



STANDARD TERMS AND CONDITIONS

**FOR CICA TRIBUNAL
AND UNTRACED DRIVERS AGREEMENT WORK**

**TREATED AS ANNEXED TO THE CONDITIONAL FEE AGREEMENT
BETWEEN SOLICITOR AND COUNSEL FOR CICA TRIBUNAL WORK
INDEX**

1. **INTRODUCTION**
2. **TERMINOLOGY**

CONDITIONS PRECEDENT

3. Papers Provided To Counsel
4. Solicitor's Compliance with the Statute

OBLIGATIONS OF COUNSEL

5. To Act Diligently
6. Inappropriate Instructions

OBLIGATIONS OF SOLICITOR

7. Obligations of Solicitor

TERMINATION

8. Termination by Counsel
9. Termination by The Solicitor
10. Automatic Termination
11. Counsel Taking Silk

COUNSEL'S FEES AND EXPENSES

12. Counsel's Normal Fees
13. Counsel's Success Fee
14. Definition of Success
15. Failure
16. Errors and Indemnity for Fees
17. On Termination of the Agreement by Counsel,
by Solicitor and Automatic Termination
18. Return of Work

ASSESSMENT AND PAYMENT OF COSTS/FEES

19. Solicitor's Obligation to Pay
20. Challenge to Counsel's Fees

INTRODUCTION

1. These standard terms will, where so indicated, be incorporated into an Agreement made between a Solicitor and a Counsel.

TERMINOLOGY

2. The words “Solicitor”, “Counsel” and “Client” herein are defined in “the Agreement” made between a Solicitor and a Counsel which expressly incorporates these terms.

CONDITIONS PRECEDENT

Papers provided to Counsel

3. The Solicitor should have provided Counsel with the following documents:
 - (1) a copy of any conditional fee or other agreement between the Solicitor and the Client and the Law Society's Conditions as they apply to the claim or a copy of any relevant collective conditional fee agreement;
 - (2) all relevant papers and risk assessment material, including all advice from experts and other solicitors or barristers to the Client or any Litigation Friend in respect of the claim, which is currently available to the Solicitor; and
 - (3) any award already made.

Solicitor’s Compliance with Statute

4. The Solicitor confirms that any conditional fee agreement between the Solicitor and the Client complies with sections 58 and 58A of the Courts and Legal Services Act 1990 and the Conditional Fee Agreements Order 2000.

OBLIGATIONS OF COUNSEL

To act diligently

5. Counsel agrees to act diligently on all proper instructions from the Solicitor subject to paragraph 6 hereof.

Inappropriate Instructions

6. Counsel is not bound to accept instructions:
 - (1) 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;
 - (2) outside the scope of this agreement.

OBLIGATIONS OF THE SOLICITOR

7. The Solicitor agrees:
- (1) to act diligently in all dealings with Counsel and the prosecution of the claim;
 - (2) to deliver within a reasonable time papers reasonably requested by Counsel for consideration;
 - (3) promptly to bring to Counsel's attention:
 - (a) any award made;
 - (b) any evidence information or communication which may materially affect the merits of any issue in the case;
 - (c) 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 and, in particular, to notify counsel at the conclusion of the application of the result of the application and any award of compensation made;
 - (4) promptly to communicate to the Client any advice by Counsel:
 - (a) to incur, or not incur, expenditure in obtaining evidence or preparing the case;
 - (b) to instruct Leading Counsel or a more senior or specialised barrister;
 - (c) that the case or a substantial issue in the case is likely to be lost;
 - (d) that damages and costs recoverable on success make it unreasonable or uneconomic for the action to proceed;
 - (5) promptly to inform Counsel's clerk of any listing for hearing;
 - (6) to deliver the brief to Counsel in accordance with the agreement between the Solicitor and Counsel
 - (7) to inform Counsel promptly if the case concludes at any time before the date fixed for trial
 - (8) to inform Counsel in writing within 2 days of any reduction of Counsel's fees on assessment in the absence of Counsel; and

TERMINATION

Termination by Counsel

8. Counsel may terminate the agreement if:
- (1) Counsel discovers the existence of any document which should have been disclosed to him under clause 3 above and which materially affects Counsel's view of the likelihood of success and/or the amount of financial recovery in the event of success;
 - (2) Counsel discovers that the Solicitor is in breach of any obligation in paragraph 7 hereof;

- (3) the Solicitor, Client or any Litigation Friend rejects Counsel's advice in any respect set out in paragraph 7(4) hereof;
- (4) Counsel is informed or discovers the existence of information which has been falsified or should have been but has not been provided by the Solicitor, Client or any Litigation Friend, of which Counsel was not aware and which Counsel could not reasonably have anticipated, which materially affects the merits of any substantial issue in the case;
- (5) Counsel is required to cease to act by the Code of Conduct of the Bar of England and Wales or Counsel's professional conduct is being impugned; provided that 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;

Termination by the Solicitor

9. The Solicitor may terminate the agreement at any time on the instructions of the Client or any Litigation Friend.

Automatic Termination

10. This agreement shall automatically terminate if:
 - (1) Counsel accepts a full-time judicial appointment;
 - (2) Counsel retires from practice;
 - (3) the Solicitor's retainer agreement with the Client is terminated before the conclusion of the case;
 - (4) the Client dies.

Counsel taking Silk

11. If Counsel becomes Queen's Counsel during the course of the agreement then either party may terminate it provided he/she does so promptly in writing.

COUNSEL'S FEES AND EXPENSES

12. Counsel's Normal Fees

- (1) Counsel's fees upon which a success fee will be calculated (the normal fees) will be calculated on the basis of the figures contained in the agreement between the Solicitor and Counsel.
- (2) To the extent that the hours of preparation set out in that agreement are reasonably exceeded then Counsel's hourly rate will apply to each additional hour of preparation.
- (3) Counsel's normal fees will be subject to review with effect from each successive anniversary of the date of this agreement.

Counsel's Success Fee

13. The rate of Counsel's success fee and the reasons for the success fee will be as set out in the agreement between the Solicitor and Counsel.

COUNSEL'S ENTITLEMENT TO FEES

14. Definition of "success"

- (1) "Success means the Client becoming entitled to recover compensation or increased compensation, in the event that an award has already been made prior to counsel entering into this agreement, and any relevant appeal is concluded.
- (2) Subject to paragraphs 17 hereof, in the event of success the Solicitor will pay Counsel his/her normal and success fees.

Failure

15. Subject to paragraph 16 (1) hereof, if the application is lost or on Counsel's advice ends without success then Counsel is not entitled to any fees or expenses.

16. Errors and Indemnity for Fees

- (1) If, because of a breach by the Solicitor of his/her duty to the Client, the Client's application is dismissed or struck out as a result of any failure by the Solicitor, the Solicitor shall (subject to sub paragraph (2) hereof) pay Counsel such normal fees as would have been recoverable under the Agreement.
- (2) No payment shall be made under sub paragraph (1) hereof in respect of any non-negligent breach by the Solicitor.

Adjudication on disagreement

- (3) In the event of any disagreement as to whether there has been an actionable breach by the Solicitor, or as to the amount payable under sub paragraph (1) hereof, that disagreement shall be referred to adjudication by a panel consisting of a Barrister nominated by PIBA and a Solicitor nominated by the Law Society who shall be requested to resolve the issue on written representations and on the basis of a procedure laid down by agreement. The costs of such adjudication shall, unless otherwise ordered by the panel, be met by the unsuccessful party.
- (4) In the event of a panel being appointed pursuant to sub paragraph (3) hereof:
 - (a) 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 the Law Society to nominate a third member of the panel;

- (b) that panel shall be entitled if it considers it reasonably necessary, to appoint a qualified costs draftsman, to be nominated by the President for the time being of the Law Society, to assist the panel;
- (c) the Solicitor alleged to be in breach of duty shall be entitled to argue that, on the basis of information reasonably available to both the Solicitor, 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

- (5) The amount payable in respect of any claim under sub paragraph (1) shall be limited to a maximum of £25,000.

On Termination of the Agreement

Termination by Counsel

- 17. (1) If Counsel terminates the agreement under paragraph 8 then, subject to sub-paragraph 2 hereof, Counsel may elect either:
 - (a) to receive payment of normal fees without a success fee which the Solicitor shall pay not later than three months after termination: ("**Option A**"), or
 - (b) to await the outcome of the case and receive payment of normal and success fees if it ends in success: ("**Option B**").
- (2) If Counsel terminates the agreement because the Solicitor, Client or Litigation Friend rejects advice under paragraph 7(4) (c) or 7(4)(d) Counsel is entitled only to "**Option B**".

Termination by the Solicitor

- (3) If the Solicitor terminates the agreement under paragraph 9, Counsel is entitled to elect between "**Option A**" and "**Option B**".

Automatic Termination and Counsel taking silk

- (4) If the agreement terminates under paragraphs 10 or 11 Counsel is entitled only to "**Option B**".

Return of Work

- 18. 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:
 - (1) Counsel will use his/her best endeavours to ensure that an appropriate barrister agrees to act for the Client on the same terms as this agreement;

- (2) 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 fee incurred by the Solicitor or Client.
- (3) If the application ends in success Counsel's fees for work done shall be due and paid on the conditional fee basis contained in this agreement whether or not the replacement barrister acts on a conditional fee basis; but
- (4) If the Solicitor or Client rejects any advice by the replacement barrister of the type described in paragraph 7(4) hereof, the Solicitor shall immediately notify Counsel who shall be entitled to terminate this agreement under paragraph 8(3).

ASSESSMENT AND PAYMENT OF COSTS / FEES

Solicitor's Obligation to pay

19. (1) The amounts of fees and expenses payable to Counsel under this agreement:
 - (a) are not limited by reference to the compensation which may be recovered on behalf of the Client; and
 - (b) are payable whether or not the Solicitor is or will be paid by the Client or Opponent.
- (2) Upon success the Solicitor will promptly conclude by agreement or assessment the question of costs and will pay Counsel promptly and in any event not later than one month after receipt of such costs the full sum due under this agreement.

20. Challenge to Counsel's Fees

The Solicitor will inform Counsel's clerk in good time of any challenge made to his fee and of the date, place and time of any detailed costs assessment, the Client has taken out and provide Counsel with the opportunity to make written or verbal representations in support of his/her fees at any assessment and unless Counsel is present or represented at the assessment hearing will place Counsel's relevant details and any written representations before the assessing judge and argue Counsel's case for his/her fee.

END