

BAR STANDARDS BOARD

APPLICATION FOR APPROVAL TO AMENDMENT OF CAB RANK RULE – NEW CONTRACTUAL TERMS

October 2011

ANNEX 1

Current Provisions of the Bar Code of Conduct

RELEVANT PASSAGES OF THE CURRENT BAR CODE OF CONDUCT:

"403.2 A self-employed barrister:

"(a) must take all reasonable steps to ensure that...

"(iii) he complies with the Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988 as amended and in force from time to time (reproduced in Annex G1) and with any Withdrawal of Credit Direction issued by the Chairman of the Bar pursuant thereto."

"404.2 Any [head of chambers] must take all reasonable steps to ensure that...

"(f) all barristers practising from his chambers comply with paragraph 403.2 (a)(iii)"

"603. A barrister must not accept any instructions if to do so would cause him to be professionally embarrassed and for this purpose a barrister will be professionally embarrassed...

"(g) if he is a self-employed barrister where the instructions are delivered by a solicitor or firm of solicitors in respect of whom a Withdrawal of Credit Direction has been issued by the Chairman of the Bar pursuant to the Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988 as amended and in force from time to time (reproduced in Annex G1) unless his fees are to be paid directly by the Legal Services Commission or the instructions are accompanied by payment of an agreed fee or the barrister agrees in advance to accept no fee for such work or has obtained the consent of the Chairman of the Bar."

"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 G2) or on any other contractual terms"

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ANNEX 2

Proposed amendments to the Bar Code of Conduct

including proposed new annexes to Code:

Annex T1 – Standard Contractual Terms

Annex T2 – Voluntary Joint Tribunal on Barristers' Fees Rules

Annex T3 – Scheme for complaining to the Bar Council for
publicly funded matters

Annex T4 – Rules Relating to the List of Defaulting Solicitors

PROPOSED AMENDMENTS TO THE BAR CODE OF CONDUCT

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

Insert the Standard Contractual Terms at Annex T1, the Voluntary Joint Tribunal on Barristers' Fees Rules at Annex T2, Scheme for Complaining to the Bar Council at Annex T3 and the Defaulting Solicitors Scheme Rules at Annex T4.

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 on the Instructions of Solicitors 2011 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 2011 (a copy of which is reproduced at Annex T4) as amended from time to time."

**THE (NEW) STANDARD CONTRACTUAL TERMS FOR THE SUPPLY OF LEGAL
SERVICES BY BARRISTERS TO SOLICITORS 2011 –
ANNEXE T1 TO THE BAR CODE OF CONDUCT**

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STANDARD CONDITIONS OF CONTRACT FOR THE SUPPLY OF LEGAL SERVICES BY BARRISTERS TO SOLICITORS 2011

1. DEFINITIONS AND INTERPRETATION

- 1.1 In these Conditions of Contract for the Supply of Legal Services by Barristers to Solicitors ("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), firms 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; and
- 1.1.7 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 Solicitor for the Barrister to provide the Services on the terms set out in these Conditions;

"the Barrister"

the barrister, practising as a member of the Bar of England & Wales, who is willing and able to provide the Services in connection with the Case and in accordance with the Instructions from the Solicitor 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;

“the Instructions”

the written briefs, instructions and requests for work to be done (and all accompanying materials) given by the Solicitor 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 Lay Client”

the Lay Client for whose benefit or on behalf of whom the Barrister is Instructed by the Solicitor to provide the Services (and may include the Solicitor);

“the Services”

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

“the Solicitor”

the sole practitioner or employed solicitor by whom the Barrister is instructed to provide the Services, or the partnership, limited liability partnership or company through or in the name of which an individual instructs the Barrister to provide the Services, and all successors and assignees.

2. APPLICATION AND PRIMACY OF THESE CONDITIONS

- 2.1 The Barrister provides the Services requested by the Solicitor 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 email).
- 2.3 These Conditions apply in respect of the Services provided by the Barrister notwithstanding any other contractual terms sought to be imposed by any person other than the Barrister.
- 2.4 By instructing the Barrister to provide further Services in relation to the Case, the Solicitor 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.
- 2.5 These Conditions do not apply in the following circumstances:
 - 2.5.1 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
 - 2.5.2 the Barrister has entered into a Conditional Fee Agreement in relation to the Case that does not specifically incorporate these Conditions.

3. THE INSTRUCTIONS TO THE BARRISTER

- 3.1 The Solicitor 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 Solicitor must respond promptly to any requests for further information or instructions made by the Barrister.
- 3.3 The Solicitor 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 Solicitor requires the Barrister to perform all or any part of the Services urgently the Solicitor 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 Without prejudice to clause 4.2, the Barrister may refuse any Instructions on the ground that he is unable, due to professional commitment or otherwise, to comply with the timescale for providing the Services requested by the Solicitor.
- 3.6 The Solicitor 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 Solicitor 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 The Barrister is not to be treated as having accepted the Instructions unless and until he has carried out any customer due diligence required by the Money Laundering Regulations 2007. The Solicitor will provide the Barrister with all reasonable assistance to carry out any necessary customer due diligence including consenting to the Barrister relying upon the Solicitor under Regulation 17 of the Money Laundering Regulations 2007.
- 4.4 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 Solicitor 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 the 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 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 Solicitor 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 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 Solicitor 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.

6. ELECTRONIC COMMUNICATION

- 6.1 Unless otherwise directed by the Solicitor, 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. He is entitled to process (which includes obtaining, consulting, holding, using and disclosing) personal data of the Lay Client, the Solicitor and others to enable him to provide the Services, to liaise with the Solicitor 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 has a right of access and a right of correction in respect of his personal data which the Barrister holds about the Lay Client, 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.
- 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 Solicitor 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 product of the Services, including all documents, reports, written advice or other materials provided by the Barrister to the Solicitor or the Lay Client belong to and remain with the Barrister. The Solicitor and the Lay Client have the right and licence to use the product of the Services for the particular Case and the particular purpose for which they are prepared. If the Solicitor or the Lay Client wishes to use copies of the product of the Services for purposes other than those for which they are prepared, this will require the express written permission of the Barrister. The moral rights of the Barrister in respect of the product of the Services are asserted.

10. LIABILITY

- 10.1 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 The Barrister is not under a duty to bring to the attention of the Solicitor any changes in the law or its interpretation which occur and is not liable for any consequences for the Lay Client of such changes in the law or its interpretation occurring subsequently to the date on which the Services are provided.

11. FEES

- 11.1 The fee for the Services will be calculated as agreed between the Barrister (or his clerk on his behalf) and the Solicitor, whether prospectively or retrospectively.

- 11.2 The Barrister may agree to provide the Services for a fixed fee. If at any stage it becomes impractical to complete the Services for the fee agreed, he will inform the Solicitor and seek to agree a revised fee prior to carrying out any further work.
- 11.3 The Barrister may agree to provide the Services on the basis of an agreed hourly rate. If so:
- 11.3.1 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;
- 11.3.2 any variation of the agreed hourly rate and the date on which it shall take effect shall be agreed with the Solicitor, and in default of agreement the Barrister shall be entitled to treat the Agreement as having been terminated by the Solicitor, subject to the Barrister's obligations under the Code.
- 11.4 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.
- 11.5 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 Solicitor 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 Solicitor 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 Solicitor; (b) notification by the Solicitor 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 Solicitor must pay the Invoice within 30 days of delivery, time being of the essence, whether or not the Solicitor 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 Solicitor 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 Solicitor for payment; and

- 12.6.3 to refrain from doing any further work on the Case unless payment for that further work is made in advance.
- 12.7 The Barrister and the Solicitor may agree in writing to refer any dispute which arises over the Barrister's fees to the Voluntary Joint Tribunal on Barristers' Fees, in accordance with Annex T2 to the Code. If the Voluntary Joint Tribunal's award remains unpaid in whole or part for more than 30 days, the Barrister shall be entitled:
- 12.7.1 to refer the matter to the Chairman of the General Council of the Bar and the Rules relating to the List of Defaulting Solicitors shall thereafter apply; and/or
- 12.7.2 to sue the Solicitor to enforce any award.
- 12.8 If any judgment against the Solicitor in respect of the Barrister's fees remains unpaid for more than 30 days, in addition to any other steps he may take to enforce the judgment, the Barrister may refer the matter to the Chairman of the General Council of the Bar and the Rules relating to the List of Defaulting Solicitors shall thereafter apply.

13. TERMINATION

- 13.1 The Solicitor 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 when he is entitled pursuant to Part VI 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 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 Solicitor 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. ENTIRE AGREEMENT

16.1 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.

17. GOVERNING LAW AND JURISDICTION

17.1 The Agreement and these Conditions shall be governed by and construed in accordance with English Law.

17.2 Except as otherwise provided in these Conditions or 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.

**VOLUNTARY JOINT TRIBUNAL ON BARRISTERS' FEES RULES 2010 –
ANNEXE T2 TO THE BAR CODE OF CONDUCT**

1. These rules apply where a Barrister and the Firm agree in writing, whether under the Standard Contractual Terms for the Supply of Legal Services by Barristers to Solicitors 2010 (“the Contractual Terms”) or otherwise, to refer a dispute in relation to his fees to resolution by the Voluntary Joint Tribunal on Barristers’ Fees (“the Joint Tribunal”).
2. On agreeing to refer the dispute to the Joint Tribunal the Firm shall forthwith set out in writing the grounds upon which it challenges the Barrister’s fees (“the Challenge”) and shall serve a copy of the Challenge on the Barrister.
3. Either the Barrister or the Firm shall at any time thereafter be entitled to notify the Chairman of the Bar Council and/or the President of the Law Society in writing that it wishes a Tribunal to be appointed for the purposes of resolving the Challenge.
4. The party so notifying the Chairman and/or the President shall within 7 (seven) days thereafter serve on the other party a copy of its notification.
5. In connection with any Challenge, the Barrister and the Firm are unconditionally:-
 - (i) bound by the Standing Orders; and
 - (ii) bound to comply strictly with any order made by the Tribunal.
6. The Joint Tribunal shall, in resolving the Challenge, act as an expert and not as an arbitrator.
7. The decision of the Joint Tribunal shall be conclusive, final and binding for all purposes and enforceable by action at law and not subject to appeal on a point of law. For the avoidance of doubt the Firm may not thereafter be entitled to raise further or different challenges to the Barrister’s fees.

8. In the event that the Firm fails to pay any sums determined by the Joint Tribunal to be due and owing to the Barrister within 30 days of the Joint Tribunal's decision then the Barrister shall be entitled to refer the matter to the Chairman of the General Council of the Bar and the Rules relating to the List of Defaulting Solicitors shall thereafter apply. For the avoidance of doubt this is without prejudice to the Barrister's rights to enforce the sums determined by the Joint Tribunal to be due and owing but remaining unpaid by action at law.

Definitions:

9. In these rules the following definition shall apply:
- (i) **"Firm"**: a company, partnership, firm, limited liability partnership, association, public authority, professional body, sole practitioner or other person or body (a) of which the barrister's Instructing Solicitor is a director, partner, member, employee, consultant, associate or agent and (b) on whose behalf, and in such capacity, the Instructing Solicitor instructs the barrister..
 - (ii) **"Instructing Solicitor"**: the person who is responsible for instructing the barrister in his capacity as director, partner, member, employee, consultant, associate or agent of the Firm. For the avoidance of doubt, the term "Instructing Solicitor" may include any person, whether employed by a Firm or not, and whether himself qualified as a Solicitor or not, but who Instructs or purports to Instruct a barrister either on behalf of a Firm or on behalf of a Solicitor;

**THE SCHEME FOR COMPLAINING TO THE BAR COUNCIL
FOR PUBLICLY FUNDED MATTERS –
ANNEXE T3 TO THE BAR CODE OF CONDUCT**

1. This Scheme applies to all Publicly Funded Cases.
2. This Scheme is intended to be read alongside and be supplemental to the Bar Council's Rules Relating to the List of Defaulting Solicitors 2010 (Annexe T4 to the Code of Conduct).
3. In a Publicly Funded Case, subject to any agreement or arrangement in writing between the barrister and the Firm, the Barrister may:
 - (i) at any time after the expiration of one month after sending the first fee note or invoice relating to fees claimed by the barrister send to the Instructing Solicitor a reminder substantially in the form of the letter marked "A" in the Schedule to this Scheme or some reasonable adaptation thereof;
 - (ii) unless payment or an explanation for non-payment satisfactory to the barrister has been received within two months after the letter referred to in sub-paragraph (i) above has been sent, send to the Instructing Solicitor a further reminder substantially in the form of the letter marked "B" in the Schedule to this Scheme or some reasonable adaptation thereof.
4. Unless payment or an explanation for non-payment satisfactory to the barrister is thereupon received within 14 days of the letter referred to in sub-paragraph 3(ii) above being sent, the barrister may then report the facts to the Chairman of the Bar. Such report will be a report for the purposes of rule 5 of the Bar Council's Rules Relating to the List of Defaulting Solicitors 2010.

Definitions:

5. The following definitions shall apply to this Scheme:
 - (i) "**Publicly Funded Case**": a case in which the Barrister is paid directly by:

- (a) The Legal Services Commission, through the Community Legal Service or the Criminal Defence Service; or
 - (b) The Crown Prosecution Service.
- (ii) **“Firm”**: a company, partnership, firm, limited liability partnership, association, public authority, professional body, sole practitioner or other person (a) of which the Instructing Solicitor is a director, partner, member, employee, consultant, associate or agent and (b) on whose behalf, and in such capacity, the Instructing Solicitor instructs the barrister. The expression "Firm" shall include (where appropriate) its successors in title and assigns;
- (iii) **“Instructing Solicitor”**: the person who is responsible for instructing the barrister in his capacity as director, partner, member, employee, consultant, associate or agent of the Firm. For the avoidance of doubt, the term “Instructing Solicitor” may include any person, whether employed by a Firm or not, and whether himself qualified as a Solicitor or not, but who Instructs or purports to Instruct a barrister either on behalf of a Firm or on behalf of a Solicitor;

SCHEDULE

L E T T E R "A" - To be sent not less than 1 month after the fee note or invoice

Dear Sir,

[Relevant Public Funding Certificate Number]

[Date of issue]

Re: _____

I refer to the fee note of [name of barrister] in respect of the above case which was sent to you on [date].

My records indicate that this is a publicly funded case and I would be grateful if you could let me know when payment may be expected.

Yours faithfully,

Clerk to [name of barrister]

L E T T E R "B" - To be sent not less than 2 months after Letter "A"

Dear Sir,

[Relevant Public Funding Certificate Number]

[Date of issue]

Re: _____

I have referred to [name of barrister] the letter I wrote to you concerning the fees in this matter. To date payment has not been received.

My records indicate that this is a publicly funded case. I must therefore ask you to notify me of:

- (a) the date of issue and number of the relevant public funding certificate(s);
- (b) the date of any order for assessment of costs under the relevant certificate or other event giving rise to a right to such assessment; and
- (c) the steps you have taken under the relevant Regulations for the purpose of obtaining payment of [name of barrister]'s fees.

Would you also supply me with copies of the relevant Public Funding Certificate(s).

As you know the Bar Council's Rules relating to the List of Defaulting Solicitors ("the Rules") will apply to this case. Unless, therefore, he receives in response to this letter the information requested above and a satisfactory explanation for the fact that he has not yet been paid within the next 14 days I regret that Counsel will make such a report to the Chairman of the Bar Council, which will be a report for the purposes of rule 5 of the Rules.

I sincerely trust that this will not be necessary and look forward to hearing from you in early course.

Yours faithfully,

Clerk to [name of barrister]

RULES RELATING TO THE LIST OF DEFAULTING SOLICITORS 2012 - ANNEXE T4 to the BAR CODE OF CONDUCT

1. These Rules are intended to be read alongside and to be supplemental to:
 - (1) The Standard Contractual Terms for the Supply of Legal Services by Barristers to Solicitors 2010 (at Annexe T1 to the Code of Conduct) including all amendments thereto ("the 2010 Terms");
 - (2) The Voluntary Joint Tribunal on Barristers' Fees Rules 2010 (at Annexe T2 to the Code of Conduct);
 - (3) Any contract for the supply of legal services which complies with paragraph 3 of these Rules;
 - (4) Instructions accepted under the Terms of Work 1988 where paragraph 4 of these Rules apply; and
 - (5) The Scheme for Complaining to the Bar Council (Annexe T3 to the Code of Conduct).

2. These Rules apply in relation to any contract for the supply of legal services by barristers to a Firm on the 2010 Terms.

3. These Rules apply in relation to any contract for the supply of legal services by barristers to a Firm which is a legally binding contract and which contains clauses equivalent to clause 12.7 of the 2010 Terms.

4. Where paragraph 15 of the Terms of Work 1988 applies in respect of instructions accepted before [insert date], the reference in that paragraph to Letter "A" and Letter "B" shall be taken to be a reference to the documents marked Letter "A" and Letter "B" contained in Schedule C to these Rules but without prejudice to the validity of any such letters sent before [insert date].

5. Where a Barrister has made a report to the Chairman in accordance with:
 - (1) Clause 12.7 of the 2010 Terms or an equivalent contractual term; or
 - (2) Rule 8 of the Voluntary Joint Tribunal on Barristers' Fees Rules 2010; or
 - (3) Paragraph 15(3) of the Terms of Work 1988 as modified by paragraph 4 of these Rules above; or
 - (4) The Scheme for Complaining to the Bar Council (Annexe T3 to the Code of Conduct),
 then the Chairman may write to the Firm a letter substantially in the form of Standard Letter 1 contained in Schedule A hereto.

6. Paragraph 7 of these Rules applies where Standard Letter 1 has been sent and either:-
 - (1) Any fees referred to in Standard Letter 1 remain unpaid for more than 14 days after Standard Letter 1 was sent and, in the case of publicly funded matters, there has been no satisfactory explanation provided for the non-payment; or

- (2) In the event that all such fees have been paid, not more than twelve months have elapsed since payment and circumstances have arisen in which the Chairman would otherwise have occasion to send to the Firm or to any Connected Person a further Standard Letter 1.
7. Where this paragraph applies, the Chairman shall write a letter to the Firm in substantially the form of Standard Letter 2 contained in Schedule B hereto to the effect that, whether or not any fees remain unpaid, he will:-
 - (1) Include the name of the Firm on the Bar Council's List of Defaulting Solicitors indicating that they are defaulters, who have in the past failed to pay barristers' fees in accordance with contractual terms on which the barrister was engaged or with the Terms of Work 1988, or that they have been subject to a successful complaint to the Bar Council under the Scheme for Complaining to the Bar Council.
 - (2) Circulate the Bar Council's List of Defaulting Solicitors including the name of the Firm to all barristers suggesting that it would be unwise for any barrister to accept instructions from the Firm or from Connected Persons unless they are paid directly by the Legal Services Commission or such Instructions are accompanied by payment of an agreed fee for the Services or unless he agrees in advance to accept no fee for the Services.
 - (3) Circulate the Bar Council's List of Defaulting Solicitors including the Firm's name to the Master of the Rolls, the President of the Law Society and the Solicitors Regulation Authority.
8. If the Chairman is satisfied in any other case that it is appropriate to proceed as provided in paragraph 7 of these Rules, he may do so after giving the Firm (and, if appropriate, any Connected Persons) due notice of why he considers it appropriate to take such course, and after considering any written representations from the Firm, and after consultation with the Law Society.
9. Upon including the Notified Solicitor on the Bar Council's List of Defaulting Solicitors, the Chairman shall report the fact to the Solicitors' Regulation Authority and shall request the Solicitors' Regulation Authority to commence proceedings before the Solicitors' Disciplinary Tribunal against the Notified Solicitor.
10. The Bar Council's List of Defaulting Solicitors shall be circulated at least 3 times each year to the persons mentioned in paragraphs 7(2) and (3) of these Rules.
11. Any Notified Solicitor may at any time after the expiration of six months after his name was first included in the Bar Council's List of Defaulting Solicitors apply to the Chairman for the removal of their name from that list. The Chairman may, after considering any written representations and after consultation with the Law Society, remove the name of any Notified Solicitor from the Bar Council's List of Defaulting Solicitors unconditionally or upon such terms as he considers appropriate.
12. The Bar Council's List of Defaulting Solicitors may include, in addition to the name of the Notified Solicitor, the Instructing Solicitor, any other person liable for the fees shown in the Fee Note, and any Connected Person.

Transitional Arrangements:

13. On the date on which the Bar Council's List of Defaulting Solicitors comes into force, namely [insert date] the names of all the Firms, Solicitors and other persons on the Withdrawal of Credit Scheme 1988 immediately before that date shall be immediately and automatically included on the Bar Council's List of Defaulting Solicitors. In such cases, paragraph 11 of these Rules will apply as if those Firms, Solicitors and other persons were first included on the Bar Council's List of Defaulting Solicitors on the date they were included on the Withdrawal of Credit Scheme 1988

Definitions:

14. The following definitions shall apply to these rules in addition to the definitions contained in the 2010 Terms:-

"Bar Council's List of Defaulting Solicitors": the list of Firms and persons referred to in these Rules.

"Connected Person": shall mean any Firm or person who from time to time is either a partner, director, associate, member, or employee of, a consultant to, or a person employing, a Notified Solicitor, save that it shall not include an employee of a Notified Solicitor who was not himself the Instructing Solicitor.

"Firm": a company, partnership, firm, limited liability partnership, association, public authority, professional body, sole practitioner or other person or body (a) of which the barrister's Instructing Solicitor is a director, partner, member, employee, consultant, associate or agent and (b) on whose behalf, and in such capacity, the Instructing Solicitor instructs the barrister.

"Instructing Solicitor": the person who is responsible for instructing the barrister in his capacity as director, partner, member, employee, consultant, associate or agent of the Firm. For the avoidance of doubt, the term "Instructing Solicitor" may include any person, whether employed by a Firm or not, and whether himself qualified as a Solicitor or not, but who instructs or purports to instruct a barrister either on behalf of a Firm or on behalf of a Solicitor;

"Notified Solicitor": any Firm whose name is for the time being included in the Bar Council's List of Defaulting Solicitors, or any Firm or person who has, since the said inclusion thereof, been a Connected Person.

"Standard Letter 1": the pro-forma letter whose text is contained in Schedule A hereto.

"Standard Letter 2": the pro-forma letter whose text is contained in Schedule B hereto.

"2010 Terms": the Standard Contractual Terms for the Supply of Legal Services by Barristers to Solicitors 2010 (Annexe T1 to the Code of Conduct), including all amendments thereto, or such other contractual terms to which these Rules apply by virtue of paragraphs 1 and 2 above.

“Terms of Work 1988”: the Terms of Work on which Barristers offer their services to Solicitors and the Withdrawal of Credit Scheme 1988 (formerly Annexe G1 to the Code of Conduct).

Schedule A: Standard Letter 1

First Chairman's Letter - Privately Funded Cases

To be sent to the Senior Partner of the Firm:

Dear Sir or Madam,

Bar Council's List of Defaulting Solicitors: The Rules Relating to the List of Defaulting Solicitors ("the Rules")

I refer to the barrister's fees particulars of which are set out in the schedule to this letter. You will be aware that your agreement with the barrister is governed by [the Standard Contractual Terms for the Supply of Legal Services by Barristers to Solicitors 2010 ("the 2010 Terms")] or [contractual terms to which the Rules apply] (the "Agreement"). Copies of the Agreement and of the Rules are attached to this letter.

OR

I refer to the barrister's fees particulars of which are set out in the schedule to this letter. You will be aware that these fees were referred to the Voluntary Joint Tribunal on Barristers' Fees. Copies of the List of Defaulting Solicitors Rules and Voluntary Joint Tribunal on Barristers' Fees Rules are attached to this letter.

OR

I refer to the barrister's fees particulars of which are set out in the schedule to this letter. You will be aware that your agreement with the barrister is governed by the Terms of Work on which Barristers offer their services to Solicitors and the Withdrawal of Credit Scheme 1988 ("the Terms of Work 1988"). You will also be aware that pursuant to Annexe T4 to the Code of Conduct of the Bar Council of England and Wales the Rules now also apply to this case. Copies of the Terms of Work 1988 and the Rules are attached to this letter.

Copies of the relevant invoices or fee notes are attached.

[On [insert date] [judgment was entered against you in case number in the sum of £..... in relation to those fees] or [the Voluntary Joint Tribunal on Barristers' Fees determined that the sum of £..... was due and owing in relation to those fees]. To date [this sum] or [£..... of this sum] remains unpaid, with interest accruing thereon daily.] OR [Letters have been written regarding payment of these fees. Payment has not been received.] As a result the matter has been referred to the Bar Council under [clause [] of the Agreement] or [clause 12.7 of the 2010 Terms] or [rule 8 of the Voluntary Joint Tribunal on Barristers' Fees Rules] or [paragraph 15.3 of the Terms of Work 1988, as modified by paragraph 4 of the Rules].

I would ask you to pay these fees at once and in any event within 14 (fourteen) days of the date of this letter. You will appreciate from paragraphs 6 and 7 of the Rules relating to the List of Defaulting Solicitors that, unless you pay the fees within 14 days of the date of this letter, or if in

11.10.25 Application to LSB Rules for List of Defaulting Solicitors Annex T4

any event the Chairman has occasion to write again in respect of other outstanding fees within the period referred to in paragraph 6(2) of the Rules, then the consequences spelt out in paragraph 7 of the Rules will follow. In other words, the name of your firm will be included on the Bar Council's List of Defaulting Solicitors. Furthermore, the Chairman will report the facts to the Solicitors Regulation Authority with a request that it should commence proceedings against your firm before the Solicitors' Disciplinary Tribunal.

I hope that it will not prove necessary to include your firm's name on the Bar Council's List of Defaulting Solicitors, and that you will pay the fees of barristers instructed by your firm promptly when due. I am, however, concerned that you should be fully informed in advance of the problems which would arise should you fail to pay barristers' fees in accordance with the Agreement.

Yours faithfully,

First Chairman's Letter - Publicly Funded Cases

To be sent to the Senior Partner of the Firm:

Dear Sir or Madam,

Bar Council's List of Defaulting Solicitors: The Rules Relating to the List of Defaulting Solicitors ("the Rules")

I refer to Counsel's fees, particulars of which are set out in the Schedule to this letter. Copies of the relevant fee notes are attached.* Letters have been written regarding payment of these fees. Payment has not been received and no satisfactory explanation has been provided for the non-payment. As a result, the matter has been referred to the General Council of the Bar in accordance with [paragraph 4 of the Scheme for Complaining to the Bar Council (Annexe T3 to the Code of Conduct of the Bar Council of England and Wales) ("the Scheme for Complaining")] OR [paragraph 15.3 of the Terms of Work on which Barristers offer their services to Solicitors and the Withdrawal of Credit Scheme 1988 ("the Terms of Work 1988") as modified by paragraph 4 of the Rules.

Since this complaint relates to a publicly funded matter, I would be grateful if you would supply me with the following information within 14 days of the date of this letter:-

- (a) the date of issue and number of any relevant publicly funded certificates, together with a copy of such certificates;
- (b) the date of any order for assessment of costs under the relevant certificate(s) or other event giving rise to a right to such assessment; and
- (c) what steps you have taken under the relevant regulations for the purpose of obtaining payment of Counsel's fees.

I am also enclosing for your attention a copy of the Rules and [the Scheme for Complaining] OR [the Terms of Work 1988]. You will appreciate from reading them that their effect is such that if (1) no satisfactory explanation for non-payment of the fees referred to in the Schedule to this letter has been provided and (2) the Chairman has occasion to write again in respect of other outstanding fees within the period referred to in paragraph 6(2) of the Rules, then the consequences spelt out in paragraph 7(1) of the Rules will follow. In other words, the name of your firm will be included on the Bar Council's List of Defaulting Solicitors. Furthermore, the Chairman will report the facts to the Solicitors Regulation Authority with a request that it should commence proceedings against your firm before the Solicitors' Disciplinary Tribunal.

I hope that it will not prove necessary to include your firm's name on the Bar Council's List of Defaulting Solicitors, and that you will pay the fees of barristers instructed by your firm promptly when due. I am, however, concerned that you should be fully informed in advance of the problems which would arise should you fail to pay barristers' fees in accordance with the Agreement.

Yours faithfully,

* The fees referred to in this letter must be unpaid more than 14 days after delivery of Letter "B", as set out at the Schedule C to these Rules or the Scheme for Complaining to the Bar Council as the case may be, and the solicitor must not have provided a satisfactory explanation for the non-payment.

Schedule B: Standard Letter 2

Second Chairman's Letter - Privately Funded Cases

To be sent to the Senior Partner of the Firm:

Dear Sir or Madam,

Bar Council's List of Defaulting Solicitors: The Rules Relating to the List of Defaulting Solicitors ("the Rules")

I refer to the barrister's fees particulars of which are set out in the schedule to this letter. You will be aware that your agreement with the barrister is governed by [the Standard Contractual Terms for the Supply of Legal Services by Barristers to Solicitors 2010] or [contractual terms to which the Rules apply] (the "Agreement"). Copies of the Agreement and of the Rules are attached to this letter.

OR

I refer to the barrister's fees particulars of which are set out in the schedule to this letter. You will be aware that these fees were referred to the Voluntary Joint Tribunal on Barristers' Fees. Copies of the List of Defaulting Solicitors Rules and Voluntary Joint Tribunal on Barristers' Fees Rules are attached to this letter.

OR

I refer to the barrister's fees particulars of which are set out in the schedule to this letter. You will be aware that your agreement with the barrister is governed by the Terms of Work on which Barristers offer their services to Solicitors and the Withdrawal of Credit Scheme 1988 ("the Terms of Work 1988"). You will also be aware that pursuant to Annexe T3 to the Code of Conduct of the Bar Council of England and Wales the Rules will now also apply to this case. Copies of the Terms of Work 1988 and the Rules are attached to this letter.

Copies of the relevant invoices or Fee Notes are attached.

{On [insert date] [judgment was entered against you in case number in the sum of £..... in relation to those fees] or [the Voluntary Joint Tribunal on Barristers' Fees determined that the sum of £..... was due and owing in relation to those fees]. To date [this sum] or [£..... of this sum] remains unpaid, with interest accruing thereon daily.) OR [Letters have been written regarding payment of these fees. Payment has not been received.] As a result the matter has [again] been referred to the Bar Council under [clause [] of the Agreement] or [clause 12.7 of the 2010 Terms] or [rule 8 of the Voluntary Joint Tribunal on Barristers' Fees Rules] or [paragraph 15.3 of the Terms of Work 1988, as modified by paragraph 4 of the Rules].

This is the [second] occasion on which it has been necessary to write to you concerning outstanding fees.

I would ask you to pay these fees at once and in any event within 14 (fourteen) days of the date of this letter.

[The schedule to this letter also sets out particulars of previous barristers' fees which have been reported to the Bar Council as being [unpaid by your firm, or its associates, consultants, employers, or employees (as the case may be)] **AND/OR** [on your firm's instructions and publicly funded but unpaid without a satisfactory explanation for the non-payment].] You will appreciate from reading rules 6 and 7 of the Rules that, since it is now necessary to write to you [again in respect of the outstanding fees referred to in the schedule to this letter] or [within the period referred to in paragraph 6(2) of the Rules], this [new] complaint, if properly made, will have the consequences spelt out in paragraph 7(1) of the Rules. This means that the Chairman will include the name of your firm in the Bar Council's List of Defaulting Solicitors, unless (exceptionally) he is persuaded by any representations you may make not to do so.

The consequence of your firm's inclusion in the Bar Council's List of Defaulting Solicitors will be that all barristers will be told that it would be unwise for any barrister to accept instructions from your firm or from Connected Persons unless they are paid directly by the Legal Services Commission or such instructions are accompanied by payment of an agreed fee for such work or unless he agrees in advance to accept no fee for such work.

Furthermore the Chairman will report the fact to the Solicitors Regulation Authority with a request that it should commence proceedings against your firm, its partners, associates, consultants, employers, or employees (as the case may be) before the Solicitors' Disciplinary Tribunal.

Any representations which your firm may wish to make must be made in writing within the next 14 (fourteen) days. You will be informed of the Chairman's decision in any event and before circulation of any list containing your firm's name.

Yours faithfully

Second Chairman's Letter - Publicly Funded Cases

To be sent to the Senior Partner of the Firm:

Dear Sir or Madam,

Bar Council's List of Defaulting Solicitors: The Rules Relating to the List of Defaulting Solicitors ("the Rules")

I refer to the barrister's fees particulars of which are set out in the schedule to this letter.

Copies of the relevant Fee Notes are attached. Letters have been written regarding payment of these fees. Payment has not been received and no satisfactory explanation for the non-payment has been provided. As a result the matter has [again] been referred to the Bar Council.

You will be aware that this matter is governed by [the Scheme for Complaining to the Bar Council (Annexe T3 to the Code of Conduct of the Bar Council of England and Wales) and the Rules] OR [the Terms of Work on which Barristers offer their services to Solicitors and the Withdrawal of Credit Scheme 1988, as modified by paragraph 4 of the Rules, together with the Rules themselves].

[Since this complaint relates to a publicly funded matter, I would be grateful if you would supply me with the following information within 14 days of the date of this letter:-

- (a) the date of issue and number of any relevant publicly funded certificates, together with a copy of such certificates;
- (b) the date of any order for assessment of costs under the relevant certificate(s) or other event giving rise to a right to such assessment; and
- (c) what steps you have taken under the relevant regulations for the purpose of obtaining payment of Counsel's fees.]*

This is the [second] occasion on which it has been necessary to write to you concerning outstanding fees.

[The schedule to this letter also sets out particulars of previous barristers' fees which have been reported to the Bar Council as being [unpaid by your firm, or its associates, consultants, employers, or employees (as the case may be)] AND/OR [on your firm's instructions and publicly funded but unpaid without a satisfactory explanation for the non-payment].] You will appreciate from reading clauses 6 and 7 of the Rules that, since it is now necessary to write to you [again in respect of the outstanding fees referred to in the schedule to this letter] or [within the period referred to in paragraph 6(2) of the Rules], this [new] complaint, if properly made, will have the consequences spelt out in paragraph 7(1) of the Rules. This means that the Chairman will include the name of your firm in the Bar Council's List of Defaulting Solicitors, unless (exceptionally) he is persuaded by any representations you may make not to do so.

The consequence of your firm's inclusion in the Bar Council's List of Defaulting Solicitors will be that all barristers will be told that it would be unwise for any barrister to accept instructions from your firm or from Connected Persons unless they are paid directly by the Legal Services

Commission or such instructions are accompanied by payment of an agreed fee for such work or unless he agrees in advance to accept no fee for such work.

Furthermore the Chairman will report the fact to the Solicitors Regulation Authority with a request that it should commence proceedings against your firm, its partners, associates, consultants, employers, or employees (as the case may be) before the Solicitors' Disciplinary Tribunal.

Any representations which your firm may wish to make must be made in writing within the next 14 (fourteen) days. You will be informed of the Chairman's decision in any event and before circulation of any list containing your firm's name.

Yours faithfully

* Delete this section if this is a further complaint about non-payment of fees after Standard Letter 1 has been sent in respect of the same matter.

Schedule C: Letter "A"

LETTER "A" - Privately Funded Cases

Dear Sir,

Re: _____

I refer to the fee note of [name of barrister] in respect of the above case which was sent to you on [date].

My records indicate that this is a privately funded case in which your relationship with [Name of Barrister] is governed by the Terms of Work on which Barristers offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988 (as amended; "the Terms"). Pursuant to Annexe T3 to the Code of Conduct of England and Wales the Bar Council's Rules relating to the List of Defaulting Solicitors will now apply to this case.

Under paragraph 13(1) of the Terms, the fees were due and payable within 1 month of the fee note.

I would be grateful if you could make arrangements for these fees to be paid or let me know when payment may be expected.

[Please note that under paragraph 13(2) of the Terms, any such fees remaining outstanding one month after the date of this letter will carry interest at 2% above the Bank of England base rate from time to time from one month after the date of this letter until payment.]*

Yours faithfully,

Clerk to [name of barrister]

*Words substantially in the form of those shown in square brackets must be included if (but only if) it is wished to charge interest on the fees which are the subject of this letter A.

LETTER "A" - Publicly funded cases

Dear Sir,

[Relevant Public Funding Certificate Number]

[Date of issue]

Re: _____

I refer to the fee note of [name of barrister] in respect of the above case which was sent to you on [date].

My records indicate that this is a publicly funded case and I would be grateful if you could let me know when payment may be expected.

Yours faithfully,

Clerk to [name of barrister]

LETTER "B" (To be sent 3 months after fee note) - Privately funded cases

Dear Sir,

Re: _____

I have referred to [name of barrister] the letter I wrote to you concerning the fees in this matter. To date payment has not been made and no explanation for the non-payment has been forthcoming.

As you know the Bar Council's Rules relating to the List of Defaulting Solicitors ("the Rules") now apply to this case. Unless, therefore, I hear from you within the next 14 days with a satisfactory explanation for the non-payment, I regret that Counsel will make a report to the Chairman of the Bar Council, which will be a report for the purposes of rule 5 of the Rules .

I sincerely trust that this will not be necessary and look forward to hearing from you in early course.

Yours faithfully,

Clerk to [name of barrister]

LETTER "B" (To be sent 3 months after fee note) - Publicly funded cases

Dear Sir,

[Relevant Public Funding Certificate Number]

[Date of issue]

Re: _____

I have referred to [name of barrister] the letter I wrote to you concerning the fees in this matter. To date payment has not been received.

My records indicate that this is a publicly funded case. I must therefore ask you to notify me of:

- (a) the date of issue and number of the relevant public funding certificate(s);
- (b) the date of any order for assessment of costs under the relevant certificate or other event giving rise to a right to such assessment; and
- (c) the steps you have taken under the relevant regulations for the purpose of obtaining payment of [name of barrister]'s fees.

Would you also supply me with copies of the relevant Public Funding Certificate(s).

As you know the Bar Council's Rules relating to the List of Defaulting Solicitors ("the Rules") will now apply to this case. Unless, therefore, he receives in response to this letter the information requested above and a satisfactory explanation for the fact that he has not yet been paid within the next 14 days I regret that Counsel will make a report to the Chairman of the Bar Council, which will be a report for the purposes of rule 5 of the Rules.

I sincerely trust that this will not be necessary and look forward to hearing from you in early course.

Yours faithfully,

Clerk to [name of barrister]