

Ten Old Square – Chancery and Commercial Barristers

LICENSED ACCESS

THE LICENSED ACCESS TERMS OF WORK

1. **Application of these terms:** These terms apply to all instructions accepted by barristers where the instructions are given by a licensed access client in accordance with the terms of a licence issued by the Bar Council. They apply save to the extent that they have been varied or excluded by written agreement and subject to the following:

(1) These Terms will apply to instructions only where the instructions have been accepted by the barrister.

(2) These terms do not apply to legal aid work.

2. **The Licence:** A copy of the Licence issued to the licensed access client by the Bar Standards Board of the Bar Council shall be sent with every set of instructions.

3. **Acceptance of instructions:** Notwithstanding that instructions have been delivered to a barrister, he shall not be deemed to have accepted them until he has satisfied himself that the instructions are given in accordance with the licence granted by the Bar Council by a person entitled by that licence to give those instructions and has expressly accepted them orally or in writing.

4. **Code of Conduct to prevail:** A barrister accepts instructions upon the understanding that in carrying them out he must and will comply with the Code of Conduct and the general law. In this regard:

(1) Paragraph 307(e) of the Code of Conduct provides that a barrister must not:

(i) receive or handle client money securities or other assets other than by receiving payment of remuneration;

(ii) undertake the management administration or general conduct of a lay client's affairs;

(iii) conduct litigation or inter-partes work (for example the conduct of correspondence with an opposite party);

(iv) investigate or collect evidence for use in any court;

(v) except as permitted in certain limited circumstances, take any proof of evidence in any criminal case;

(vi) attend at a police station without the presence of a solicitor to advise a suspect or interviewee as to the handling and conduct of police interviews.

(1) The Licensed Access Rules (which form part of the Code of Conduct) provide:

(a) by rule 5 that a barrister must not accept any instructions from a licensed access client

(i) unless the barrister and his Chambers are able to provide the services required of them by that licensed access client;

(ii) if the barrister considers it in the interests of the lay client or the interests of justice that a solicitor or other authorised litigator or some other appropriate intermediary (as the case may be) be instructed either together with or in place of the barrister;

(b) by rule 8 that if at any stage a barrister who is instructed by a licensed access client considers it in the interests of the lay client or the interests of justice that a solicitor or other authorised litigator or some other appropriate intermediary (as the case may be) be instructed either together with or in place of the barrister:

(i) the barrister must forthwith advise the licensed access client in writing to instruct a solicitor or other authorised litigator or other appropriate intermediary (as the case may be); and

(ii) unless a solicitor or other authorised litigator or other appropriate intermediary (as the case may be) is instructed as soon as reasonably practicable thereafter the barrister must cease to act and must return any instructions.

5. Duty to the lay client: Where instructions are given to a barrister by a licensed access client in relation to a matter concerning a lay client the licensed access client warrants that he has or will as soon as practicable

(1) Send the lay client a copy of the Licensed Access Terms of Work.

(2) Advise the lay client in writing of:

(a) the effect of paragraph 401 of the Code of Conduct as it relevantly applies in the circumstances;

(b) the fact that the barrister cannot be expected to perform the functions of a solicitor or other authorised litigator and in particular to fulfil limitation obligations disclosure obligations and other obligations arising out of or related to the conduct of litigation;

(c) the fact that circumstances may require the lay client to retain a solicitor or other authorised litigator at short notice and possibly during the case.

(3) Send to the lay client a copy of any advice received by the licensed access client from the barrister to the effect that:

(a) a solicitor or other authorised litigator or some other appropriate intermediary (as the case may be) is capable of providing any services to the lay client which the barrister himself is unable to provide; or

(b) the barrister considers it in the interests of the lay client or the interests of justice that a solicitor or other authorised litigator or some other appropriate intermediary (as the case may be) be instructed either together with or in place of the barrister; or

(c) the licensed access client should instruct a solicitor or other authorised litigator or other appropriate intermediary (as the case may be).

6. Liability for the fees: The licensed access client is liable for a barrister's fee due in respect of work carried out by the barrister under any instructions. In a case where the matter concerns a lay client, the licensed access client is solely and exclusively liable to the barrister for the fees. In this regard:

(1) The relationship between the barrister and the licensed access client is a contractual one.

(2) Any individual giving or purporting to give the instructions on behalf of any partnership firm, company, individual or other person warrants to the barrister that he is authorised by the latter to do so.

(3) If the licensed access client is a partnership or a firm or unincorporated association, the liability of the partners or members and on death that of their estates for the barrister's fees is joint and several.

(4) Neither the sending by a licensed access client of instructions to a barrister nor the acceptance of those instructions by a barrister nor anything done in connection therewith nor these Terms nor any arrangement or transaction entered into under them shall give rise to any contractual relationship rights duties or consequences whatsoever either (i) between the barrister or the General Council of the Bar and any lay client or (ii) between the General Council of the Bar and the licensed access client.

7. Time for performance of instructions: Unless otherwise expressly stipulated by written agreement

(a) a barrister will carry out the instructions as soon as he reasonably can in the ordinary course of his work, but

(b) time will not be of the essence.

8. Duty of care: A barrister will exercise reasonable care and skill in carrying out instructions. This is however subject to

(a) any immunity from suit which the barrister may enjoy under the general law in respect of any work done in the course of carrying out instructions and

(b) paragraph 11(1) below.

9. Copies of Briefs and Instructions and Records of Advice: A barrister shall be entitled on completion of any work to take and retain a copy of such instructions and papers and of any written work.

10. **Fees:** Subject to the Code of Conduct, the following provisions apply:

(1) **Fees and/or charging rates:** These shall be as agreed between the barrister and the licensed access client before the barrister commences work under the instructions or, in default of such agreement, shall be a reasonable professional rate for the barrister instructed.

(2) **Submission of fee notes:** The barrister shall (a) as soon as reasonably practicable comply with a written request by the licensed access client for a fee note and (b) in any event submit a fee note not later than 3 months after the work to which the fee note relates has been done.

(3) **Time for payment:** A barrister's fees in respect of instructions to which these Terms apply are payable and must be paid by the licensed access client 30 days after receipt by the licensed access client of the fee note submitted by him to the licensed access client in respect of such fees.

(4) **Default in payment:** In the event that a barrister's fees are not paid in full in accordance with sub-paragraph (3) above, the fees and/or the balance thereof outstanding from time to time will carry simple interest at the stipulated rate from the date they became due until payment in full.

11. **Complaints:** In the event that the licensed access client or the lay client (if any) has any Complaint about the services provided by a barrister under any instructions

(1) The fees shall be paid in accordance with paragraph 10(3) above and no Complaint shall afford a valid ground for non-payment of the fees whether on grounds of set-off or otherwise.

(2) Sub-paragraph (1) above is without prejudice to any rights of the licensed access client and the lay client to institute any proceedings against the barrister and/or a complaint against the barrister under the Complaints Rules in Annexe K to the Code of Conduct.

12. **Definitions:** In these Terms:

(1) "Instructions" includes a brief and any other instructions to a barrister.

(2) "Licensed Access Client" means the individual, firm, company or other person instructing or seeking to instruct a barrister, whether on his, their or its own behalf or on behalf of some other person under the terms of a licence issued by the Bar Council.

(3) In a case where the licensed access client is instructing or seeking to instruct a barrister not on his, their or its own behalf but on behalf of some other person, „lay client“ means that other person;

(4) "Written agreement" means an agreement in writing between (a) one or more barristers (including a set of Chambers) and (b) a licensed access client;

(5) "Written work" includes any draft pleading or other document and any written opinion or advice prepared by a barrister pursuant to any instructions;

(6) "Legal aid work" means instructions which are publicly funded under the Legal Aid Act 1988 or Access to Justice Act 1999 as in force from time to time or any legislation which may replace them, and any work carried out pursuant to such instructions;

(7) “Stipulated rate” means the rate at which interest is payable from time to time on High Court judgment debts;

(8) “Complaint” includes any complaint whatsoever relating to anything done by a barrister pursuant to any instructions or to the time taken or alleged to have been taken by him in carrying them out and whether the same involves issues of competence, quantum or otherwise.

(9) “Code of Conduct” means the Code of Conduct of the Bar of England and Wales as promulgated and amended by the General Council of the Bar from time to time.

(10) In these Terms any reference to the masculine shall be deemed to include the feminine.