

Licensed Access Terms of Work

1. Application Of These Terms

These terms apply to all instructions accepted by a barrister where the instructions are given by (i) an authorised licensed access client in accordance with the terms of a licence issued by the Bar Standards Board under the Licensed Access Recognition Regulations or (ii) a person who is deemed to be an authorised licensed access client under the Licensed Access Recognition Regulations. 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

If a licence has been issued to the licensed access client by the Bar Standards Board, a copy of the licence shall be sent with every set of instructions.

3. Acceptance Of Instructions

Notwithstanding that instructions have been delivered to the barrister, she shall not be deemed to have accepted them until she has:

- (1) Satisfied herself that the instructions are given (i) in accordance with a licence granted by the Bar Standards Board under the Licensed Access Recognition Regulations and by a person entitled by that licence to give those instructions or (ii) by a person who is deemed to be an authorised licensed access client under the Licensed Access Recognition Regulations; and
- (2) Expressly accepted them orally or in writing.

4. Scope Of Instruction

The work which can be expected of the barrister is defined by her instructions. The instructions will only extend to any work which is permitted by the Code of Conduct in Part 2 of the Bar Standards Board Handbook but which the barrister is not required to undertake (for example, conducting correspondence on behalf of the lay client) if that work is the subject of specific instructions and those instructions have been accepted by the barrister in writing.

5. Code Of Conduct To Prevail

The barrister accepts instructions upon the understanding that in carrying them out she must and will comply with the Code of Conduct and with the general law. In this regard, the effect of Rules rC21 and rC25 of the Code of Conduct is that a barrister must not accept instructions, and must return instructions which have already been accepted and cease to act, if:

- (1) Due to any existing or previous instructions she is not able to fulfil her obligation to act in the best interests of the client or prospective client; or
- (2) There is a conflict of interest, or real risk of conflict of interest, between her own personal interests and the interests of the client or prospective client in respect of the particular matter; or
- (3) There is a conflict of interest, or real risk of conflict of interest, between the client or prospective client and one or more of her former or existing clients in respect of the particular matter, unless all of the clients who have an interest in the particular matter give their informed consent to her acting in such circumstances; or
- (4) There is a real risk that information confidential to another former or existing client, or any other person to whom she owe duties of confidence, may be relevant to the matter, such that if, obliged to maintain confidentiality, she could not act in the best interests of the client or prospective client, and the former or existing client or person to whom she owes that duty does not give informed consent to disclosure of that confidential information; or
- (5) Her instructions seek to limit her ordinary authority or discretion in the conduct of proceedings in court; or
- (6) Her instructions require her to act other than in accordance with the law or with the provisions of the Bar Standards Board Handbook; or
- (7) She is not authorised and/or otherwise accredited to perform the work required by the relevant instructions; or
- (8) She is not competent to handle the particular matter or otherwise does not have enough experience to handle the matter; or
- (9) She does not have enough time to deal with the particular matter, unless the circumstances are such that it would nevertheless be in the client or prospective client's best interests for her to accept; or
- (10) There is a real prospect that she is not going to be able to maintain her independence.

6. Conduct Of Litigation & Instructing A Solicitor

The barrister cannot be expected to perform the functions of a solicitor or other person who is authorised to conduct litigation, and, in particular, she cannot be expected to fulfil obligations arising out of or related to the conduct of litigation. Under Rule rC138 of the Code Of Conduct, if a barrister who has been instructed by a licensed access client considers it in the interests of justice that a solicitor or other person who is authorised to conduct litigation should be instructed either together with her or in her place, then:

- (1) She must forthwith advise the licensed access client in writing to instruct a solicitor or other person who is authorised to conduct litigation; and
- (2) Unless a solicitor or other person who is authorised to conduct litigation is instructed as soon as reasonably practicable thereafter, she must cease to act and return the instructions.

This means that circumstances may require a solicitor or other person who is authorised to conduct litigation to be instructed at short notice and possibly during the case.

7. Duty To The Lay Client

Where instructions are given to the barrister by a licensed access client in relation to a matter concerning a lay client, the licensed access client warrants that she has or will as soon as practicable

- (1) Send the lay client a copy of these Terms.
- (2) 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 person who is authorised to conduct litigation is capable of providing any services to the lay client which the barrister herself is unable to provide; or
 - (b) The barrister considers it in the interests of justice that a solicitor or other person who is authorised to conduct litigation should be instructed either together with or in place of the barrister; or
 - (c) The licensed access client should instruct a solicitor or other person who is authorised to conduct litigation.

8. Liability For The Barrister's Fees

The licensed access client is liable for the barrister's fees due in respect of work carried out by her 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 instructions on behalf of any partnership firm, company, individual or other person warrants to the barrister that she 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 between the barrister and any lay client.

9. Time For Performance Of Instructions

Unless otherwise expressly stipulated by written agreement:

- (1) The barrister will carry out the instructions as soon as she reasonably can in the ordinary course of her work; but
- (1) Time will not be of the essence.

10. Duty of care

The barrister will exercise reasonable care and skill in carrying out instructions. This is however subject to:

- (1) Any immunity from suit which she may enjoy under the general law in respect of any work done in the course of carrying out instructions and
- (2) Paragraph 13(1) below.

11. Copies Of Instructions & Records Of Advice

In order to enable the barrister to comply with Rule rC41 of the Code Of Conduct, the barrister shall be entitled to take, and retain for at least 7 years after the last item of work done, copies of instructions, advices given and documents drafted and approved, and notes of all conferences and all advice given on the telephone.

12. 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 (i) as soon as reasonably practicable comply with a written request by the licensed access client for a fee note and (ii) 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: The 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 the barrister 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.

13. Complaints

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

- (1) The fees shall be paid in accordance with paragraph 12(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 the Code Of Conduct.

14. Definitions

In these Terms:

- (1) 'Instructions' includes a brief and any other instructions to the barrister.
- (2) 'Licensed access client' means the individual, firm, company or other person instructing or seeking to instruct the barrister, whether on his, their or its own behalf or on behalf of some other person either (i) under the terms of a licence issued by the Bar Standards Board under the Licensed Access Recognition Regulations or (ii) as a person who is deemed to be an authorised licensed access client under the Licensed Access Recognition Regulations.
- (3) 'Licensed Access Recognition Regulations' means the Bar Standards Board's Licensed Access Recognition Regulations as promulgated and amended from time to time.
- (4) 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;
- (5) 'Written agreement' means an agreement in writing between (i) one or more barristers (including a set of Chambers) and (ii) a licensed access client;
- (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 the barrister pursuant to any instructions or to the time taken or alleged to have been taken by her in carrying them out and whether the same involves issues of competence, quantum or otherwise.
- (9) 'Code Of Conduct' means the Code Of Conduct in Part 2 of the Bar Standards Board Handbook as promulgated and amended from time to time.
- (10) Any reference to the feminine shall be deemed to include the masculine.