees as being reasonable and properly payable, and where the Claim is one to which Fixed Costs apply, the Solicitor will be deemed to have agreed the Relevant Details.

# The Agreement may be varied, but any reductions to Counsel’s fees must either be (i) specifically endorsed and dated by Counsel or by Counsel’s clerks or (ii) be the subject of written agreement with Counsel or Counsel’s clerk.

# Obligation of Counsel to act diligently

# Counsel agrees to act in accordance with clause 8 of the Bar Council’s (New) Standard Contractual Terms for the Supply of Legal Services by Barristers to Authorised Persons 2012.

# Inappropriate Instructions

# Counsel is not bound to accept instructions:

# to appear at any hearing where such instructions would be disproportionate to the nature of the hearing and where it would be reasonable either:

# for Counsel to believe that Counsel's fees would not be allowed on assessment, or

# for the Solicitor to instruct a barrister of less experience and seniority,

# albeit that Counsel will, where appropriate, use reasonable endeavours to ensure that an appropriate barrister will act for the Client on the same terms as this Agreement;

# to carry out work which has been occasioned by reason of the failure of the Solicitor to comply with any rule, practice direction or order;

# to draft documents or advise if a barrister of similar seniority would not ordinarily be instructed so to do if not instructed on a conditional fee basis;

# to accept instructions that are outside the scope of the Agreement;

# to carry our work which would not ordinarily be carried out by counsel; or

# in a case to which Fixed Costs apply, to carry out work which is additional to the work covered by those Fixed Costs unless Counsel’s remuneration for that work has been agreed in writing.

# Obligations of the solicitor

# The Solicitor agrees:

# to act diligently in all dealings with Counsel and the prosecution of the claim;

# to comply with the requirements of the CPR, the Practice Directions supplementing Parts 3 and 44 to 47 of the CPR, any relevant Pre-Action Protocol, and any court order relating to costs or costs management;

# promptly to apply for relief from sanction pursuant to CPR Part 3 if any default under the CPR occurs (and to notify Counsel of any such default without delay);

# to ensure that Counsel’s fees are agreed in advance of the preparation and service of any Form H (namely, any draft budget) in respect of multi-track work, and in particular, to:

# provide Counsel with a draft copy of the Form H at least 14 days prior to the date for filing and service of that form; and

# ensure that the Form H incorporates fees which are agreed between the Solicitor and Counsel;

# to consult Counsel on the need for advice and action:

# within 14 days of receipt of the Defence;

# not less than six weeks prior to any cost management conference (or costs and case management conference);

# within 14 days of the exchange of lay witness evidence;

# within 14 days of disclosure of any medical evidence from the Opponent;

# within 14 days of receipt of any joint statement of experts;

# within 14 days of any development which could significantly and adversely affect the prospects of Success in the Claim or the value of the Claim;

# within seven days of any Part 36 offer (or other offer) being made by the Client or within seven days of any such offer having been made by the Opponent;

# not less than four weeks before the date of the trial; and

# at any other point reasonably requested by Counsel in writing;

# to deliver within a reasonable time papers reasonably requested by Counsel for consideration;

# promptly to bring to Counsel's attention:

# any priority (or equivalent) report to insurers;

# any Part 36 offer (or other offer) to settle the Claim or any part of it;

# any evidence, information, or communication which may materially affect the merits of any issue in the Claim or the amount of any Fixed Costs that may be payable;

# any application by any party that might have a bearing on the amount of Fixed Costs payable;

# any costs capping or costs management order (or variation thereof);

# any other factor coming to the Solicitor's attention which may affect Counsel's entitlement to fees (whether before or after the termination of this Agreement);

# the instruction of any Counsel outside of Cobden House Chambers;

# any agreement (including any priorities agreement) with any litigation funder that may have a bearing on Counsel’s fees;

# promptly to communicate to the Client any advice given by Counsel:

# to make, accept or reject any Part 36 offer or other offer;

# to incur, or not incur, expenditure in obtaining evidence or preparing the Claim (including expert evidence);

# to instruct leading counsel, a more senior counsel, or specialised counsel;

# that the Claim or a substantial issue in the Claim is likely to Fail;

# that, for whatever reason, the Claim has become uneconomic;

# any other advice that Counsel has asked to be communicated to the Client;

# promptly to inform Counsel’s clerk of any listing for trial or any hearing;

# to deliver the brief to Counsel in accordance with the Short Form Agreement;

# to inform Counsel promptly if the Claim concludes at any time before the date fixed for trial;

# if any summary assessment of costs takes place in the absence of Counsel, to make competent representations on Counsel’s behalf in relation to their fees;

# to inform Counsel in writing within two days of any reduction of Counsel’s fees on summary assessment made in the absence of Counsel;

# where more than one Opponent is sued, to write to any after-the-event insurers clarifying whether and when Opponents’ costs are to be covered if the Client does not succeed or win against all of the Opponents, and send that correspondence to Counsel;

# when drawing up a Bill of Costs or Statement of Costs (N260), to include within that document a claim for Counsel’s fees in full wherever this is appropriate;

# where possible, to seek interest on Counsel’s fees from the Opponent; and

# to diligently carry out enquiries relating to funding the Claim (including enquiries relating to before-the-event insurance), and to draw the existence of any alternative means of funding to Counsel’s attention.

# In the event that the Solicitor fails to comply with subclause 6.1(4) above (or in the event that Counsel is instructed after the filing of the Form H), then:

# Counsel will not be obliged to work in accordance with the fees suggested by the Solicitor in the Form H; and

# Counsel’s fees will be those agreed as between Counsel and the Solicitor.

# In the event that the Solicitor fails (or has failed) to serve a Form H in accordance with the CPR or in accordance with any Court Order (or both), the Solicitor will pay Counsel’s fees on a private basis in accordance with the ‘Standard Contractual Terms for the Supply of Legal Services by Barristers to Authorised Persons 2012’ which can be found on the Cobden House Website ([www.cobden.co.uk](http://www.cobden.co.uk)).

# In the event that that Counsel is instructed to carry out work which is occasioned by (or has been occasioned by) the Solicitor’s failure to comply with any rule, direction or order, the Solicitor will pay Counsel’s fees in respect of that work on a private basis in accordance with the ‘Standard Contractual Terms for the Supply of Legal Services by Barristers to Authorised Persons 2012’ which can be found on the Cobden House Website ([www.cobden.co.uk](http://www.cobden.co.uk)).

# TERMINATION

# Termination by Counsel

# Counsel may terminate the Agreement if:

# Counsel discovers any fact or document which should have been disclosed to them and which materially affects Counsel’s view of the likelihood of Success and/or the amount of financial recovery in the event of Success;

# Counsel discovers that the Solicitor is in material breach of any obligation in clause 6.1 hereof;

# the Solicitor or the Client in any material way rejects Counsel's advice as set out in clause 6.1(8) above;

# Counsel is informed or discovers the existence of any set-off or counterclaim which materially affects the likelihood of Success or the amount of financial recovery in the event of Success (or both);

# Counsel is informed of, or discovers the existence of, information of which Counsel was not aware and which Counsel could not reasonably have anticipated which:

# has been falsified; or

# should have been but was not provided by the Solicitor or Client,

# and which materially affects the merits of any substantial issue in the case;

# Counsel is informed of, or discovers the existence of, any information or evidence of which Counsel was not aware and which Counsel could not reasonably have anticipated, which materially affects either the merits of the claim or the valuation of the Claim so as to adversely affect the likely costs outcome of the Claim;

# Counsel is required to cease to act by the operation of the Code of Conduct of the Bar of England and Wales or by reason of Counsel's professional conduct is being impugned (although Counsel may not terminate the Agreement if so to do would be a breach of that Code, and notice of any termination must be communicated promptly in writing to the Solicitor);

# the Solicitors instructs a barrister in a chambers other than Cobden House without Counsel’s written agreement;

# a costs capping order or costs management order is made which Counsel reasonably believes may adversely affect the recoverability of their Normal Fees;

# the Opponent receives civil legal aid under Part 1 of Legal Aid, Sentencing and Punishment of Offenders Act 2012 in respect of the Claim;

# at any time, Counsel assesses the prospects of Success in the case at or below 50 percent;

# Counsel advises the discontinuance of a claim for any reason;

# the court makes a group litigation order covering this claim;

# the Solicitor has, by reason of any failure to comply with an order, rule or direction relating to costs management or by reason of any failure to comply with the obligations imposed by clause 6.1(2) to 6.1(4) above, caused Counsel’s fees (or any of them) to become difficult to recover (or irrecoverable) from the Opponent; or

# the Solicitor takes any steps that frustrates Counsel’s reasonable expectation to be paid under this Agreement.

# Termination by the Solicitor

# The Solicitor may terminate the Agreement at any time and for any reason provided that any such termination is carried out on the instructions of the Client.

# Automatic Termination

# Subject to clauses 9.2 and 9.3 below, this Agreement will automatically terminate if:

# Counsel accepts a full-time judicial appointment;

# Counsel retires from practice;

# the Solicitor’s contract of retainer with the Client is terminated before the conclusion of the Claim and no new contract of retainer is made between the Solicitor and the Client; or

# the Client becomes entitled to civil legal aid under Part 1 of Legal Aid, Sentencing and Punishment of Offenders Act 2012 in respect of the Claim.

# Where this Agreement relates to more than one barrister, clauses 9.1(1) and 9.1(2) will apply only in respect of that barrister who has accepted a judicial appointment or retired from practice; the other barrister(s) will, in their discretion, be permitted to elect to terminate this Agreement, but if they do not elect to do so within a reasonable period of time, this Agreement will continue to apply to those barristers.

# Where the conduct of the Claim is transferred from the Solicitor to a new firm of solicitors, clause 9.1(3) will not apply; instead, unless they say otherwise within a reasonable period of time or unless it is agreed otherwise, the new firm will be taken to have novated this Agreement in their own name from the date of transfer (this being without prejudice to Counsel’s right to seek payment of their fees from the original Solicitors for work carried out prior to the date of transfer). Counsel will, however, be permitted to terminate this retainer by giving written notice within a reasonable period of time after the transfer.

# Counsel taking Silk

# If Counsel becomes King’s Counsel during the course of the Agreement, then either party may terminate it provided they do so promptly in writing.

# Errors and Indemnity for Fees

# The following provisions will apply:

# If, because of a breach by the Solicitor of their duty to the Client, the Client's claim is dismissed or struck out:

# for non-compliance with an interim order;

# for want of prosecution; or

# for breach of any rule of court or the CPR,

# or if the claim becomes unenforceable against the MIB for breach of the terms of the Uninsured Drivers Agreements or the Untraced Drivers Agreements,

# then the Solicitor shall (subject to the other provisions of this clause) pay Counsel such Normal Fees as would have been recoverable under the Agreement to the date of strike out.

# If, solely because of a breach by Counsel of their duty to the Client (but not otherwise), the Client’s claim is dismissed or struck out:

# for non-compliance with an interim order;

# for want of prosecution; or

# for breach of any rule of court or the CPR,

# Counsel shall (subject to the other provisions of this clause) pay the Solicitor such basic costs as would have been recoverable from the Client under the Solicitor's agreement with the Client to the date of strike out.

# No payment shall be made under subclauses 11.1(1), (2) or 1.1(1) herein in respect of any non-negligent breach by the Solicitor or Counsel.

# *Adjudication on disagreement*

# In the event of any disagreement as to whether there has been an actionable breach by either the Solicitor or Counsel, or as to the amount payable under subclauses 11.1(1), (2) or 1.1(1) herein, that disagreement shall be referred to adjudication by a panel consisting of a barrister nominated by PIBA and a solicitor nominated by APIL, who shall be requested to resolve the issue on written representations and on the basis of a procedure laid down by agreement between PIBA and APIL (which shall follow the procedure in the Bar Council/Law Society Joint Tribunal Standing orders published in June 2011 and available on the Bar Council’s website). The costs of such adjudication shall, unless otherwise ordered by the panel, be met by the unsuccessful party.

# In the event of a panel being appointed pursuant to sub clause (4) hereof:

# if that panel considers, after initial consideration of the disagreement, that there is a real risk that they may not be able to reach a unanimous decision, then the panel shall request APIL (where it is alleged there has been an actionable breach by the Solicitor) or PIBA (where it is alleged that the has been an actionable breach by Counsel) to nominate a third member of the panel;

# that panel shall be entitled if it considers it reasonably necessary, to appoint a qualified costs lawyer, to be nominated by the President for the time being of the Law Society, to assist the panel;

# the Solicitor or Counsel alleged to be in breach of duty shall be entitled to argue that, on the basis of information reasonably available to both the Solicitor and Counsel, the Claim would not have succeeded in any event. The panel shall resolve such issue on the balance of probabilities, and if satisfied that the Claim would have been lost in any event shall not make any order for payment of fees or costs.

# *Cap*

# The amount payable in respect of any claim under subclauses (1), (2) or 1.1(1) shall be limited to a maximum of £25,000.

# Save as provided at clause 11.1(2) herein, in no circumstances shall any liability that Counsel may have in damages for breach of duty under this contract whether to the Solicitor or to anyone else (including for the avoidance of doubt, the Client) exceed such liability (if any) as Counsel would have had to that person at common law in tort were no contract to exist.

# Nothing in clause 11.1(7) shall operate so as to exclude liability where such exclusion is prohibited by law nor to limit or exclude a contribution claim by the Solicitor against Counsel under the Civil Liability (Contribution) Act 1978.

**COUNSEL’S ENTITLEMENT TO FEES**

**On Termination of the Agreement**

# Termination

# By Counsel

# If Counsel terminates the Agreement under clause 7 then, subject to sub-clause 12.11.1(1) below, Counsel may elect either:

# to receive payment of Normal Fees which the Solicitor shall pay not later than three months after termination: (‘Option A’), or

# to await the outcome of the case and receive payment of Normal Fees if it ends in Success: (‘Option B’).

# If Counsel terminates the Agreement because the Solicitor, Client or Litigation Friend rejects advice under clause 6.1(8)(d) or clause 6.1(8)(e), Counsel is entitled only to Option B.

# By the Solicitor

# If the Solicitor terminates the Agreement under clause 8, Counsel is entitled to elect between Option A and Option B.

# Automatic Termination and Counsel taking silk

# If the Agreement terminates under clauses 9 or 10, Counsel is entitled only to Option B save where clause 9.1(3) applies, in which case Counsel may elect between Option A and Option B.

# Challenge to fees

# If the Client or the Solicitor wishes to challenge:

# the entitlement to fees of Counsel or the level of such fees following termination of the Agreement; or

# any refusal by Counsel after signing this Agreement to accept instructions,

# the Solicitor must make such challenge in writing within 14 days of termination or refusal.

# Return of Work

# If Counsel in accordance with the Bar's Code of Conduct is obliged to return any brief or instructions in this case to another barrister, then:

# Counsel will use reasonable endeavours to ensure that an appropriate barrister agrees to act for the Client on the same terms as this Agreement;

# If Counsel is unable to secure an appropriate replacement barrister to act for the Client on the same terms as this Agreement, Counsel will not be responsible for any additional fees incurred by the Solicitor or Client.

# If the case ends in Success, Counsel's fees for work done shall be due and paid on the conditional fee basis contained in this Agreement, and this will be so whether or not the replacement barrister acts on a conditional fee basis; but

# If the Solicitor or the Client rejects any advice by the replacement barrister of the type described in clause 6.1(8) above, the Solicitor shall immediately notify Counsel who shall be entitled to terminate this Agreement under clause 7.1(3) above.

# ASSESSMENT AND PAYMENT OF COSTS / FEES

# Fixed Costs cases

# This clause (clause 15) will apply only if and to the extent that the Claim is one to which Fixed Costs apply.

# Subject to clauses 15.6 to 15.7 (inclusive) below, Counsel’s Normal Fees will be in the same amount as the corresponding Fixed Costs.

# Unless agreed otherwise in writing, the Relevant Details will be as stated in the letter of claim; if there is no letter of claim, then the Relevant Details will be based on the instructions as first sent to Counsel.

# If the Claim is allocated to a track or is assigned to a band that is higher than those that previously existed (or if the Claim is settled on a basis that implies this), then the Relevant Details will be deemed to be revised accordingly.

# The Relevant Details may be varied to a lower band or track only with the consent of Counsel (such consent not to be unreasonably withheld); for the avoidance of doubt, the Relevant Details will not change merely because the Claim is allocated to a lower track or assigned to a lower band (or because the Claim is settled on such a basis).

# Clause 15.2 above will not apply where, for whatever reason, the Opponent pays an amount of costs in respect of Counsel’s fees that exceed the Fixed Costs as determined in accordance with the Relevant Details; where this is so, Counsel’s Normal Fees will be based on Counsel’s hourly rate, but will be limited to the amount paid by the Opponent.

# Clause 15.2 will not apply to work that Counsel is instructed to do that does not fall within the relevant fixed costs regime. Furthermore, clause 15.2 will not apply to any work to which clause 6.4 above applies.

# Costs Assessment – summary assessment

# Where a statement of costs is served on the Opponent:

# the Solicitor will include in the statement of costs a full claim for Counsel's Normal Fees;

# the Solicitor will seek to promptly conclude by agreement or assessment the question of such costs; and

# within 30 days of receipt of such costs, the Solicitor will pay to Counsel the amount recovered in respect of their Normal Fees, such sum to be on account in respect of Counsel's fees generally.

# Costs assessment – detailed or provisional assessment

# This clause (clause 17) will apply only where the Client is entitled to costs to be assessed by way of detailed or provisional assessment. Where this is so, the Solicitor will:

# Progress that assessment diligently and without undue delay;

# Provide Counsel with any information about the progress of the assessment withing seven days of being asked to do so;

# Where appropriate, seek either a payment on account or an interim payment; and

# Inform Counsel within seven days (or such other time as may be stated in the Short Form Agreement) of (i) the fact that a payment on account or an interim payment has been made and (ii) the amount of that payment.

# The remainder of this clause (namely, subclauses 17.3 and 17.4) will apply only where the Short Form Agreement provides that Counsel will restrict their Normal Fees by reference to those that are recovered from the Opponent.

# The Solicitor will:

# liaise with Counsel for the purposes of ensuring that all Counsel’s fees are included within the Bill of Costs and that all relevant fee notes are served with the Bill of Costs;

# inform Counsel in good time of any challenge made to their Normal Fees (either in Points of Dispute or otherwise);

# inform Counsel of the date, place and time of any detailed assessment;

# provide Counsel with the opportunity to make written or oral representations in support of their Normal Fees; and

# save where counsel is present or separately represented, place any relevant details and any written representations before the assessing judge or costs officer and competently argue Counsel's case for their Normal Fees.

# Any material failure to comply with the provisions of clause 17.3 will mean that Counsel’s Normal Fees will be paid in full and within any reduction or adjustment.

# Agreement on Fees with Opponent

# This clause (clause 18) will apply only where the Short Form Agreement provides that Counsel will restrict their Normal Fees by reference to those that are recovered from the Opponent.

# If (i) the Opponent offers to pay the Client’s costs or makes an offer that includes payment of Counsel’s Normal Fees (including a global offer that encompasses damages), or (ii) the Client intends to make any such offer, then the Solicitor will:

# calculate the proposed reductions of both (i) the Normal Fees Counsel and (ii) the basic fees (namely, profit costs) payable to the Solicitor;

# inform Counsel of the offer and the calculations supporting the proposed reductions referred to in subclause (1) above; and

# not make or accept the offer without Counsel's express written consent.

# Any material failure to comply with the provisions of clause 18.2 will mean that Counsel’s Normal Fees will be paid in full and within any reduction or adjustment.

# Interest

# The Solicitor will seek to recover interest on Counsel’s fees from any party ordered to pay costs to the Client and shall pay Counsel the share of such interest that has accrued on Counsel's outstanding fees. Further provision in this regard may be set out int the Short Form Agreement.

# Severance

# If any provision of this Agreement is found by any competent court to be invalid, illegal or unenforceable in whole or in part for whatever reason, then it shall be deemed to be severed from this Agreement to the extent only of such invalidity, illegality or unenforceability and the remaining provisions of this Agreement and the remainder of the provision in question shall continue in full force and effect unimpaired by such severance.

# Jurisdiction

# In the event of dispute, the parties agree to submit to the exclusive jurisdiction of the Courts of England and Wales in respect of any dispute arising out of or under the terms of the Agreement between Counsel and Solicitor.

# Trust

# The Solicitor holds on trust for Counsel such part of the debt that the Client owes the Solicitor as relates to Counsel’s fees and expenses and, at Counsel’s request, will assign the benefit of that debt to Counsel and do all such things as are necessary to perfect Counsel’s title to that debt.

# The Solicitor further holds on trust for Counsel any sum that they recover from an Opponent in respect of Counsel’s fees and expenses and agrees that they will hold such sums in a separate account until those monies are paid to Counsel.

# Confidentiality

# Counsel shall keep confidential all information provided to them in connection with the Claim unless:

# Counsel is authorised by the Solicitor or the Client to disclose it;

# the information is in or comes into the public domain without any breach of confidentiality on the part of Counsel; or

# Counsel is required or permitted to disclose it by law, or by any 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 Client as much advance notice as possible and permitted of any such required disclosure.

# Counsel owes the same duty of confidentiality to other clients, and will therefore not disclose or make use of any information that might be given to them in confidence in relation to any other matter without the consent of their other client, even if it is material to providing the Services.

# Unless the Solicitor expressly informs Counsel to the contrary in advance in writing, Counsel may allow the Instructions to be reviewed by another Counsel or by a pupil (including a vacation pupil or mini‐pupil) in chambers, on terms that that other barrister or pupil complies with this clause.

# Subject to their obligation under this clause Counsel may make and retain copies of the Instructions and any written material produced by him.

# To the extent such information is already in the public domain, Counsel may disclose in their 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 Client and the nature of the Case. To the extent any such information is not already in the public domain, Counsel may only refer to it for marketing purposes in a form which sufficiently preserves the Client’s privilege and confidentiality and (where the law so requires) with the Client’s consent.

# Intellectual Property

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

# All copyright and other intellectual property rights of whatever nature in or attaching to the Solicitor’s work product, including all documents, reports, written advice or other materials provided by the Solicitor to Counsel or the Lay Client belong to and remain with the solicitor. Counsel and the Lay Client have the right and licence to use the Solicitor’s work product for the particular case and the particular purpose for which it is prepared. If Counsel or the Lay Client wishes to use copies of the solicitor’s work product for purposes other than those for which it is prepared, this will require the express written permission of the Solicitor. The moral rights of the Solicitor in respect of their work product are asserted.

# Money Laundering

# Notwithstanding acceptance of Instructions in accordance with clause 2.1 above, Counsel shall be entitled to carry out any customer due diligence required by the Money Laundering Regulations 2007. The Solicitor will provide Counsel with all reasonable assistance to carry out any necessary customer due diligence including (if required to do so) consenting to Counsel relying upon the Solicitor under Regulation 17 of the Money Laundering Regulations 2007.

# In the event that Counsel reasonably considers that the requirements of the Money Laundering Regulations have not been satisfied he may within a reasonable period after receipt of the Instructions withdraw any acceptance of those Instructions without incurring any liability.