



Legal Services Board decision notice issued under Part 3 of Schedule 4 to the Legal Services Act 2007

The Bar Standards Board's (BSB) application for approval of amendments to Part VI of the BSB Code of Conduct, Acceptance and return of instructions

The Legal Services Board (LSB) has granted an application from the BSB for amendments to its Code of Conduct provisions on the acceptance of instructions:

- A new paragraph (604(h)) to the effect that the “Cab Rank Rule” will not apply to work other than that offered on the New Contractual Terms to be included in the Code of Conduct or any standard terms on which the barrister holds himself as willing to contract.
- Amendment to paragraph 604(g) to the effect that the Cab Rank Rule would not apply to cases proposed by solicitors named on the List of Defaulting Solicitors which will replace the Withdrawal of Credit Scheme.

This application was received by the LSB on 26 October 2011.

This Decision Notice sets out the basis for the LSB granting the application and the decision taken, including a brief description of the changes.

Introduction

1. The LSB is required by Part 3 of Schedule 4 to the Legal Services Act 2007 (the Act) to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements. The Bar Council is an approved regulator and the BSB is the regulatory arm to which the Bar Council has delegated its regulatory functions.
2. Paragraph 25 of Schedule 4 to the Act explains that the LSB may only refuse an application setting out a proposed change to the regulatory arrangements if it is satisfied that by granting the application one or more of the criteria specified in sub paragraph 25(3) (and listed in the footnote below¹) will be met. For example, the LSB's granting of the application to alter the regulatory arrangements must not be prejudicial to the regulatory objectives overall. Accordingly, if the LSB is not satisfied that one or more of the criteria for refusal are met, then it must approve the application in whole, or the parts of it that can be approved.

¹ The Board may refuse the application only if it is satisfied that—(a) granting the application would be prejudicial to the regulatory objectives, (b) granting the application would be contrary to any provision made by or by virtue of the Act or any other enactment or would result in any of the designation requirements ceasing to be satisfied in relation to the approved regulator, (c) granting the application would be contrary to the public interest, (d) the alteration would enable the approved regulator to authorise persons to carry on activities which are reserved legal activities in relation to which it is not a relevant approved regulator, (e) the alteration would enable the approved regulator to license persons under Part 5 to carry on activities which are reserved legal activities in relation to which it is not a licensing authority, or (f) the alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration.

3. As provided for by paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules² about how the application to alter the regulatory arrangements must be made including the contents of that application. The rules highlight the applicant's obligations under section 28 of the Act to have regard to the Better Regulation Principles. The rules also require that the applicant provides information about the nature and effect of each proposed change and of appropriate consultation undertaken. Sub paragraph 25(3)(f) of Schedule 4 to the Act requires that each proposed alteration has been made or is likely to be made in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration. This therefore includes the LSB's rules.
4. The chronology for the LSB's handling of this application can be found towards the end of this Decision Notice.

Background

5. The Cab Rank Rule is defined in Part VI of the BSB Code of Conduct, setting out the provisions for barristers on the acceptance of instructions. Paragraph 601 states
 - “ A barrister who supplies advocacy services must not withhold those services:
 - (a) on the ground that the nature of the case is objectionable to him or to any section of the public;
 - (b) on the ground that the conduct opinions or beliefs of the prospective client are unacceptable to him or to any section of the public;
 - (c) on any ground relating to the source of any financial support which may properly be given to the prospective client for the proceedings in question (for example, on the ground that such support will be available as part of the Community Legal Service or Criminal Defence Service)”.
6. Paragraph 602 states:
 - “ A self employed barrister must comply with the Cab Rank Rule and accordingly except only as provided for in paragraphs 603, 604, 605 and 606 he must in any field in which he professes to practise in relation to work appropriate to his experience and seniority irrespective of whether his client is paying privately or is publicly funded:
 - (a) accept any brief to appear before a court in which he professes to practise
 - (b) accept any instructions
 - (c) act of any person on whose behalf he is instructedand to do so irrespective of (i) the party on whose behalf he is instructed (ii) the nature of the case and (iii) any belief or opinion which he may have formed as to the character reputation cause conduct guilt or innocence of that person”.
7. Paragraphs 603 – 606 describe the circumstances when a self employed barrister is not required to comply with the Cab Rank Rule. The current paragraph 604 sets out certain fee related issues which if they arise means that the barrister is not obliged to accept instructions in relation to fee payment. Specifically, 604(g) deals with cases where the instructing solicitor proposes contractual terms (either the Contractual Terms in Appendix G2 or any other contractual terms).
8. For cases where no contractual terms are agreed, the BSB has found some experience of solicitors not paying the fees owed to barristers. Currently there is an arrangement whereby solicitors or firms who failed to pay fees can be the subject of a Withdrawal of Credit Direction

² Rules for Rule Change Applications – Version 2 (November 2010)

which prevents a barrister from accepting any instructions from that solicitor or firm, though this does not in itself secure payment of monies due.

9. Increasingly barristers are seeking to agree contractual terms with solicitors and so mitigate the risk of non-payment of fees by solicitors. However, since paragraph 604(g) of the Code of Conduct currently provides that a barrister is not obliged to accept instructions on negotiated contractual terms, wider use of contractual arrangements risks undermining the operation of this Cab Rank Rule. The BSB proposals are designed to mitigate this risk by providing a set of standard contractual terms on which a barrister will be required to accept instructions under the Cab Rank Rule.

The proposals

10. The BSB proposes to introduce into the Code of Conduct a new paragraph 604(h) on accepting instructions on contractual terms which will operate with the Cab Rank Rule. Under the revised rule, where a solicitor proposes an instruction on either the New Contractual Terms (to be Annex T to the Code), or any standard terms on which the barrister advertises he is prepared to undertake work, then the Cab Rank Rule will apply and the barrister will be obliged to accept the instructions (subject to any of the other exceptions in the Code of Conduct not applying). The BSB believe that this will allow the barrister to supply advocacy services on a contractual basis while at the same time preserving the benefits of the Cab Rank Rule.
11. The BSB also proposes (revised paragraph 604(g)) that barristers are not obliged to accept instructions from solicitors on the List of Defaulting Solicitors. The advisory List of Defaulting Solicitors will replace the Withdrawal of Credit Scheme.

The Assessment Process – issuing a Warning Notice

12. Having considered all of the information submitted by the BSB, the LSB concluded that it had needed further advice to allow it to satisfy itself that the refusal criteria in Schedule 4 had not been met. Specifically the concerns which lead us to consider refusal and about which we sought advice were:
 - The appropriateness for terms of contract to be included in regulatory arrangements.
 - Impact on consumers, solicitors, other lawyers and alternative business structures.
 - Whether the existence of a set of default terms raise competition concerns.
 - Impact on individual solicitors and clients of being put on the List of Defaulting Solicitors.
 - Whether there were alternative solutions to deal with the issue the BSB was trying to resolve.
13. The Act requires that, if the Board is considering refusing an application, it gives notice (a Warning Notice) of this to the applicant. Issuing a Warning Notice allows the LSB to seek formal advice from a range of stakeholders to help inform the LSB decision.
14. A Warning Notice was issued on 20 January 2012 after which 22 organisations were invited to submit advice on the application. Seven submissions were received and the LSB hereby records its thanks to those who took the time to consider the proposals and give advice. The BSB made representations on the advice on 11 May 2012.

15. The key points from the Warning Notice process are as follows:

- Only the Law Society raised any concerns about the proposal; most respondents supported (or at least did not object to) the New Contractual Terms being included in the regulatory arrangements.
- The Law Society's principal concerns were that the New Contractual Terms were biased in favour of the barrister though the response did not specify the particular aspects of the terms they considered to be biased. The LSB notes that solicitors and barristers retain the freedom to agree terms other than the New Contractual Terms.
- The proposed List of Defaulting Solicitors is seen as an improvement on the current Withdrawal of Credit Scheme since it is advisory. The LSB agrees with this view.
- The BSB has accepted the advice that the terms should be extended to ABS and legal disciplinary practices authorised by the Solicitors Regulation Authority (SRA) and has submitted revised rules to reflect this.
- The BSB has noted the feedback that the provisions should be extended to authorised persons authorised by approved regulators other than the SRA; it believes that further work needs to be done to ensure that there are no unintended consequences.
- The Warning Notice process has not identified any significant new information on the potential impact on consumers.
- There were no substantive comments received on any potential impacts on the competition for legal services.

16. The request for advice, the responses and the BSB representations on that advice are all available on the LSB website.³

Decision

17. Having considered all of the information provided by the BSB, the advice received and the representations on that advice, the LSB has decided to grant this application. In reaching this decision, the LSB has taken the following into account.

Scope of the decision

18. The decision relates only to the principle behind the rule change proposal, i.e. that standard terms should be available. LSB has therefore not considered the principles behind the Cab Rank Rule itself. The application has been about the consequences of the application of the Cab Rank Rule.

19. In approving this application, the LSB does not warrant that the contents of the New Contractual Terms will be held to be enforceable between the barrister and any other party. It is not part of the approval process for the LSB to substitute for the New Contractual Terms a preferred form of drafting. It will be a matter for each barrister, and any party instructing a barrister, to satisfy

³ Request for advice http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/consultee_letter_generic.pdf
Responses

http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/bsb_cab_rank_rule_application_responses_from_consultees.pdf

BSB representations

http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/letter_to_lsb_sct_110512_final.pdf

themselves that the New Contractual Terms (or any other agreed contractual terms) are appropriate to govern the provision of advocacy services in question. As has been highlighted in this Decision Notice, an instructing solicitor/body is not obliged to accept the new contractual terms. S/He can opt for the terms on which a barrister advertises (where the Cab Rank Rule would apply), or negotiate agreed terms (which would not be subject to the Cab Rank Rule).

Representative or regulatory function?

20. The initial review of the application led the LSB to question whether the purpose of the application was to promote the interests of those persons regulated by the BSB, by improving the ability of barristers to recover fees from solicitors. The LSB therefore had to consider whether submission of the application was properly characterised as a regulatory, as opposed to a representative, function.
21. There is not a simple test which can be applied to answering this question – each case will turn on its own facts. In this case, the New Contractual Terms will operate only in relation to the Cab Rank Rule. The Cab Rank Rule is clearly a regulatory arrangement and since the New Contractual Terms are inextricably linked to the Cab Rank Rule, it is logical to conclude that they are also regulatory in nature and therefore subject to LSB approval, albeit that the consequence of the change has the potential to be of benefit to the profession.
22. The BSB has proposed that it is necessary to specify contractual terms in the Code of Conduct if the Cab Rank Rule is to continue to operate. The LSB does not accept that proposition; it would be quite possible for the rule to stand alone or for there to be a guidance published about reasonable standard terms being available. However, in the LSB's view, a difference of opinion as to the mechanism used to support the operation of the Cab Rank rule does not, of itself, undermine a conclusion that this is a regulatory measure. While one of the consequential effects of the change will be that barristers are in a better position to seek redress for non-payment, the main driver from the BSB's point of view is to ensure that the Cab Rank Rule (which it considers is fundamental to ensuring access to justice) continues to operate as intended.

Scope of the new arrangements

23. The presentation of the application led to some confusion among those that gave advice as to the scope of the New Contractual Terms with some concluding that they are *prescribed* terms. The representations by the BSB and subsequent discussions have clarified that this is not the case.
24. The BSB's approach has been that if barristers are to enter into contractual arrangements with professional clients more frequently, then this needs to be done in a way that does not undermine the operation of the Cab Rank Rule. The New Contractual Terms have been designed to allow barristers to enter into a contractual relationship while maintaining the fundamental principle of the Cab Rank Rule.
25. Where a barrister advertises his own standard terms, professional clients will have a choice as to whether to use those or the New Contractual Terms – and if either are selected the Cab Rank Rule will apply and the barrister will have to accept the instructions or (subject to any other exception not applying) risk action being brought for being in breach of the Code. However, this does not preclude the solicitor from seeking to negotiate different terms should the circumstances require this.

List of Defaulting Solicitors

26. The removal of the Withdrawal of Credit Scheme and the introduction of an advisory List of Defaulting Solicitors, against which barristers can make an assessment as to whether to accept instructions, is a positive move.

Application to other persons authorised under the Act

27. In the LSB's assessment (also noted in advice received in response to the Warning Notice), the BSB's application applied solely to the arrangements between solicitors and barristers. To some extent this is a reflection of the fact that the proposed changes resulted from lengthy discussions between the Bar Council and the Law Society dating back some years.

28. Given the emphasis that the BSB places on the Cab Rank Rule as being critical to the delivery of access to justice, the BSB will need to consider how the arrangements need to be revised to cover instructions from all types of professional client so that consumers of advocacy services are not denied the benefit of the Cab Rank Rule.

29. The LSB agrees that considering that the vast majority of current instructions come from solicitors, it would not be proportionate to delay a decision on this application pending that further consideration. However, the LSB expects the BSB to produce proposals on the issue as part of its current work on developing its Code of Conduct.

LSB's decision-making powers: applications to change regulatory arrangements

30. There is a presumption that an application to change regulatory arrangements will be approved – "the Board may refuse an application only if it is satisfied that" one or more of the criteria in paragraph 25(3) of Schedule 4 is met. The LSB must seek sufficient information in order to evidence that the refusal criteria have been satisfied.

31. The LSB's view is that, while the solution proposed by the BSB is not one which the LSB considers to be the most appropriate, having considered the BSB's application against the criteria in paragraph 25(3) of Schedule 4 to the Act, the LSB considers that there is no reason to refuse this application; accordingly, the LSB grants this application.

32. In making this decision, the LSB has formed no view on the appropriateness of the Cab Rank Rule. The BSB is undertaking a wide ranging review of its Code of Conduct with the aim of producing a set of regulatory arrangements that are outcomes focused. As a consequence of that review, it may be that the BSB reconsiders whether detailed rules and related contract terms are appropriate or necessary. We will consider this as part of our assessment of the BSB's new Code of Conduct, due to be submitted to the LSB in late 2012 or early 2013.

33. The Annex to this decision notice contains the rule changes approved by the LSB.

Chronology

- The LSB confirmed receipt of this application on 27 October 2011.
- The 28 day initial decision period for considering the application ended on 22 November 2011.

- On 22 November 2011, the LSB issued an extension notice to the BSB extending the period in which the LSB would consider the application to 24 January 2012.
- The LSB issued a Warning Notice on 20 January 2012; this extended the decision period to 19 January 2013.
- Advice was requested on 25 January 2012.
- The advice received was sent to the BSB on 2 April 2012. The BSB made its written representation on 11 May 2012.
- This decision is effective from 27 July 2012
- This Decision Notice will be published on our website on 30 July 2012.

Chris Kenny, Chief Executive

Acting under delegated authority granted by the Board of the Legal Services Board

27 July 2012

Annex 1- Amendments to the Bar Code of Conduct

Amendments to the Bar Code of Conduct

Rules 403.5(a)(iii), 404.2(f) and 603(g) and Annexes G1 and G2 deleted.

Insert the Standard Contractual Terms at Annex T.

Amend 604(g), and insert 604(h) as follows:

“604. Subject to paragraph 601 a self-employed barrister is not obliged to accept instructions...

“(g) ~~To do any work under the Contractual Terms on which barristers offer their Services to Solicitors 2001 as amended and in force from time to time (reproduced in Appendix G1) or any other contractual terms~~ if the instructing solicitors are named on the List of Defaulting Solicitors, regardless of whether his fees will be paid by the Legal Services Commission or the Criminal Defence Service”

(h) save in a matter where the barrister is paid directly (a) by the Legal Services Commission as part of the Community Legal Service or the Criminal Defence Service or (b) by the Crown Prosecution Service, after [insert date] to do any work other than on:

(i) the Standard Contractual Terms for the Supply of Legal Services by Barristers to Authorised Persons 2012 reproduced at Appendix T1 as amended and in force from time to time; or

(ii) if the self-employed barrister publishes standard terms of work, on those standard terms of work

Re-number existing 604(h) as 604(i) and 604(i) as 604(j) respectively.

Insert in the appropriate place in Definitions (Part X of the Code) the following definition:

““List of Defaulting Solicitors” means the list of firms and persons referred to in the Bar Council’s Rules relating to the List of Defaulting Solicitors as amended from time to time.”

The (new) Standard Contractual Terms for the Supply of Legal Services by Barristers to Authorised Persons 2012 – Annexe T to the Bar Code of Conduct

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Standard Conditions of Contract For The Supply Of Legal Services By Barristers To Authorised Persons 2012

1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions of Contract for the Supply of Services by Barristers to Authorised Persons (as defined below) (“the Conditions”):

1.1.1 reference to a clause is to the relevant clause of these Conditions;

1.1.2 headings are included for convenience only and do not affect the interpretation of these Conditions;

1.1.3 references to “parties” or a “party” are references to the parties or a party to the Agreement;

1.1.4 references to the masculine include the feminine and references to the singular include the plural and vice versa in each case;

1.1.5 references to a person include bodies corporate (including limited liability partnerships) and partnerships, in each case whether or not having a separate legal personality, except where the context requires otherwise;

1.1.6 references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;

1.1.7 references to any provision of the Code include references to that provision as amended replaced or renumbered from time to time; and

1.1.8 references to a person or body include references to its successor.

1.2 In these Conditions, the following words have the following meanings, except where the context requires otherwise:-

“the Agreement”

the agreement between the Barrister and the Authorised Person for the Barrister to provide the Services on the terms set out in these Conditions;

“the Authorised Person”

the person who is an authorised person for the purposes of s. 18(1)(a) of the Legal Services Act 2007 and whose approved regulator under that Act is the Law Society and/or the SRA, and all successors and assignees;

“the Barrister”

the barrister, practising as a member of the Bar of England & Wales, who is willing and able in that capacity to provide the Services in connection with

the Case and in accordance with the Instructions from the Authorised Person on behalf of the Lay Client;

“the Case”

the particular legal dispute or matter, whether contentious or non-contentious, in respect of which the Barrister is Instructed to provide the Services;

“the Code”

the Code of Conduct of the Bar of England and Wales, as amended from time to time;

“Conditional Fee Agreement”

the meaning ascribed to those words by section 58 of the Courts and Legal Services Act 1990;

“the Instructions”

the briefs, instructions and requests for work to be done (and all accompanying materials) given by the Authorised Person to the Barrister in whatever manner to enable him to supply the Services, and “Instruct” and “Instructing” shall have corresponding meanings;

“Invoice”

includes a fee note not amounting to a VAT invoice

“the Law Society”

the Law Society of England and Wales

“the Lay Client”

the person for whose benefit or on behalf of whom the Barrister is Instructed by the Authorised Person to provide the Services (who may be the Authorised Person where the Case concerns the affairs of the Authorised Person)

“the Services”

the legal services provided by the Barrister in connection with the Case pursuant to the Instructions provided by the Authorised Person;

“the SRA”

the Solicitors Regulation Authority; and

“the SRA Code”

the part of the SRA Handbook published by the SRA on 16 September 2011 referred to as the “SRA Code of Conduct 2011” as amended from time to time.

2. APPLICATION OF THESE CONDITIONS

- 2.1 The Barrister provides the Services requested by the Authorised Person on the terms set out in these Conditions and subject to his professional obligations under the Code.
- 2.2 These Conditions (other than this clause 2.2) may be varied if, but only if, expressly agreed by the Parties in writing (including by exchange of emails).
- 2.3 By instructing the Barrister to provide further Services in relation to the Case, the Authorised Person accepts these Conditions in relation to those further Services, as well as in relation to the Services which the Barrister is initially instructed to provide.
- 2.4 These Conditions do not apply in the following circumstances:
 - 2.4.1 the Barrister is paid directly (a) by the Legal Services Commission, through the Community Legal Service or the Criminal Defence Service or (b) by the Crown Prosecution Service; or
 - 2.4.2 the Barrister has entered into a Conditional Fee Agreement in relation to the Case that does not specifically incorporate these Conditions.
- 2.5 Nothing in these Conditions nor any variation referred to in clause 2.2 shall operate so as to conflict with the Barrister’s duty under the Code or with the Authorised Person’s duty under the SRA Code.

3. THE INSTRUCTIONS TO THE BARRISTER

- 3.1 The Authorised Person must ensure the Instructions delivered to the Barrister are adequate to supply him with the information and documents reasonably required and in reasonably sufficient time for him to provide the Services requested.
- 3.2 The Authorised Person must respond promptly to any requests for further information or instructions made by the Barrister.
- 3.3 The Authorised Person must inform the Barrister immediately if there is reason to believe that any information or document provided to the Barrister is not true and accurate.

- 3.4 Where the Authorised Person requires the Barrister to perform all or any part of the Services urgently the Authorised Person must ensure that:
 - 3.4.1 all relevant Instructions are clearly marked “Urgent”; and
 - 3.4.2 at the time the Instructions are delivered the Barrister is informed in clear and unambiguous terms of the timescale within which the Services are required and the reason for the urgency.
- 3.5 The Authorised Person must inform the Barrister within a reasonable time if the Case is settled or otherwise concluded.

4. *RECEIPT AND ACCEPTANCE OF THE INSTRUCTIONS*

- 4.1 Upon receipt of the Instructions, the Barrister will within a reasonable time review the Instructions and inform the Authorised Person whether or not he accepts the Instructions.
- 4.2 The Barrister may accept or refuse the Instructions in the circumstances and for the reasons set out in the Code and the Barrister incurs no liability if he refuses any Instructions in accordance with the Code.
- 4.3 Notwithstanding acceptance of Instructions in accordance with Clause 4.1 above, the Barrister shall be entitled to carry out any customer due diligence required by the Money Laundering Regulations 2007. The Authorised Person will provide the Barrister with all reasonable assistance to carry out any necessary customer due diligence including (if required to do so) consenting to the Barrister relying upon the Authorised Person under Regulation 17 of the Money Laundering Regulations 2007.
- 4.4 In the event that the Barrister 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
- 4.5 Subject to the preceding provisions of this Clause 4, the Agreement comes into effect upon the Barrister accepting the Instructions.

5. *CONFIDENTIAL INFORMATION AND PUBLICITY*

- 5.1 The Barrister will keep confidential all information provided to him in connection with the Case unless:
 - 5.1.1 he is authorised by the Authorised Person or the Lay Client to disclose it;
 - 5.1.2 the information is in or comes into the public domain without any breach of confidentiality on the part of the Barrister; or

- 5.1.3 he 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 Authorised Person and/or the Lay Client as much advance notice as possible and permitted of any such required disclosure.
- 5.2 The Barrister owes the same duty of confidentiality to other lay clients, and will therefore not disclose or make use of any information that might be given to him in confidence in relation to any other matter without the consent of his other lay client, even if it is material to providing the Services.
- 5.3 Unless the Authorised Person expressly informs the Barrister to the contrary in advance in writing, the Barrister may allow the Instructions to be reviewed by another barrister or by a pupil (including a vacation pupil or mini-pupil) in chambers, on terms that that other barrister or pupil complies with clause 5.1.
- 5.4 Subject to his obligation under clause 5.1, the Barrister may make and retain copies of the Instructions and any written material produced by him.
- 5.5 To the extent such information is already in the public domain, the Barrister may disclose in his marketing and similar materials, and to prospective clients and publishers of legal directories that he is or has been instructed by the Authorised Person and/or for the Lay Client and the nature of the Case. To the extent any such information is not already in the public domain, the Barrister may only refer to it for marketing purposes in a form which sufficiently preserves the Lay Client's privilege and confidentiality and (where the law so requires) with the Lay Client's consent.

6. *ELECTRONIC COMMUNICATION*

- 6.1 Unless otherwise directed by the Authorised Person, the Barrister may correspond by means of electronic mail, the parties agreeing hereby:
- 6.1.1 to accept the risks of using electronic mail, including but not limited to the risks of viruses, interception and unauthorised access; and
- 6.1.2 to use commercially reasonable procedures to maintain security of electronic mail and to check for commonly known viruses in information sent and received electronically.

7. *DATA PROTECTION*

- 7.1 The Barrister is a data controller for the purposes of the Data Protection Act and is bound by the Act amongst other things, to take appropriate technical and organisational measures against unauthorised processing of personal data and against accidental loss or destruction of, or damage to, personal data. He is entitled to process (which includes obtaining, consulting, holding, using and disclosing) personal data of the Lay Client, the Authorised Person and others to enable him to provide the Services, to liaise with the Authorised Person in respect of the Lay

Client's case or on the Lay Client's behalf, to maintain and update client records, to produce management data, to prevent crime, to publicise his activities as set out in clause 5.5 above, to comply with regulatory requirements and as permitted or required by law. The Lay Client and the Authorised Person each have a right of access and a right of correction in respect of their personal data which the Barrister holds about them, in accordance with data protection legislation.

8. PROVIDING THE SERVICES

- 8.1 The Barrister will exercise reasonable skill and care in providing the Services. The Barrister acknowledges the existence of a duty of care owed to the Lay Client at common law, subject to his professional obligations to the Court and under the Code.
- 8.2 The Barrister will provide the Services by such date as may be agreed between the parties, and in any event will do so within a reasonable time having regard to the nature of the Instructions and his other pre-existing professional obligations as referred to in paragraph 701 of the Code.
- 8.3 The Barrister may delegate the provision of any part of the Services but will remain responsible for the acts, omissions, defaults or negligence of any delegate as if they were the acts, omissions, defaults or negligence of the Barrister.
- 8.4 The Barrister will, in addition, provide all information reasonably required to enable the Lay Client and/or Authorised Person to assess what costs have been incurred and to obtain and enforce any order or agreement to pay costs against any third party.

9. INTELLECTUAL PROPERTY RIGHTS

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

10. LIABILITY

- 10.1 Subject to Clause 10.2 below, the Barrister is not liable:
- 10.1.1 For any loss or damage, however suffered, by any person other than the Lay Client;

- 10.1.2 for any loss or damage, however suffered, which is caused by inaccurate, incomplete or late Instructions;
- 10.1.3 for any indirect or consequential loss however suffered.
- 10.2 Nothing in Clause 10.1 shall operate so as to exclude liability where such exclusion is prohibited by law.

11. FEES

- 11.1 The fee for the Services shall in all cases comply with paragraph 405 of the Code and will be calculated as agreed between the Barrister (or his clerk on his behalf) and the Authorised Person, whether prospectively or retrospectively.
- 11.2 The Barrister may agree to provide the Services for a fixed fee or may agree to provide the Services on the basis of an agreed hourly rate or on such other basis as may from time to time be agreed. If an hourly rate is agreed:
 - 11.2.1 the agreed hourly rate will be subject to reasonable periodic review by the Barrister, and in addition may be reviewed by the Barrister to reflect any reasonably significant changes in his status or seniority;
 - 11.2.2 any variation of the agreed hourly rate and the date on which it shall take effect shall be agreed with the Authorised Person, and in default of agreement the Barrister shall be entitled to treat the Agreement as having been terminated by the Authorised Person, subject to the Barrister's obligations under paragraph 610 of the Code.
- 11.3 If no fee or hourly rate is agreed, then the Barrister is entitled to charge a reasonable fee for the Services having regard to all relevant circumstances.
- 11.4 The fee for the Barrister's Services is exclusive of any applicable Value Added Tax (or any tax of a similar nature), which shall be added to the fee at the appropriate rate.

12. BILLING, PAYMENT AND INTEREST

- 12.1 The Barrister shall be entitled to deliver an Invoice to the Authorised Person in respect of the Services or any completed part thereof and any disbursements at any time after supplying the Services or the relevant part thereof.
- 12.2 The Barrister shall deliver an Invoice to the Authorised Person in respect of the Services or any part thereof and any disbursements as soon as reasonably practicable after and not more than 3 months from the earliest of: (a) a request by the Authorised Person; (b) notification by the Authorised Person that the Case has settled or otherwise concluded; or (c) termination of the Agreement.
- 12.3 The Invoice must set out an itemised description of:
 - 12.3.1 the Services provided by the Barrister and the fees charged;

- 12.3.2 any disbursements incurred and the cost thereof; and
- 12.3.3 VAT (or any tax of a similar nature), if any.
- 12.4 The Authorised Person must pay the Invoice within 30 days of delivery, time being of the essence, whether or not the Authorised Person has been put in funds by the Lay Client. The Invoice must be paid without any set-off (whether by reason of a complaint made or dispute with the Barrister or otherwise), and without any deduction or withholding on account of any taxes or other charges.
- 12.5 Where the Barrister has delivered a fee note, on request by the Authorised Person the Barrister will deliver a VAT invoice following receipt of payment.
- 12.6 If the Invoice remains outstanding more than 30 days from the date of delivery, the Barrister is entitled:
 - 12.6.1 to the fixed sum and interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998;
 - 12.6.2 to sue the Authorised Person for payment; and
 - 12.6.3 subject to the Barrister's obligations to the Court and under paragraph 610 of the Code, to refrain from doing any further work on the Case unless payment for that further work is made in advance.

13. TERMINATION

- 13.1 The Authorised Person may terminate the Agreement by giving notice to the Barrister in writing at any time.
- 13.2 The Agreement will terminate automatically as soon as the Barrister is under an obligation pursuant to Part VI of the Code or otherwise to withdraw from the Case or to cease to act and has complied with any requirements of the Code in so doing.
- 13.3 The Barrister may terminate the Agreement by written notice when he is entitled pursuant to Paragraphs 608 to 610 of the Code or otherwise to withdraw from the Case or cease to act and has complied with any requirements of the Code in so doing.
- 13.4 For the avoidance of doubt, termination of the Agreement, whether under this clause 13 or otherwise, does not affect or prejudice any accrued liabilities, rights or remedies of the parties under the Agreement.

14. WAIVER

- 14.1 Except where expressly stated, nothing done or not done by the Barrister or the Authorised Person constitutes a waiver of that party's rights under the Agreement.

15. SEVERABILITY

- 15.1 If any provision of these Conditions is found by a competent court or administrative body of competent jurisdiction to be invalid or unenforceable for any reason, such invalidity or unenforceability shall not affect the other provisions of these Conditions which will remain in full force and effect.
- 15.2 If any provision of these Conditions is found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question will apply with such deletions as may be necessary to make it valid and enforceable.

16. EXCLUSION OF RIGHTS OF THIRD PARTIES

- 16.1 This Agreement governs the rights and obligations of the Barrister and the Authorised Person towards each other and confers no benefit upon any third party (including the Lay Client). The ability of third parties to enforce any rights under the Contracts (Rights of Third Parties) Act 1999 is hereby excluded.

17. ENTIRE AGREEMENT

- 17.1 Subject to clauses 2.2 and 11.1, the Agreement, incorporating these Conditions, comprises the entire agreement between the parties to the exclusion of all other terms and conditions and prior or collateral agreements, negotiations, notices of intention and representations and the parties agree that they have not been induced to enter into the Agreement on the basis of any representation.

18. NOTICES AND DELIVERY

- 18.1 Any notice or other written communication to be given or delivered under this Agreement may be despatched in hard copy or in electronic form (including fax and email) and shall in the case of a notice to be given to the Barrister be given to him at his last known Chambers' address, fax number or email address and shall in the case of a notice to be given to the Authorised Person be given to him at his last known place of business, fax number or email address.
- 18.2 Notices and other written communications under this Agreement shall be deemed to have been received:-
- 18.2.1 In the case of hard copy documents despatched by first class post, on the second working day next following the day of posting;
- 18.2.2 In the case of documents despatched by second class post, on the fourth working day next following the day of posting;

- 18.2.3 In the case of documents in electronic form, on the working day next following the date of despatch.

19. GOVERNING LAW, JURISDICTION AND DISPUTE RESOLUTION

- 19.1 The Agreement and these Conditions shall be governed by and construed in accordance with the law of England and Wales.
- 19.2 Unless any alternative dispute resolution procedure is agreed between the parties, the parties agree to submit to the exclusive jurisdiction of the Courts of England and Wales in respect of any dispute which arises out of or under this Agreement.[†]
- 19.3 Without prejudice to Clause 19.2, the parties may agree to alternative methods of dispute resolution, including submission of any dispute regarding fees to the Voluntary Joint Tribunal on Barristers' Fees where the Authorised Person is a solicitor.[†]

[†] The parties are reminded that if a judgment or a Voluntary Joint Tribunal's award is not fully paid within 30 days, the Barrister may request the Chairman of the General Council of the Bar to include the solicitor on the List of Defaulting Solicitors.