

BAR STANDARDS BOARD

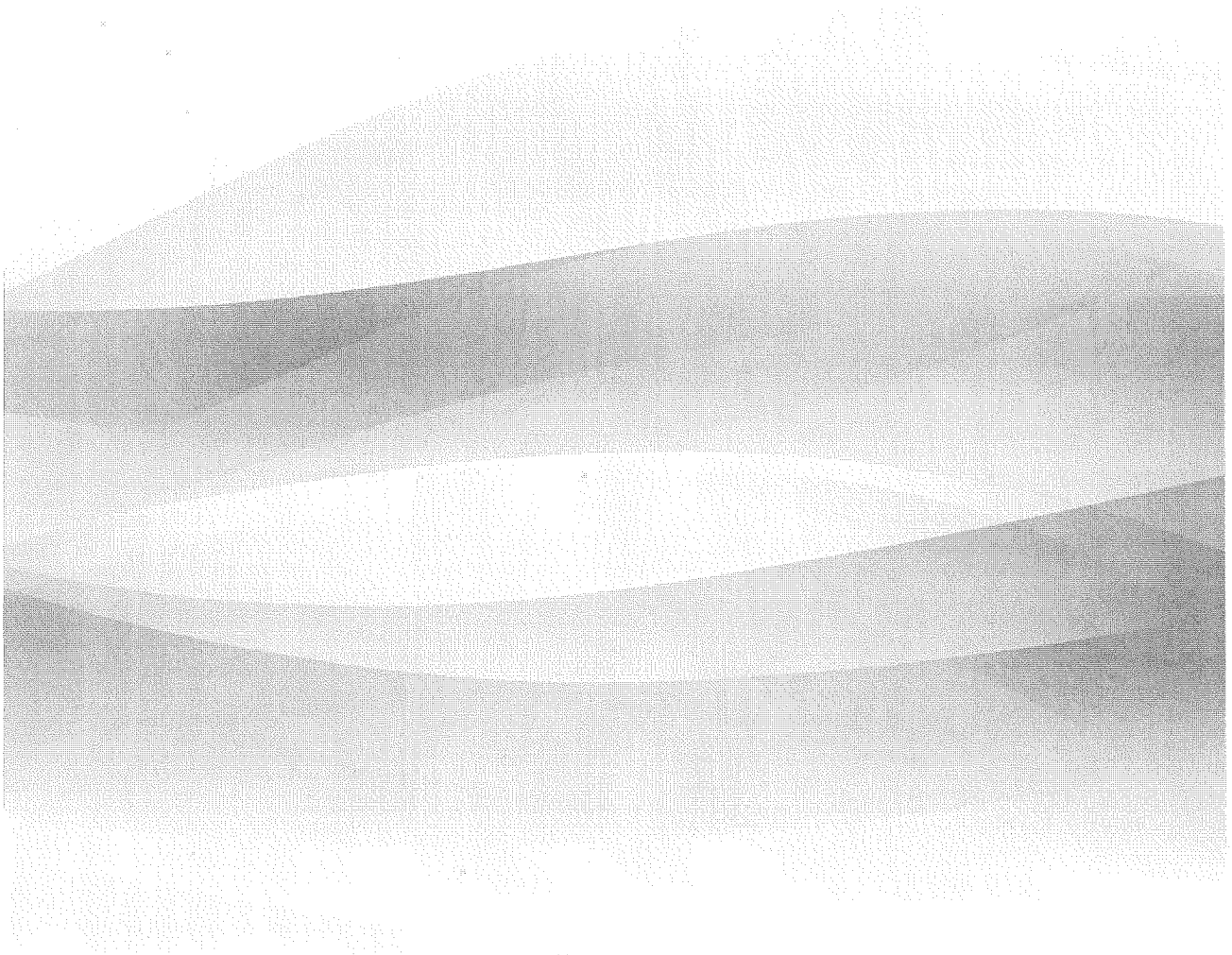
**APPLICATION FOR APPROVAL TO AMENDMENT OF CAB
RANK RULE – NEW CONTRACTUAL TERMS**

October 2011

ANNEX 3

2010 Consultation and Response Form

April 2010



Consultation

Contractual Terms of work

for the supply of legal services by Barristers to Solicitors



PROPOSED CHANGES TO THE BAR CODE OF CONDUCT

CONSULTATION PAPER

Introduction

1. This consultation paper seeks the views of interested parties **by the 31 July 2010** on proposals to introduce new contractual terms on which self-employed barristers practising in England and Wales are instructed by solicitors on behalf of private clients and to amend the Bar's Code of Conduct ("the Code"). Subject to the outcome of this consultation process, it is the intention of the Bar Council and the Bar Standards Board to apply to the Legal Services Board for approval under the Legal Services Act 2007 of the proposed changes to the Code that are explained in this document.
2. Put shortly, the Bar Council considers that the current basis on which barristers are engaged by solicitors in privately funded work is both outdated and unsatisfactory. The present, non-contractual, honorarium basis of payment is an anachronism and has long been obsolete. It fails to address the need for clarity in relation to the professional obligations of barristers and solicitors to each other and to the lay client. It also fails to provide, for solicitors, barristers and the lay client, an effective method of enforcement of rights and obligations and, as a consequence, has an adverse effect upon strength and diversity of the Bar, with many barristers being faced with unacceptable delays in collecting fees and, in many cases, having to write off significant amounts owing for want of an effective enforcement process. This is a particularly acute problem for barristers in the early years of practice – especially those with limited means.
3. For these reasons, the Bar Council is strongly of the view that the basis on which barristers are engaged by solicitors in matters which are not publicly funded¹ must change in order to maintain access to justice and to promote a strong, competitive and diverse legal profession.
4. This paper accordingly explains the current basis on which barristers in England and Wales are instructed, the issues which arise and the changes which the Bar Council now proposes, including the consequential amendments that will have to be made to the Code to implement the proposals and make them effective. It goes on to ask for views and comments on a number of specific issues, but consultees and other interested parties are encouraged to comment on any aspects of the proposals. All views and comments will be carefully considered and feedback will be provided on request.

The Current Position

¹ Work which is publicly funded and work from sources other than solicitors is governed by other provisions and is not affected by these proposals, except in one respect dealt with below.

5. The historical rule of law that prevented barristers from entering into contracts for the provision of their services was abolished by statute in 1991². However, that does not mean that barristers actually enter into binding contracts with solicitors. At present, the default position is that barristers are instructed by solicitors on non-contractual (i.e. non legally enforceable) terms known as "Terms of Work on which barristers offer their services to Solicitors and the Withdrawal of Credit Scheme 1988 as amended" ("the Terms of Work"). These terms are set out in Annexe G1 of the Code. A copy of them is enclosed as Annexe 1 to this consultation paper.
6. In general, the Code provides that a barrister who receives instructions from a solicitor cannot refuse to act simply because he will be engaged under the Terms of Work. Such a refusal would be a breach of part VI of the Code, which contains the well known "cab rank rule," under which barristers are only permitted to refuse instructions in a limited number of circumstances³. A barrister may of course propose that his instructions be governed by some other terms, such as the Contractual Terms 2001⁴, but the solicitor has no obligation to accept such terms and can insist on the use of the Terms of Work.
7. The effect of this is that, at present, almost all privately funded work performed by barristers in England and Wales is performed under a non-enforceable arrangement. For the reasons set out in the following paragraphs, the Bar Council considers it wholly inappropriate for this position to continue and propose to shift the "default" position to an enforceable contractual basis.
8. The Terms of Work and the rarely used contractual 2001 Terms suffer from numerous deficiencies. The most serious are that:
- a. they are extremely complicated and the procedures under them are cumbersome and lengthy;
 - b. they are not readily understood by the lay client of the instructing solicitor or by the public in general;
 - c. the Terms of Work are non-contractual, which means that none of their terms can be enforced through the Courts. Disputes as to fees can only be resolved by agreement;
 - d. this lack of enforceability can increase the delay and cost of resolving such disputes, for the barrister, the solicitor and the lay client;
 - e. since barristers operating under the Terms of Work are unable to sue for their fees, they may suffer considerable delay in the collection of undisputed fees, or may even go unpaid for some of their work. This operates contrary to the public interest as it

² Courts and Legal Services Act 1991, section 61.

³ See Annexe 2.

⁴ This is a contractual version of the Terms of Work, introduced in 2001 ("the 2001 Terms"). Under the 2001 Terms, which largely follow the format of the Terms of Work, solicitors and barristers can specifically agree to be subject to a legally binding and enforceable contract. The 2001 Terms are set out in Annexe G2 of the Bar's Code of Conduct and a copy of them is enclosed as Annexe 3. In practice they are rarely used.

can put younger and more vulnerable barristers at a serious economic disadvantage. Those from disadvantaged backgrounds are generally less able to bear the financial burden to which the Terms of Work expose them. The Terms of Work accordingly make it more difficult to attract and retain a strong and diverse entry to the profession.

9. The two informal methods available to barristers for securing payment for work done under the Terms of Work are both indirect and inadequate. These are:
- a. complaints to the Law Society (now to the Solicitors' Regulation Authority); and
 - b. the use of the Bar Council's Withdrawal of Credit Scheme.

10. The Law Society ceased to accept complaints on the basis of non-payment of barristers' fees in 1998 and removed the professional obligation upon solicitors to pay barristers' fees in July 2007, on the introduction of the Solicitors' Code of Conduct. However, one of the present Core Duties set out in the Solicitors' Code of Conduct is that a solicitor must act with integrity in all his professional dealings, with clients, the court, other lawyers and the public (Rule 1.02) and in certain circumstances, the threat of a possible finding of misconduct by the Solicitors' Disciplinary Tribunal for breach of this rule may encourage payment. However, it is not appropriate for a formal disciplinary system to be used as an indirect method of enforcing a non contractual obligation.

11. Since it is in effect impossible for barristers themselves to invoke the solicitors' disciplinary code as a means of encouraging or compelling solicitors to pay fees due under the Terms of Work, a barrister's only remaining remedy is to lodge a complaint to the Bar Council under the Withdrawal of Credit Scheme. This procedure was not designed primarily as a means of recovering barristers' fees.

12. The Withdrawal of Credit Scheme was designed to protect all barristers from solicitors who consistently fail to pay barristers' fees for no good reason. The ultimate sanction under the scheme is that, once a solicitor is placed upon the Withdrawal of Credit scheme list, it is a matter of professional misconduct for *any* barrister to accept instructions from that solicitor without obtaining payment in advance. The scheme does not therefore have any direct effect as regards the payment of outstanding fees, although in many cases, the threat of naming a solicitor under the scheme also has the additional effect of securing fee recovery,⁵ but the Withdrawal of Credit Scheme is both a cumbersome and indirect means of securing the payment of outstanding fees.

⁵ In outline, the Withdrawal of Credit Scheme works as follows: the list produced under the scheme contains the names of solicitors in respect of whom complaints of unpaid fees have been upheld. Thereafter, in essence, barristers are only able to accept work from such solicitors if payment is made with the brief or instructions, or if the work is covered by full publicly funded certificates. The threat of having their names entered on the list is often sufficient to encourage solicitors to pay outstanding fees. Where there is a genuine dispute on the question of fees, a complaint under the scheme can lead to the appointment of a Joint Tribunal, with the Law Society and the Bar Council each nominating one member, to adjudicate on the dispute between barrister and solicitor. This, however, can only be invoked if both parties agree and is not appropriate where the fees are simply unpaid, without any dispute between the parties.

13. However, the Law Society has indicated that it may well seek to challenge the validity of the Withdrawal of Credit Scheme on competition grounds.

14. To summarise: the working relationship between barristers and solicitors in privately funded work is governed by an antiquated and inadequate system which does not promote access to justice. The Bar Council believes that it is high time that a more modern and efficient system is introduced.

Proposed Changes

15. The Bar Council proposes that:

- a. a new basic form of legally binding contract as set out in Annexe 4 (“the New Contractual Terms”) be provided for in the Bar Code of Conduct, which, the Bar Council would recommend be used by barristers and solicitors. It is anticipated that, in the absence of specific agreement in any particular case, the New Contractual Terms will operate as the de facto default terms between solicitors and barristers;
- b. the New Contractual Terms would set out the respective responsibilities of the solicitor and barrister clearly and succinctly, thereby protecting and promoting both the public interest and that of consumers and the maintenance of professional standards and principles. They would provide for the proper and prompt execution of the work, create liability for the payment of fees and a clear means of enforcement. They would also facilitate dispute resolution by way of a Voluntary Joint Tribunal, if the parties preferred such a mechanism to that of the courts;
- c. the solicitor and barrister would be free to negotiate and agree further or different terms in addition to or in substitution for those in the New Contractual Terms and to amend them as they see fit;
- d. the existing Terms of Work and the 2001 Terms reproduced in Annexes G1 and G2 of the Bar Code of Conduct be abolished;
- e. the Withdrawal of Credit scheme list be abolished and, with that, the prohibition on barristers accepting work on credit from solicitors named on that list;
- f. a scheme to maintain an Advisory List of Defaulting Solicitors would be maintained by the Bar Council, with that scheme also being used in certain circumstances to deal with defaults in publicly funded matters; and
- g. the necessary consequential changes be made to the Bar Code of Conduct as set out in Annexe 5.

16. The anticipated effect of these proposed changes, if implemented, will be that, in most non publicly funded matters, barristers will be engaged by solicitors under a binding contract which

will set out the basic legal obligations and responsibilities of both parties, but leave the parties free to negotiate the price for the barrister's services and any other specific terms that they consider appropriate. *It is important to note that it is not proposed that the rates of barristers' fees be stipulated in the New Contractual Terms. This is always left as a matter of negotiation between the individual instructing solicitor and barrister, thus promoting competition in the provision of legal services.*

17. As the "Cab Rank Rule" in the Code makes specific reference to the Terms of Work, it will be necessary to make amendments to the Code to reflect the introduction of the New Contractual Terms, so that barristers who are offered work on the New Contractual Terms are subjected to the Cab Rank Rule. In other words, the Code will be amended so that barristers will be obliged to accept instructions when a solicitor offers them on the New Contractual Terms, provided that no other provision of the Code permits or requires a barrister to refuse. Conversely, it is proposed that the Code will also provide that a barrister will **not** be obliged to accept instructions if they are not offered on the New Contractual Terms.

18. It is anticipated that many barristers will make it clear in advance of the acceptance of instructions that they intend to contract on the New Contractual Terms. However, it should be stressed that barristers and solicitors will always be free to negotiate whatever terms they consider appropriate and, indeed, to agree no terms at all.

Consultation

19. The Bar Council is seeking the views of the individuals and organisations whose names are set out in Annexe 6 on the following issues and on any other issues that they consider relevant. In addition, the views of any other interested parties who wish to comment would be welcomed.

Issue 1: Introduction of New Contractual Terms and Abolition of the Existing Arrangements.

20. The Bar Council is strongly of the view that the professional relationship between barristers and solicitors should be placed on a modern and more commercial footing, using contracts which provide for clear standards and allow solicitors and barristers to deal with disputes in the same way as all other professions.

21. The present, non-contractual, honorarium basis of payment is an anachronism and has long been obsolete. It fails to address the need for clarity in relation to the professional obligations of barristers and solicitors to each other and to the lay client. It also fails to provide, for solicitors, barristers and the lay client, an effective method of enforcement of rights and obligations and, as a consequence, has an adverse effect upon strength and diversity of the Bar, with many barristers being faced with unacceptable delays in collecting fees and, in many cases, having to write off significant amounts owing for want of an effective enforcement process.

22. The proposed changes would provide clarity for lay consumers of legal services by improving understanding of the manner in which barristers' services are provided. By providing barristers with an enforceable right to be paid, they would alleviate the problems outlined in

paragraph 8(e) and support and encourage an independent effective and diverse Bar. Furthermore, as barristers and solicitors will be no less free than they are at present to contract on any terms they see fit (see Issues 2 and 3 below)⁶, the proposed changes would have no anti-competitive impact. In fact, the proposed move away from the Terms of Work as the usual basis for the provision of barristers' services to contractual terms in every case is more likely to increase competition.

Question 1

- a. Should the existing (non-contractual) Terms of Work and the (contractual) 2001 Terms now be abolished?*
- b. If so, should they be replaced by the proposed New Contractual Terms?*
- c. If the answer to either a. or b. above is in the negative, what alternative suggestions do you have?*

Issue 2: The New Contractual Terms as de facto Default Terms

23. By custom and practice, combined with the "cab rank rule" contained in the Code, the (non-contractual) Terms of Work are the standard terms upon which barristers accept instructions from solicitors, though barristers and solicitors are free to accept different terms if they so wish, including the (contractual) 2001 Terms.

24. In some instances, barristers and solicitors already agree terms for a particular matter prior to the barrister's carrying out his or her work. This is most likely to occur between the larger commercial solicitors' practices and established members of the Bar in respect of major cases. However, in most instances, barristers and solicitors do not have the luxury of the time or resources necessary to negotiate individual agreements for each piece of work. Typical scenarios would be the last minute instruction, rung through to chambers the evening before a court hearing, or the busy small firm of solicitors dealing with many urgent matters at the same time and requiring urgent advice just before a deadline.

25. The Bar Council is anxious to avoid the situation in which the Terms of Work are withdrawn but are not replaced, or in which barristers are obliged by the Cab Rank Rule to accept disadvantageous contractual terms proposed by solicitors. If there were no default terms, a separate agreement would need to be reached in respect of each set of instructions to a barrister. If that were the case, it would be more likely that nothing would be expressly agreed and as a result there would be no clarity regarding the respective obligations and professional responsibilities of solicitors and barristers, no clear means by which to ensure the proper and prompt execution of the work or by which to determine the level of fees payable, the date for payment, the liability for that payment and its enforcement. All of these matters would be potential areas for dispute. Clarity and certainty in the terms between solicitors and barristers would not only assist the barrister and

⁶ It is intended that the New Contractual Terms should apply in default of any other agreement which the parties are free to enter into.

solicitor, but also the solicitor's lay client, who should have a full picture of the anticipated cost of engaging a barrister and the terms of that engagement.

26. Furthermore, were it necessary to agree separate terms or to imply such terms in relation to each and every set of instructions given to a barrister, it would be all but impossible to maintain the Cab Rank Rule. The Cab Rank Rule, which is set out in part VI of the Code, prevents a barrister from refusing instructions on the grounds that the nature of the case is objectionable to him or to any section of the public, or that the client's conduct, opinions or beliefs are unacceptable to him or to any section of the public, or that the source of funding, properly given, is unacceptable to him. A barrister can only refuse instructions under the Cab Rank Rule on the narrow grounds stipulated in the Code.⁷ The Rule is a formidable tool in ensuring equal access to justice and promoting competition in the provision of legal services.

27. The Bar Council accordingly intends to advise barristers to consider adopting the New Contractual Terms and, where practical, to draw the attention of solicitors to them before accepting work. It is likely that many barristers will adopt the New Contractual Terms as their standard terms. That, coupled with the proposed changes to the Code (see Issue 3 below), is likely to make the New Contractual Terms the de facto "default" terms on which solicitors engage barristers for privately funded work.

Question 2

- a. *Do you agree that the draft New Contractual Terms should become the de facto default terms of work for barristers, in the absence of alternative terms having been agreed?*
- b. *If not, what alternative(s) do you suggest?*

Issue 3: Changes to the "Cab Rank Rule"

28. As described in paragraph 25 above, the Cab Rank Rule prevents a barrister from refusing instructions unless one of the narrow grounds specified in the Code applies.

29. In the interests of improving access to justice, the Bar Council believes that the Cab Rank Rule must be maintained, but also believes that it is necessary to propose a further exception to it: namely that, if the instructing solicitor insists on terms other than the proposed New Contractual Terms, the barrister should be entitled under the Code to refuse the instructions. Without that exception, a barrister could be faced with having to accept instructions under the Cab Rank Rule on terms imposed upon him without any free negotiation. In extreme situations, such imposed terms might impede the proper execution of the barrister's work. Such a situation would be adverse to the public interest and contrary to the principle of encouraging a strong and effective legal profession. However, as already mentioned, the likely effect of having this new exception to the

⁷ Examples are where the barrister considers that the matter is beyond his competence or where he has a conflict of interest.

Cab Rank Rule is that the New Contractual Terms would generally operate as default terms, unless barristers and solicitors took active steps to negotiate other terms.

Question 3 *Should the Code be amended as proposed so that barristers are not obliged to accept instructions other than on the New Contractual Terms?*

Issue 4: Withdrawal of Credit

30. The Bar Council proposes, in abolishing the Terms of Work and the 2001 Terms, to remove the prohibition on barristers from accepting work on credit from solicitors named on the Withdrawal of Credit Scheme list. Instead, the creation of an Advisory List of Defaulting Solicitors is proposed, which will list solicitors on the abolished Withdrawal of Credit Scheme list at the date of abolition, together with solicitors who fail to pay judgments obtained by a barrister for outstanding fees, or who fail to pay an Award made by a Voluntary Joint Tribunal.⁸

31. The Code currently obliges a barrister to accept any instruction from a solicitor unless one or more of the specific exemptions to the Rule apply. Those exemptions include the situation in which the instructing solicitor is listed on the Withdrawal of Credit list and is only offering the work on credit. In that situation, the Code prohibits barristers from accepting such instructions. With the introduction of the New Contractual Terms and the consequent ability of barristers and solicitors to use the court to resolve fee disputes, the Bar Council considers that the Code should be amended so as to remove this prohibition. Accordingly, barristers will be permitted, but not obliged, to refuse instructions offered on credit terms by solicitors on the new Advisory List of Defaulting Solicitors. This change will promote competition in the provision of legal services.

32. The procedure to be adopted before a solicitor could be placed on the proposed Advisory List of Defaulting Solicitors is as follows. The Bar Council would, following the receipt of a complaint from a barrister, contact the solicitor in an attempt to establish the facts. If, after considering representations from the barrister and solicitor concerned, it appeared that the solicitor had failed to pay an amount awarded by the court to the barrister in respect of outstanding fees, or had failed to satisfy an award made by the Voluntary Joint Tribunal, the Bar Council would, in the absence of extenuating circumstances, place details of the solicitor on the Advisory List of Defaulting Solicitors. As with the current Withdrawal of Credit List, the circulation of the Advisory List of Defaulting Solicitors would be limited to barristers and their clerks, the Solicitors' Regulation Authority, the Law Society, certain Court officers and the named solicitors.

33. Another outcome of placing solicitors on the List would be that the Bar Council would consider whether to lodge a complaint with the Solicitors' Regulation Authority on the grounds that the solicitor has caused loss of public confidence in the solicitors' profession.

34. The purpose of maintaining the Advisory List of Defaulting Solicitors is twofold:

⁸ The Voluntary Joint Tribunal already exists as a service provided by the Bar Council and the Law Society to enable fee disputes between a barrister and his instructing solicitor to be resolved by an independent body comprising a member appointed by the Law Society and a member appointed by the Bar Council.

- a. to provide a warning list for barristers faced with a requirement to accept instructions from solicitors under the Cab Rank Rule. The Bar Council is of the view that a barrister should not be obliged to accept instructions from a solicitors' practice known to be such serial defaulters of payment that they are placed on the Advisory List of Defaulting Solicitors. Other professionals are entitled to take into consideration the creditworthiness of a prospective client. The proposed amendment to the Cab Rank Rule is therefore a compromise intended to maintain the interests of the public and the consumer in access to justice and competition in the provision of legal services, whilst providing a safeguard for barristers against having to work for solicitors who have regularly failed to pay fees.
- b. to identify the very small minority of solicitors' practices who default frequently on their obligations to pay barristers' fees, despite court judgments and/or awards of joint tribunals with which the solicitors have voluntarily agreed to comply. In identifying those solicitors, further investigation can be carried out to establish whether a complaint should be made to Solicitors' Regulation Authority. This clearly promotes the maintenance of professional principles and standards.

35. The proposed scheme for the Advisory List of Defaulting Solicitors is in Annexe 7. Also included are the Voluntary Joint Tribunal on Barristers' Fees Rules and the Scheme for complaining to the Bar Council for Publicly Funded Matters.

36. Whilst the deletion of the prohibition on barristers from accepting work from known bad payers removes one protection for barristers, the Bar Council is of the view that a barrister will have sufficient protection from the proposed New Contractual Terms. The barrister would be able to sue for his fees if necessary, and, with the information on the Advisory List of Defaulting Solicitors, have the necessary information to enable him to choose whether or not to accept instructions in the first place. In making this change, the Bar Council considers access to justice is improved.

Question 4

- a. *Do you think it is appropriate that the existing Withdrawal of Credit Scheme be abolished and replaced with an Advisory List of Defaulting Solicitors?*
- b. *Do you agree that, unless payment accompanies the instructions, barristers should not be obliged to accept work from solicitors' practices named on the Advisory List of Defaulting Solicitors?*
- c. *If you consider that the answer to either a. or b. above should be in the negative, what alternatives do you suggest?*

Issue 5: Application of the Advisory List of Defaulting Solicitors to Certain Publicly Funded Work

37. The New Contractual Terms would only apply to work funded privately or where the instructing solicitor, although paid from public funds, is obliged to pay the barrister direct. A

typical example of the latter category is instructions funded under “Controlled Legal Representation”.

38. The proposed New Contractual Terms would not apply where the barrister is paid directly by the Legal Services Commission as part of the Community Legal Service or as part of the Criminal Defence Service, as the procedures for payment in such matters are quite different. Although in those instances the solicitors do not actually pay the barristers, the solicitors' actions (or inaction) can adversely affect the barrister's ability to obtain payment.

39. At present, barristers are able to lodge complaints under the Withdrawal of Credit Scheme in such publicly funded matters. With the proposed abolition of the Withdrawal of Credit Scheme, the Bar Council proposes that barristers should be able to lodge complaints to the Bar Council under the Scheme for the Advisory List of Defaulting Solicitors for publicly funded matters, but only where solicitors have failed to carry out their obligations and have thus prevented barristers from being paid.

40. The Bar Council considers that to fail to provide a protection mechanism for barristers who remain unpaid in such circumstances could force many barristers out of that market and discourage barristers from undertaking publicly funded work in the future. It would accordingly operate contrary to the goal of encouraging and supporting an effective legal profession.

Question 5 Do you agree that barristers should be able to lodge complaints to the Bar under the scheme for the Advisory List of Defaulting Solicitors for publicly funded matters where barristers are prevented from being paid due to solicitors' failure in carrying out their obligations?

Issue 6: Equality and diversity impact

41. The Bar Council and the Bar Standards Board are committed to promoting diversity and equality throughout the Bar and within their own organisations. They aim to ensure that their processes and procedures are fair, objective, transparent and free from discrimination and believe that the proposals described in this consultation document support those aims. An Equality Impact Assessment is attached at Annexe 9. However, you are invited to say whether you consider that any issues or proposals discussed in this consultation paper might have equality or diversity implications, including implications of discrimination on the grounds of race, gender, disability, religion or belief, sexual orientation and age. We would particularly welcome feedback on whether there are likely to be any negative consequences for any group arising from the proposed changes and how these could be mitigated, or if there are opportunities to promote greater equality.

Question 6

- a. *Do you think there will be any negative consequence for any group arising from the proposed changes and, if so, how might they be mitigated?*
- b. *Do you think that there are opportunities to promote greater equality?*

Queries and Responses

42. If you have any queries or seek clarification on any part of this consultation paper, please contact Janice Marshall of the Implementation Committee secretariat at the Bar Council at the address below.

43. We intend to publish a report on all the responses to this consultation on our website unless a respondent expressly requests that a specific part of the response, or its entirety, should be kept confidential. With confidential responses, we will record the identity of the respondent and the fact that they have submitted a confidential response. If you prefer any part or all of your response to be treated as confidential, please ensure that you advise us accordingly.

44. Responses should be received by the Bar Council by the 31 July 2010 and be emailed or posted to the address below:

Janice Marshall
Bar Council
289-293 High Holborn,
London WC1V 7HZ
DX 240 London Chancery Lane.
email: contractconsultation@barcouncil.org.uk direct line: 020 7611 1375

date: April 2010

Annexes

Annexe 1 - Terms of Work on which barristers offer their services to Solicitors and the
Withdrawal of Credit Scheme 1988 as amended (Annexe G1 of the Bar Code of Conduct)

Annexe 2 – "Cab Rank Rule", Part VI of the Bar Code of Conduct

Annexe 3 – Contractual Terms of Work on which barristers offer their services to Solicitors
and the Withdrawal of Credit Scheme 1988 as amended (Annexe G2 of the Bar Code of
Conduct)

Annexe 4 – New Contractual Terms

Annexe 5 – Current relevant passages of the Code of Conduct and proposed amendments

Annexe 6 – List of consultees

Annexe 7 – Rules relating to the List of Defaulting Solicitors together with the Voluntary Joint
Tribunal on Barristers' Fees Rules and the Scheme for complaining to the Bar Council for
Publicly Funded Matters

Annexe 8 - Definitions

Annexe 9 – Equality Impact Assessment

**Annexe 1 – Consultation on Contractual Terms for the
supply of legal services by barristers to solicitors**

ANNEXE G1

BAR CODE OF CONDUCT

**THE TERMS OF WORK ON WHICH BARRISTERS
OFFER THEIR SERVICES TO SOLICITORS AND
THE WITHDRAWAL OF CREDIT SCHEME 1988**

**THE TERMS OF WORK ON WHICH BARRISTERS OFFER THEIR
SERVICES TO SOLICITORS AND THE WITHDRAWAL OF CREDIT
SCHEME 1988**

(As authorised by the General Council of the Bar on 16 July 1988 and
amended by authority of the General Council of the Bar
on 10 November 1990, 17 July 1999, 24 March 2001 and 17 November 2001)

WHEREAS:

(1) These Terms have been authorised by the General Council of the Bar and are intended to apply (save as hereinafter provided) in any case where a barrister is instructed by a solicitor;

(2) Any solicitor who sends a brief or instructions to a barrister will be deemed to instruct that barrister on these Terms unless and to the extent that the barrister and the solicitor have agreed in writing in relation to the particular matter or generally (a) that the Contractual Terms on which Barristers Offer their Services to Solicitors 2000 shall apply, or (b) to exclude or vary these Terms;

AND WHEREAS:

(3) By the established custom of the profession a barrister looks for payment of his fees to the solicitor who instructs him and not to his lay client;

(4) Except in publicly funded cases a solicitor is personally liable as a matter of professional conduct for the payment of a barrister's proper fees whether or not he has been placed in funds by his lay client;

(5) Where instructions have been given in the name of a firm all partners at that date incur personal liability and remain liable for the payment of counsel's fees incurred on behalf of the firm by a deceased bankrupt or otherwise defaulting former partner of the firm; and

(6) The liability of a sole practitioner and of partners for the liabilities of their co-partners is a continuing one and is not cancelled or superseded by any transfer of the practice or dissolution of the partnership;

General

1 A solicitor may in his capacity as a director partner member employee consultant associate or other agent of a company firm or other body brief or instruct a barrister.

2 In any case where a barrister accepts a brief or instructions from a solicitor in his capacity as a director partner member employee consultant associate or agent of a company firm or other body:

- (1) the solicitor warrants that he is authorised by his company firm or other body to instruct the barrister;
- (2) the obligations of the solicitor under these Terms (including in particular his responsibility for the payment of the barrister's fees) shall be the joint and several obligations of him and that company firm or other body.

Instructions

3 A barrister has the duty or the right in certain circumstances set out in the Bar Code of Conduct to refuse to accept a brief or instructions and these Terms will apply only where the barrister has accepted the brief or instructions.

4 Notwithstanding that a brief or instructions have been delivered to a barrister the barrister shall not be deemed to have accepted that brief or those instructions until he has had a reasonable opportunity:

- (1) to peruse them;
- (2) in the case of a brief to agree a fee with the solicitor.

5 A barrister accepts a brief or instructions upon the understanding:

- (1) that he must and will comply with the Bar Code of Conduct;
- (2) that he will deal with instructions as soon as he reasonably can in the ordinary course of his work
- (3) that he may return the brief or instructions in accordance with the Bar Code of Conduct, and that, if he does so, he will incur no liability to the solicitor under these terms as a result of so doing.

- 6 (1) Where for any reason time is of the essence the solicitor must at the time when he delivers the brief or instructions but separately from the brief or instructions themselves inform the barrister of that fact and of the particular reason for urgency in order that the barrister may decide whether in those circumstances he can accept the brief or instructions. In addition the brief or instructions must be clearly marked "Urgent".
- (2) In the case of publicly funded work, the solicitor must at the time when he delivers the brief or instructions (or if any relevant certificate is not then available to him as soon as reasonably practicable thereafter) supply the barrister with copies of any relevant public funding certificates.

Copies of Briefs and Instructions and Records of Advice

7 A barrister shall be entitled for the purposes of his records (but not otherwise) to retain his brief or instructions or any papers delivered therewith or (if the solicitor requires the return of such brief or instructions and papers) to take and retain a copy of such brief or instructions and papers and of any written advice PROVIDED that nothing shall entitle a barrister to exercise any lien over any brief instructions or papers.

Fees

8 Save in the case of publicly funded work or in the case of a Notified Solicitor a barrister and solicitor may (subject to any rules regarding contingent fees) make such agreement or arrangement between them as to the time or times whether at the time of delivery of the brief or instructions or subsequently thereto or otherwise at which the barrister's fees shall be paid as they may think fit and the barrister's fees shall be paid by the solicitor accordingly PROVIDED that every such agreement or arrangement shall be in writing.

9 Save in the case of publicly funded work or in the case of work the fees for which are to be paid out of a fund but cannot be so paid without an order of the court a barrister may and in the case of fees payable by a Notified Solicitor a barrister (unless and except as otherwise previously authorised in writing by the Chairman) must require his fees to be agreed and paid before he accepts the brief or instructions to which the fees relate.

- 10 (1) Fees and/or charging rates shall be (i) as agreed between the barrister and the solicitor before the barrister commences work under the brief or instructions; or, in default of such agreement, (ii) a reasonable professional rate for the barrister instructed

- (2) The barrister shall submit an itemised fee note not later than three months after the work to which the fee note relates has been done or at the conclusion of the matter in which the barrister is briefed or instructed whichever is the sooner.
- (3) The barrister shall as soon as reasonably practicable comply with a request by the solicitor for a fee note.
- (4) Every fee note shall include the solicitor's reference and (where appropriate) the barrister's case reference number, the barrister's relevant account number for the purpose of receiving payment in publicly funded cases and (if known to the barrister) any relevant public funding certificate number and date of issue.
- (5) If any fees remain outstanding at the conclusion of a case the solicitor shall as soon as reasonably practicable inform the barrister that the case has concluded.

11 In the case of publicly funded work:

- (1) The solicitor and barrister shall respectively take such steps as may be open to each of them to take under the applicable Regulations for the time being in force for the purpose of obtaining payment of the barrister's fees as soon as reasonably practicable;
- (2) The solicitor shall as soon as reasonably practicable comply with a request by the barrister for information by (i) notifying the barrister of the date of issue and number and supplying the barrister with copies of any relevant public funding certificates (ii) notifying the barrister of the date of any order for assessment of costs under the relevant certificate or other event giving rise to a right to such assessment (iii) informing the barrister of the steps taken by him pursuant to paragraph 11(1) hereof;
- (3) The barrister unless such information and an explanation for non-payment satisfactory to him is thereupon received from the solicitor shall then report the facts to the Chairman.

12 In the case of work the fees for which are to be paid out of a fund but cannot be so paid without an order of the court:

- (1) The solicitor shall use his best endeavours to obtain such order or orders as may be requisite to enable payment of the fees to be made as soon as reasonably practicable;
- (2) The solicitor shall as soon as reasonably practicable comply with a request by the barrister for information by informing the barrister of the steps taken by him pursuant to paragraph 12(1) hereof;

- (3) The barrister unless such information and an explanation for non-payment satisfactory to him is thereupon received from the solicitor shall then report the facts to the Chairman;
 - (4) Subject to paragraph 12(5) below, the barrister's fees shall be payable one month after the making of the order of the court required for the payment of such fees out of the fund.
 - (5) In the event of any breach by the solicitor of his obligations under paragraph 12(1) and/or 12(2) above, the fees will be payable forthwith and the amount outstanding from time to time will carry simple interest at the stipulated rate from one month after the date of the letter referred to in paragraph 15(1) hereof until payment.
- 13**
- (1) Subject to any such agreement or arrangement as is referred to in paragraph 8 hereof the barrister's fees if and to the extent that such fees have not been previously paid shall unless challenged by the solicitor as hereinafter provided be paid by the solicitor within one month after the fee note relating thereto has been sent to the solicitor whether or not the solicitor has been placed in funds by his client and whether or not the case is still continuing.
 - (2) In the event that the barrister's fees are not paid in full in accordance with subparagraph (1) above, the fees outstanding from time to time will carry simple interest at the stipulated rate from one month after the date of the letter referred to in paragraph 15(1) hereof until payment if that letter includes a statement to that effect.
- 14**
- (1) Any challenge by a solicitor to a barrister's fee (whether giving rise to an issue of competence or a dispute on quantum or otherwise) must be made by the solicitor in writing within three months after the first fee note relating to that fee has been sent to him or within one month after such letter relating to that fee as is referred to in paragraph 15(1) hereof has been sent to him whichever is the later.
 - (2) No challenge to a barrister's fees will be accepted either by the barrister or in the case of a complaint by the barrister to the Bar Council of failure to pay those fees by the Bar Council unless:
 - (a) the challenge was made in accordance with paragraph 14(1) hereof; and
 - (b) the solicitor has within 14 days of being requested to do so either by the barrister or by the Bar Council agreed in writing (i) to submit the issue or dispute giving rise to the challenge to the decision of a Tribunal and (ii) to abide by and forthwith give effect to the decision of the Tribunal.

- (3) If a dispute is referred to a Tribunal in accordance with paragraph 14(2) above:
- (a) The Tribunal shall act as experts and not as arbitrators and its decision shall be conclusive, final and binding for all purposes upon the solicitor and the barrister.
 - (b) No payment need be made in respect of the fees (unless the Tribunal orders an interim payment) until the Tribunal has made its decision and communicated it to the parties.
 - (c) If the Tribunal determines that any sum is payable in respect of the fees, paragraph 13(2) above shall apply to that sum as if it had become payable when it would have become payable if no challenge had been made, and the Tribunal shall also determine the amount payable in respect of interest thereon under that paragraph.
- (4) Unless the solicitor has challenged the barrister's fees and agreed to submit the issue or dispute in accordance with paragraphs 14(1) and (2), the fees will be payable in full, without any set-off whatsoever, in the amount set out in the relevant fee note and at the time specified in paragraph 13(1) above.

15 Save as aforesaid and subject to any such agreement or arrangement as is referred to in paragraph 8 hereof the barrister if and to the extent that his fees have not been previously paid:

- (1) may at any time after the expiration of one month after the first fee note relating thereto has been sent send a reminder substantially in the form of the letter annexed hereto and marked "A" or some reasonable adaptation thereof;
- (2) unless an explanation for non-payment satisfactory to the barrister has been received shall at the expiration of three months after the first fee note relating thereto has been sent send a further reminder substantially in the form of the letter annexed hereto and marked "B" or some reasonable adaptation thereof; and
- (3) unless an explanation for non-payment satisfactory to the barrister is thereupon received shall then report the facts to the Chairman.

Withdrawal of Credit

16 In any case where a barrister has made a report to the Chairman in accordance with paragraphs 11(3) 12(3) or 15(3) hereof or under the equivalent terms of any contract and in any other case in which he is satisfied that it is appropriate to do so, the Chairman may write a letter in the form of one of the letters annexed hereto and marked "C" or some reasonable adaptation thereof.

- 17 (1) This paragraph applies where the following conditions are satisfied namely where:
- (a) such a letter as is referred to in paragraph 16 hereof has been sent and no explanation for non-payment satisfactory to the Chairman has been received; and
 - (b) either (i) any fees referred to in such letter which are in the opinion of the Chairman properly payable remain unpaid or (ii) in the event that all such fees have been paid not more than twelve months have elapsed since payment; and
 - (c) circumstances have arisen in which the Chairman would otherwise have occasion to send to any person liable for the fees or to any connected person a further letter such as is referred to in paragraph 16 hereof.
- (2) In any case in which paragraph 17(1) hereof applies the Chairman shall write to such person or persons (as the case may be) to the effect that unless written representations received by him within 14 days after the date of such letter or within such extended period as he may allow justify an exceptional departure from the following course he will and unless persuaded by such representations not to do so the Chairman whether or not any fees remain unpaid shall:
- (a) issue a direction that no barrister may without the written consent of the Chairman (which consent may be sought urgently in exceptional cases) knowingly accept instructions from any person or firm named in such direction or from any person who or firm which is or has at any time since the direction was issued been a connected person unless his fees are to be 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; and
 - (b) cause the names of the persons or firms named in such direction to be included in a list of persons and firms named in such directions to be circulated by pre-paid first-class post to all such persons and firms to all the Clerks and Heads of Chambers in England and Wales to the Master of the Rolls and to the President of the Law Society notifying them of such direction.

18 Notwithstanding anything to the contrary herein if in any case the Chairman is satisfied that it is appropriate to issue a direction such as is referred to in paragraph 17(2)(a) hereof in respect of any person or firm named in such direction and to circulate a list such as is referred to in paragraph 17(2)(b) hereof including the names of the persons or firms named in such direction he may after giving such persons and firms due notice of why he considers it appropriate to take such course and after considering any written representations and after consultation with the Law Society issue a direction in respect of and cause the list to include the names of such persons and firms as may be appropriate.

18A Upon issuing a direction pursuant to either paragraph 17(2)(a) or paragraph 18 hereof, the Chairman shall report the facts to the OSS and shall request the OSS to commence proceedings before the Solicitors' Disciplinary Tribunal against the persons, the firms, or the partners in the firms named in such direction.

19 The list referred to in paragraphs 17 and 18 hereof shall be circulated monthly unless there have been in the meantime no additions to or deletions from the list.

20 Any Notified Solicitor and any barrister may at any time after the expiration of six months after the name of any person or firm was first included in such a list seek the revocation of any relevant direction and the amendment of the list and the Chairman after considering any written representations and after consultation with the Law Society shall be empowered (but shall not be obliged) to accede to such application upon such terms as he considers appropriate.

Definitions and consequential provisions

21 For the purpose hereof:

- (1) "Bar Code of Conduct" shall mean the Code of Conduct of the Bar of England and Wales for the time being in force;
- (2) "brief" "instructions" and "lay client" shall have the meanings assigned to them respectively in the Bar Code of Conduct;
- (3) "solicitor" shall where the context admits include any solicitor liable for the fees;
- (4) "person liable for the fees" shall mean any solicitor liable for the fees and any person company firm or other body responsible by virtue of paragraph 2(2) hereof for the payment of the fees;
- (5) Section 5(2), (3) and (4) of the Arbitration Act 1996 apply to the interpretation of all references in these Terms to parties having agreed, or made an agreement, in writing;
- (6) "connected person" shall mean any person who from time to time is either
 - (a) a partner employee consultant or associate of any firm of which any person liable for the fees or any Notified Solicitor is a partner employee consultant or associate;
 - (b) the employer of any person liable for the fees or of any Notified Solicitor;
 - (c) an employee of any person liable for the fees or of any Notified Solicitor;
 - (d) a firm of which any person liable for the fees or any Notified Solicitor is a partner employee consultant or associate;

- (7) "Notified Solicitor" shall mean any person or firm whose name is for the time being included in the list referred to in paragraphs 17 and 18 hereof and any person who or firm which is or has at any time since the direction was issued been a connected person;
- (8) "Tribunal" shall mean a Tribunal consisting of a barrister nominated by the Chairman and a solicitor nominated by the President of the Law Society;
- (9) "the Chairman" shall mean the Chairman of the Bar Council and shall include any person including in particular the Vice-Chairman of the Bar and the Chairman of the Remuneration and Terms of Work Committee and the Chairman of the Fees Collection Committee to whom the Chairman may have delegated either the whole or any part of his responsibilities hereunder;
- (10) "the OSS" shall mean the Office for the Supervision of Solicitors;
- (11) "publicly funded work" shall mean cases funded and paid directly to the barrister by the Legal Services Commission, as part of the Community Legal Service or the Criminal Defence Service
- (12) Where the context admits, references to fees include any interest accrued in respect of them under paragraph 13(2) hereof.
- (13) The "stipulated rate" shall mean 2% above the Bank of England base rate from time to time
- (14) Any letter written by the Chairman to any person pursuant to or which would otherwise have been effective for the purposes of either the Withdrawal of Credit Scheme which came into effect on 2 March 1987 or the Withdrawal of Credit Scheme 1988 as originally enacted or in force from time to time shall in relation to such person be deemed to be such a letter as is referred to in paragraph 16 hereof.

- 22 (1) Subject to sub-paragraph (2) below, any fee note and any such letter as is referred to in paragraphs 15(1) 15(2) 16 17(2) or 18 hereof may be sent and shall be treated as having been properly and sufficiently sent to each and every person liable for the fees and to each and every connected person (as the case may be) if posted by pre-paid first-class post or sent through any Document Exchange or by facsimile transmission addressed to:
- (a) any person liable for the fees; or
 - (b) if any person liable for the fees is either a partner of or consultant to or associate of or employed by another or others to the person liable for the fees or to his employer or to his senior partner (as the case may be); or
 - (c) if any such person practises (whether on his own or in partnership with others or otherwise) under a name other than

his own, to the firm under whose name he practises;

and addressed to any place at which such person or his employer or any partner of his carries on practice.

- (2) Where a firm or a sole proprietor is liable for the fees, if any letter under paragraphs 15(2), 16, 17(2) or 18 hereof is addressed to some person other than the senior partner of the firm or the sole proprietor, a copy must also be sent to the senior partner or sole proprietor at the same time.

23 Any such letter as is referred to in paragraphs 17(2) or 18 hereof shall:

- (1) identify any relevant earlier matters of complaint;
- (2) state the Chairman's proposed course of action; and
- (3) enclose a copy of this document provided that any accidental omission or failure to enclose such a copy may be remedied by the sending of a separate copy as soon as the Chairman is made aware of such omission or failure.

24 Any such direction as is referred to in paragraphs 17 or 18 hereof may contain or be amended so as to add or include any or all of the names and addresses:

- (1) of any person liable for the fees;
- (2) of any connected person; and
- (3) if any such person practises (whether on his own or in partnership with others or otherwise) under a name other than his own, of the firm under whose name he practises.

Status of these Terms

25 Neither the General Council of the Bar in authorising these Terms nor a barrister in offering his services to a solicitor on these Terms has any intention to create legal relations or to enter into any contract or other obligation binding in law.

26 Neither the sending by a solicitor of a brief or instructions to a barrister nor the acceptance by a barrister of a brief or instructions nor anything done in connection therewith nor the arrangements relating thereto (whether mentioned in these Terms or in the Bar Code of Conduct or to be implied) nor these Terms or any agreement or transaction entered into or payment made by or under them shall be attended by or give rise to any contractual relationship rights duties or consequences

whatsoever or be legally enforceable by or against or be the subject of litigation with either the barrister or the General Council of the Bar.

Exclusion or variation

27 A solicitor who sends a brief or instructions to a barrister will be deemed to instruct that barrister on these Terms unless and to the extent that the barrister and the solicitor have agreed in writing in relation to the particular matter or generally (a) that the Contractual Terms on which Barristers Offer their Services to Solicitors 2000 shall apply, or (b) to exclude or vary these Terms.

Transitional

28 Unless otherwise agreed in writing:

- (1) Any amendment to these Terms has effect only with regard to briefs and instructions accepted on or after the date the amendment is expressed to take effect; and
- (2) As regards briefs and instructions accepted before that date, these Terms continue to have effect in the form in which they stood before the amendment.

LETTER "A"

(To be sent 1 month after fee note)

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"). 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.

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 Counsel is required as a matter of professional conduct to report to the Chairman of the General Council of the Bar the fact that these fees have been outstanding for more than three months without satisfactory explanation. Unless, therefore, I hear from you within the next 14 days I regret that Counsel will have no alternative other than to make such a report.

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]

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 Counsel is required as a matter of professional conduct to report the matter to the Chairman of the General Council of the Bar unless 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. Unless, therefore, I hear from you within the next 14 days I regret that Counsel will have no alternative other than to make such a report.

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 "C"

First Chairman's Letter: Private

PRIVATE AND CONFIDENTIAL
RECORDED DELIVERY

The Senior Partner

Dear Sir,

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. As a result the matter has been referred to the General Council of the Bar in accordance with Counsel's professional obligations.

I would remind you of your professional obligation to pay Counsel's fees in non publicly funded matters irrespective of whether you have been placed in funds by your client. In this context, non-publicly funded matters refer to instructions for which Counsel is not paid directly by the Legal Services Commission, as part of the Community Legal Service or the Criminal Defence Service.

Unless you challenged Counsel's fees in writing within 3 months after the first fee note was sent to you, or you are able to provide a satisfactory explanation for non-payment, I would ask you to pay Counsel within 14 days of the date of this letter. In addition, please provide an explanation for the delay in payment, again within 14 days of the date of this letter.

I am also enclosing for your attention a copy of the Terms of Work on which Barristers offer their services to Solicitors and the Withdrawal of Credit Scheme 1988 (as amended). You will appreciate from reading the text of the Scheme that its effect is such that, unless there is a satisfactory explanation for non-payment or you challenged the fees in time, and the Chairman has occasion to write again in respect of other outstanding fees within the period referred to in paragraph 17(1)(b) of the Scheme, then the consequences spelt out in paragraph 17(2) of the Scheme will, save in the most exceptional circumstances, follow. In other words, credit will be withdrawn. Furthermore, the Chairman will report the facts to the Office for the Supervision of Solicitors with a request that it should commence proceedings against you before the Solicitors Disciplinary Tribunal.

If, therefore, you consider that a satisfactory explanation for non-payment exists, it is in your interests to provide it now.

I hope that it will not prove necessary to implement the Scheme in your case and that Counsel's fees will be paid 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 Counsel's fees on time.

Yours faithfully,

[Name]
CHAIRMAN OF THE BAR

11.10.25 Application to LSB - Consultation

encls:

THE SCHEDULE

Name and address of Counsel Fees in the matter of

[Here list name(s) and address(es) of Counsel and name(s) of case(s)]

LETTER "C"
First Chairman's Letter: Publicly funded

PRIVATE AND CONFIDENTIAL

RECORDED DELIVERY

The Senior Partner

Dear Sir,

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. As a result, the matter has been referred to the General Council of the Bar in accordance with Counsel's professional obligations.

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

- (a) notify me of the date of issue and number and supply me with copies of any relevant publicly funded certificates;
- (b) notify me of 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) inform me of 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 Terms of Work on which Barristers offer their services to Solicitors and the Withdrawal of Credit Scheme 1988 (as amended). You will appreciate from reading the text of the Scheme that its 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 17(1)(b) of the Scheme, then the consequences spelt out in paragraph 17(2) of the Scheme will, save in the most exceptional circumstances, follow. In other words, credit will be withdrawn. Furthermore, the Chairman will report the facts to the Office for the Supervision of Solicitors with a request that it should commence proceedings against you before the Solicitors Disciplinary Tribunal.

If, therefore, you consider that a satisfactory explanation for non-payment exists, it is in your interests to provide it now.

I hope that it will not prove to be necessary to implement the Scheme in your case, and that Counsel's fees will be paid 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 Counsel's fees on time."

Yours faithfully,

[Name]
CHAIRMAN OF THE BAR

encls:

THE SCHEDULE
11.10.25 Application to LSB - Consultation

LETTER "C"

First Chairman's Letter: Private and Publicly funded

PRIVATE AND CONFIDENTIAL

RECORDED DELIVERY

The Senior Partner

Dear Sir,

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. As a result, the matter has been referred to the General Council of the Bar in accordance with Counsel's professional obligations.

I would remind you of your professional obligation to pay Counsel's fees in privately funded matters irrespective of whether you have been placed in funds by your client. In this context, non-publicly funded matters refer to instructions for which Counsel is not paid directly by the Legal Services Commission, as part of the Community Legal Service or the Criminal Defence Service.

Unless you challenged Counsel's fees in writing within 3 months after the first fee note was sent to you, or you are able to provide a satisfactory explanation for non-payment, I would ask you to pay Counsel within 14 days of the date of this letter. In addition, please provide an explanation for the delay in payment, again within 14 days of the date of this letter.

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

- (a) notify me of the date of issue and number and supply me with copies of any relevant publicly funding certificates;
- (b) notify me of 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) inform me of 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 Terms of Work on which Barristers offer their services to Solicitors and the Withdrawal of Credit Scheme 1988 (as amended). You will appreciate from reading the text of the Scheme that its effect is such that, unless there is a satisfactory explanation for non-payment or you challenged the fees in time, and the Chairman has occasion to write again in respect of other outstanding fees within the period referred to in paragraph 17(1)(b) of the Scheme, then the consequences spelt out in paragraph 17(2) of the Scheme will, save in the most exceptional circumstances, follow. In other words, credit will be withdrawn. Furthermore, the Chairman will report the facts to the Office for the Supervision of Solicitors with a request that it should commence proceedings against you before the Solicitors Disciplinary Tribunal.

If, therefore, you consider that a satisfactory explanation for non-payment exists, it is in your interests to provide it now.

I hope that it will not prove to be necessary to implement the Scheme in your case, and that
11.10.25 Application to LSB - Consultation

Counsel's fees will be paid 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 Counsel's fees on time.

Yours faithfully,
[Name] CHAIRMAN OF THE BAR

encls: THE SCHEDULE

**Annexe 2 – Consultation on Contractual Terms for the
supply of legal services by barristers to solicitors**

Part VI - Acceptance and Return of Instructions

Part VI - Acceptance and Return of Instructions

Acceptance of instructions and the 'Cab-rank rule'

601. 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).

602. A self-employed barrister must comply with the 'Cab-rank rule' and accordingly except only as otherwise provided 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 and 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 for any person on whose behalf he is instructed;

and 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.

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:

- (a) if he lacks sufficient experience or competence to handle the matter;
- (b) if having regard to his other professional commitments he will be unable to do or will not have adequate time and opportunity to prepare that which he is required to do;
- (c) if the instructions seek to limit the ordinary authority or discretion of a barrister in the conduct of proceedings in Court or to require a barrister to act otherwise than in conformity with law or with the provisions of this Code;
- (d) if the matter is one in which he has reason to believe that he is likely to be a witness or in which whether by reason of any connection with the client or with the Court or a member of it or otherwise it will be difficult for him to maintain professional independence or the administration of justice might be or appear to be prejudiced;
- (e) if there is or appears to be a conflict or risk of conflict either between the interests of the barrister and some other person or between the interests of any one or more clients (unless all relevant persons consent to the barrister accepting the instructions);

- (f) if there is a significant risk that information confidential to another client or former client might be communicated to or used for the benefit of anyone other than that client or former client without their consent;
- (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.
- (h) If the barrister is instructed by or on behalf of a lay client who has not also instructed a solicitor or other professional client, and if the barrister is satisfied that it is in the interests of the client or in the interests of justice for the lay client to instruct a solicitor or other professional client.

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

- (a) requiring him to do anything other than during the course of his ordinary working year;
- (b) other than at a fee which is proper having regard to:
 - (i) the complexity length and difficulty of the case;
 - (ii) his ability experience and seniority; and
 - (iii) the expenses which he will incur;
 and any instructions in a matter funded by the Legal Services Commission as part of the Community Legal Service or the Criminal Defence Service for which the amount or rate of the barrister's remuneration is prescribed by regulation or subject to assessment shall for this purpose unless the Bar Council or the Bar in general meeting otherwise determines (either in a particular case or in any class or classes of case or generally) be deemed to be at a proper professional fee.¹²
- (c) to do any work under a conditional fee agreement;
- (d) save in a matter funded by the Legal Services Commission as part of the Community Legal Service or the Criminal Defence Service:
 - (i) unless and until his fees are agreed;
 - (ii) if having required his fees to be paid before he accepts the instructions those fees are not paid;
- (e) from anyone other than a professional client who accepts liability for the barrister's fees;
- (f) in a matter where the lay client is also the professional client;³
- (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,
- (h) where the potential liability for professional negligence in respect of the case could exceed the level of professional indemnity insurance which is reasonably available and likely to be available in the market for him to accept.⁴

- (i) to investigate or collect evidence (save for taking proofs of evidence or preparing witness statements urgently as part of the barrister's conduct of the case at court), to attend at a police station with or without a solicitor, or to conduct correspondence with other parties (save where reasonably necessary as part of the barrister's conduct of the case at court).⁵

605. A self-employed Queen's Counsel is not obliged to accept instructions:

- (a) to settle alone any document of a kind generally settled only by or in conjunction with a junior;
- (b) to act without a junior if he considers that the interests of the lay client require that a junior should also be instructed.

606.1 A barrister (whether he is instructed on his own or with another advocate) must in the case of all instructions consider whether consistently with the proper and efficient administration of justice and having regard to:

- (a) the circumstances (including in particular the gravity complexity and likely cost) of the case;
- (b) the nature of his practice;
- (c) his ability experience and seniority; and
- (d) his relationship with the client;

the best interests of the client would be served by instructing or continuing to instruct him in that matter.

606.2 Where a barrister is instructed in any matter with another advocate or advocates the barrister must in particular consider whether it would be in the best interests of the client to instruct only one advocate or fewer advocates.

606.3 A barrister who in any matter is instructed either directly by the lay client or by an intermediary who is not a solicitor or other authorised litigator should consider whether it would be in the interests of the lay client or the interests of justice to instruct a solicitor or other authorised litigator or other appropriate intermediary either together with or in place of the barrister.

606.4 In cases involving several parties, a barrister must on receipt of instructions and further in the event of any change of circumstances consider whether, having regard to all the circumstances including any actual or potential conflict of interest, any client ought to be separately represented or advised or whether it would be in the best interests of any client to be jointly represented or advised with another party.

607. If at any time in any matter a barrister considers that it would be in the best interests of any client to have different representation, he must immediately so advise the client.

¹On the 30 April 2001 the Bar Council decided that, with effect from 1 May 2001, all cases subject to family graduated fees are no longer deemed to be at a proper professional fee for the purposes of paragraph 604(b).

² On the 15th November 2003 the Bar Council decided that, effective immediately, all cases subject to criminal graduated fees are no longer deemed to be at a proper professional fee for the purposes of paragraph 604(b)

³ Amended 1st September 2005

⁴ Amended 1st March 2007

⁵Effective from 31st March 2010

**Annexe 3 – Consultation on Contractual Terms for the
supply of legal services by barristers to solicitors**

ANNEXE G2

BAR CODE OF CONDUCT

**THE CONTRACTUAL TERMS OF WORK ON WHICH BARRISTERS
OFFER THEIR SERVICES TO SOLICITORS 2001**

**THE CONTRACTUAL TERMS ON WHICH BARRISTERS OFFER
THEIR SERVICES TO SOLICITORS 2001**

*(As Authorised By The General Council Of The Bar On 24 March 2001
and amended by authority of the General Council of the Bar
on the 17 November 2001)*

WHEREAS:

- (1) These terms have been authorised by the General Council of the Bar;
- (2) These terms are intended to apply in any case where a barrister is instructed by a solicitor, and both the barrister and the solicitor have agreed in writing that the barrister's retainer shall be contractually binding;
- (3) Any such agreement shall operate in accordance with paragraph 27 of the Terms of Work to exclude paragraphs 1-15 and 25-26 thereof as regards the instructions to which it relates;

AND WHEREAS:

- (4) By the established custom of the profession a barrister looks for payment of his fees to the solicitor who instructs him and not to his lay client;
- (5) Except in cases funded by the Legal Services Commission, Community Legal Service or Criminal Defence Service a solicitor is personally liable as a matter of professional conduct for the payment of a barrister's proper fees whether or not he has been placed in funds by his lay client;
- (6) Where instructions have been given in the name of a firm all partners at that date incur personal liability and remain liable for the payment of counsel's fees incurred on behalf of the firm by a deceased bankrupt or otherwise defaulting former partner of the firm; and
- (7) The liability of a sole practitioner and of partners for the liabilities of their co-partners is a continuing one and is not cancelled or superseded by any transfer of the practice or dissolution of the partnership;

APPLICATION OF THESE TERMS

- 1 These terms apply in any case where a barrister is instructed by a solicitor and where both the barrister and the solicitor have agreed in writing that the barrister's retainer shall be contractually binding subject to the following:-
 - (1) these terms apply to any particular contract only insofar as they have not been expressly varied or excluded by written agreement between the barrister and the solicitor;
 - (2) these terms will apply to briefs and instructions only where they have been accepted by the barrister;
 - (3) these terms do not apply to publicly funded work; and
 - (4) these terms do not apply to any work undertaken by a barrister on a conditional fee basis.

GENERAL

- 2 The solicitor may in his capacity as a director partner member employee consultant associate or other agent of a company firm or other body brief or instruct the barrister.
- 3 In any case where the barrister accepts a brief or instructions from the solicitor in his capacity as a director partner member employee consultant associate or agent of a company firm or other body:
 - (1) the solicitor warrants that he is authorised by his company firm or other body to instruct the barrister;
 - (2) the obligations of the solicitor under these terms (including in particular his responsibility for the payment of the barrister's fees) shall be the joint and several obligations of him and that company firm or other body.

INSTRUCTIONS

- 4 The barrister has the duty or the right in certain circumstances set out in the Bar Code of Conduct to refuse to accept a brief or instructions and these terms will apply only where the barrister has accepted the brief or instructions.
- 5 Notwithstanding that a brief or instructions have been delivered to the barrister he shall not be deemed to have accepted that brief or those instructions until he has had a reasonable opportunity:

- (1) to peruse them;
- (2) in the case of a brief, to agree a fee with the solicitor.

6 The barrister accepts a brief or instructions upon the understanding:

- (1) that he must and will comply with the Bar Code of Conduct;
- (2) that he will deal with instructions as soon as he reasonably can in the ordinary course of his work;
- (3) that he may return the brief or instructions in accordance with the Bar Code of Conduct, and that, if he does so, he will incur no liability to the solicitor under these terms as a result of so doing.

7 Where for any reason time is of the essence the solicitor must at the time when he delivers the brief or instructions but separately from the brief or instructions themselves inform the barrister of that fact and of the particular reason for urgency in order that the barrister may decide whether in those circumstances he can accept the brief or instructions. In addition the brief or instructions must be clearly marked "Urgent."

COPIES OF BRIEFS AND INSTRUCTIONS AND RECORDS OF ADVICE

8 The barrister shall be entitled for the purposes of his records (but not otherwise) to retain his brief or instructions or any papers delivered therewith or (if the solicitor requires the return of such brief or instructions and papers) to take and retain a copy of such brief or instructions and papers and of any written advice PROVIDED that nothing shall entitle the barrister to exercise any lien over any brief instructions or papers.

FEES AND INTEREST

9 Subject to the Bar Code of Conduct, the following provisions shall apply:

- (1) Fees and/or charging rates shall be (a) as agreed between the barrister and the solicitor before the barrister commences work under the brief or instructions; or, in default of such agreement, (b) a reasonable professional rate for the barrister instructed.
- (2) Subject to paragraphs 11 and 12 below, the solicitor shall pay the barrister's fees in respect of work to which these terms apply within one month after receipt by the solicitor of the barrister's fee note in respect of such fees.

(3) In the event that the barrister's fees are not paid in full in accordance with sub-paragraph (2) above, the fees outstanding from time to time will carry simple interest at the stipulated rate from one month after the date of the letter referred to in paragraph 13(1) hereof until payment.

- 10
- (1) The barrister shall submit an itemised fee note not later than three months after the work to which the fee note relates has been done or at the conclusion of the matter in which the barrister is briefed or instructed whichever is the sooner.
 - (2) The barrister shall as soon as reasonably practicable comply with a request by the solicitor for a fee note.
 - (3) Every fee note shall include the solicitor's reference and (where appropriate) the barrister's case reference number.
 - (4) If any fees remain outstanding at the conclusion of a case the solicitor shall as soon as reasonably practicable inform the barrister that the case has concluded.

11 In the case of work the fees for which are to be paid out of a fund but cannot be so paid without an order of the court:

- (1) The solicitor shall use his best endeavours to obtain such order or orders as may be requisite to enable payment of the fees to be made as soon as reasonably practicable;
- (2) The solicitor shall as soon as reasonably practicable comply with a request by the barrister for information by informing the barrister of the steps taken by him pursuant to paragraph 11(1) hereof;
- (3) The barrister unless such information and an explanation for non-payment satisfactory to him is thereupon received from the solicitor shall then report the facts to the Chairman.
- (4) Subject to paragraph 11(5) below, the barrister's fees shall be payable one month after the making of the order of the court required for the payment of such fees out of the fund.
- (5) In the event of any breach by the solicitor of his obligations under paragraph 11(1) and/or (2) above, the fees will be payable forthwith and the amount outstanding from time to time will carry simple interest at the stipulated rate from one month after the date of the letter referred to in paragraph 13(1) hereof until payment if that letter includes a statement to that effect.

- 12 (1) Any challenge by the solicitor to the barrister's fee (whether giving rise to an issue of competence or a dispute on quantum or otherwise) must be made by the solicitor in writing within three months after the first fee note relating to that fee has been sent to him or within one month after such letter relating to that fee as is referred to in paragraph 13(1) hereof has been sent to him whichever is the later.
- (2) No challenge to a barrister's fees will be accepted either by the barrister or in the case of a complaint by the barrister to the Bar Council of failure to pay those fees by the Bar Council unless:
- (a) the challenge was made in accordance with paragraph 12(1) hereof; and
 - (b) the solicitor has within 14 days of being requested to do so either by the barrister or by the Bar Council agreed in *writing*
 - (i) to submit the issue or dispute giving rise to the challenge to the decision of a Tribunal
 - (ii) to abide by and forthwith give effect to the decision of the Tribunal.
- (3) If a dispute is referred to a Tribunal in accordance with paragraph 12(2) above:
- (a) the Tribunal shall act as experts and not as arbitrators and its decision shall be conclusive, final and binding for all purposes upon the solicitor and the barrister.
 - (b) no payment need be made in respect of the fees (unless the Tribunal orders an interim payment) until the Tribunal has made its decision and communicated it to the parties.
 - (c) If the Tribunal determines that any sum is payable in respect of the fees, paragraph 9(3) above shall apply to that sum as if it had become payable when it would have been payable if no challenge had been made, and the Tribunal shall also determine the amount payable in respect of interest thereon under that paragraph.
- (4) Unless the solicitor has challenged the barrister's fees and agreed to submit the issue or dispute in accordance with paragraphs 12(1) and (2);
- (a) the fees will be payable in full, without any deductions or set-off whatsoever, in the amount set out in the relevant fee note and at the time specified in paragraph 9(2) above
 - (b) for the avoidance of doubt, it shall not be open to the solicitor to withhold or delay such payment or any part thereof on the grounds that a claim or complaint has been made or maybe made against the barrister arising out of the brief or instruction

to which the fees relate or any other ground

- 13 Save as aforesaid and if and to the extent that his fees have not been previously paid, and without prejudice to any other remedy open to him in order to recover them, the barrister:
- (1) may at any time after the expiration of one month after the first fee note relating thereto has been sent send a reminder substantially in the form of the letter annexed hereto and marked "A" or some reasonable adaptation thereof; and
 - (2) unless an explanation for non-payment satisfactory to the barrister has been received, shall at the expiration of three months after the first fee note relating thereto has been sent send a further reminder substantially in the form of the letter annexed hereto and marked "B" or some reasonable adaptation thereof; and
 - (3) unless an explanation for non-payment satisfactory to the barrister is thereupon received shall then report the facts to the Chairman.

WITHDRAWAL OF CREDIT

- 14
- (1) In any case where a barrister has made a report to the Chairman in accordance with paragraphs 11(3) or 13(3) hereof, paragraphs 16 to 24 (inclusive) of the Terms of Work shall, so far as applicable, apply to the relationship created between the barrister and the solicitor under these terms.
 - (2) Paragraph 22 of the Terms of Work shall also apply to any fee note or letter referred to in paragraphs 9, 10 and 13 above as it does to those referred to in paragraphs 15-18 of the Terms of Work

DEFINITIONS AND CONSEQUENTIAL PROVISIONS

- 15 For the purpose hereof:
- (i) "Bar Code of Conduct" shall mean the Code of Conduct of the Bar of England and Wales for the time being in force;
 - (ii) "brief" "instructions" and "lay client" shall have the meanings assigned to them respectively in the Bar Code of Conduct;
 - (iii) "solicitor" shall where the context admits include any solicitor liable for the fees;

- (iv) "person liable for the fees" shall mean any solicitor liable for the fees and any person company firm or other body responsible by virtue of paragraph 3(2) hereof for the payment of the fees;
- (v) Section 5(2), (3) and (4) of the Arbitration Act 1996 apply to the interpretation of all references in these Terms to parties having agreed, or made an agreement, in writing;
- (vi) "Terms of Work" shall mean 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)
- (vii) "Tribunal" shall mean a Tribunal consisting of a barrister nominated by the Chairman and a solicitor nominated by the President of the Law Society;
- (viii) "the Chairman" shall mean the Chairman of the General Council of the Bar (also referred to as the "Bar Council") and shall include any person including in particular the Vice Chairman of the General Council of the Bar and the Chairman of the Remuneration and Terms of Work Committee and the Chairman of the Fees Collection Committee to whom the Chairman may have delegated either the whole or any part of his responsibilities hereunder;
- (ix) "publicly funded work" shall mean cases funded and paid directly to the barrister by the Legal Services Commission, as part of the Community Legal Service or the Criminal Defence Service.
- (x) Where the context admits, references to fees include any interest accrued in respect of them under paragraph 9(3) hereof.
- (xi) The "stipulated rate" shall mean 2% above the Bank of England base rate from time to time.

THE GENERAL COUNCIL OF THE BAR

- 16 Neither the sending by the solicitor of a brief or instructions to the barrister nor the acceptance by the barrister of a brief or instructions nor anything done in connection therewith nor the arrangements relating thereto (whether mentioned in these Terms or in the Bar Code of Conduct or to be implied) nor these Terms or any agreement or transaction entered into or payment made by or under them shall be attended by or give rise to any contractual relationship rights duties or consequences whatsoever (except between the solicitor and barrister) or be legally enforceable by or against or be the subject of litigation with the General Council of the Bar.

LETTER "A"

(TO BE SENT 1 MONTH AFTER FEE NOTE)

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 the [*Date*].

My records indicate that this is a privately funded case in which your relationship with [*Name of Barrister*] is governed by the Contractual Terms on which Barristers Offer their Services to Solicitors 2000 (the "Contractual Terms"). Under paragraph 9(2) of those terms, the fees were due and payable within 30 days of the Fee Note.

[Please note that under paragraph 9(3) of the The Contractual Terms, any such fees remaining outstanding within 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 1 month after the date of this letter until payment.]*

I would be grateful if you could now make arrangements for these fees to be paid.

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 "B"

(TO BE SENT 3 MONTHS AFTER FEE NOTE)

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 Counsel is required as a matter of professional conduct to report to the Chairman of the General Council of the Bar the fact that these fees have been outstanding for more than three months without satisfactory explanation. Unless, therefore, I hear from you within the next 14 days I regret that Counsel will have no alternative other than to make such a report.

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*]

Annexe 4 – Consultation on Contractual Terms for the
supply of legal services by barristers to solicitors

**THE (NEW) STANDARD CONTRACTUAL TERMS FOR THE SUPPLY OF LEGAL
SERVICES BY BARRISTERS TO SOLICITORS 2010 – ANNEXE T1**

INDEX OF CLAUSES

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STANDARD CONDITIONS OF CONTRACT FOR THE SUPPLY OF LEGAL SERVICES BY BARRISTERS TO SOLICITORS 2010

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;

1.2 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 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;

“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.
- 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, as part of the Community Legal Service or as part of 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 a professional commitment or otherwise, to comply with the timescale for providing the Services requested by the Solicitor.

4. RECEIPT AND ACCEPTANCE OF THE INSTRUCTIONS

- 4.1 Upon receipt of the Instructions, the Barrister will review the Instructions within a reasonable time 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 complied with any obligations arising in relation to money laundering.
- 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 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 advice provided 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 subcontract the provision of any part of the Services but will remain responsible for the acts, omissions, defaults or negligence of any subcontractor as if they were the acts, omissions, defaults or negligence of the Barrister.

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 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 or the Solicitor;

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 Services will be provided on the basis of the proper interpretation of laws and court decisions in existence on the date on which the Services are provided. Changes in the law or its interpretation may take place before reliance is placed on the Services, or may be retrospective in effect. The Barrister 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 hourly rate will be subject to periodic review by the barrister, and in addition will be reviewed to reflect any significant changes in the status or seniority of the Barrister;

11.3.2 if the hourly rate is varied as a result of a review, the Barrister will notify the Solicitor and the revised hourly rate will take effect from the date of the notification or such other date as agreed.

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 part thereof and any disbursements at any time and in any event within 3 months of a request by the Solicitor.

12.2 The Invoice must set out an itemised description of:

12.2.1 the Services provided by the Barrister and the fees charged;

- 12.2.2 any disbursements incurred and the cost thereof; and
- 12.2.3 VAT (or any tax of a similar nature, if any).
- 12.3 The Solicitor must pay the Invoice upon 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, and without any deduction or withholding on account of any taxes or other charges.
- 12.4 Where the Barrister has delivered a fee note, on request by the Solicitor the Barrister will deliver a VAT invoice following receipt of payment.
- 12.5 If the Invoice remains outstanding more than 30 days from the date of delivery, the Barrister is entitled:
 - 12.5.1 to the fixed sum and interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998; and
 - 12.5.2 to sue the Solicitor for payment.
- 12.6 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:
 - 12.6.1 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
 - 12.6.2 to sue the Solicitor to enforce any award.
- 12.7 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 and 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 English Courts in respect of any dispute which arises out of or under this Agreement.

**Annexe 5 – Consultation on Contractual Terms for the
supply of legal services by barristers to solicitors**

RELEVANT PASSAGES OF THE CURRENT CODE OF CONDUCT:

“403.5 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 403.5 (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”

PROPOSED AMENDMENTS TO 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 funded by the Legal Services Commission as part of the Community Legal Service or the Criminal Defence Service or by the Crown Prosecution Service, after [insert date] to do any work other than on the Standard Contractual Terms for the Supply of Legal Services by Barristers on the Instructions of Solicitors 2010 reproduced at Appendix T1 as amended and in force from time to time"

Re-number existing 604(h) as 604(i)

Insert as follows:

"401. A self-employed barrister whether or not he is acting for a fee":

"(aa) in default of agreement to the contrary in relation to instructions accepted on or after [insert date] (save where he is to be paid directly by the Legal Service Commission as part of the Community Legal Service or as part of the Criminal Defence Service or by the Crown Prosecution Service or acts pursuant to a Conditional Fee Agreement) provides legal services to solicitors pursuant to the Standard Contractual Terms for the Supply of Legal Services by Barristers on the Instructions of Solicitors 2010 reproduced at Annex T1, as amended and in force from time to time, and accordingly Annexes G1 and G2 have no application to instructions accepted on or after [insert date]."

Insert 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 2010 (a copy of which is reproduced at Annex T4) as amended from time to time."

Annexe 6 – Consultation on Contractual Terms for the supply of legal services by barristers to solicitors

List of consultees

Association of Chartered Certified Accountants
Association of Law Costs Draftsmen
Association of Muslim Lawyers
Attorney General and Shadow Attorney General
Bar Council of Northern Ireland
Bar Mutual Indemnity Fund
the Bar, including Specialist Bar Associations, Circuits and other Bar groups
CBI
Chartered Institute of Patent Attorneys
Chartered Institute of Public Finance & Accountancy
Citizens' Advice
Consumer Focus
Council for Licensed Conveyancers
Council of the Inns of Court
Department for Business Innovation & Skills
Faculty of Advocates
Federation of Small Businesses
ILEX Professional Standards Board
Institute of Barristers' Clerks
Institute of Chartered Accountants in England & Wales
Institute of Chartered Accountants in Northern Ireland
Institute of Chartered Accountants of Scotland
Institute of Directors
Institute of Legal Executives
Institute of Paralegals
Institute of Trade Mark Attorneys
Intellectual Property Regulation Board
Law Centres Federation
Law Society
Legal Action Group
Legal Complaints Service
Legal Practice Management Association
Legal Services Board
Legal Services Board Consumer Panel
Legal Services Commission
Legal Services Ombudsman
Local Government Association
Master of Faculties
Ministry of Justice
Office of Fair Trading
Society of Asian Lawyers
Society of Black Lawyers
Solicitors Regulation Authority

11.10.25 Application to LSB - Consultation

Treasury Solicitor
Which?

THE BAR COUNCIL'S RULES RELATING TO THE LIST OF DEFAULTING SOLICITORS 2010 - ANNEXE T4

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:

11.10.25 Application to LSB – Consultation

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 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]

VOLUNTARY JOINT TRIBUNAL ON BARRISTERS' FEES RULES 2010 - ANNEXE T2

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**

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, as part of the Community Legal Service or as part of 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]

Annexe 8 – Consultation on Contractual Terms for the supply of legal services by barristers to solicitors

Definitions

Bar Council and the Bar Standards Board

In January 2006, the Bar Council, as the professional body for barristers in England and Wales, separated its regulatory and representative functions. The role of the Bar Council now is to represent and promote the Bar to non-barrister organisations and bodies and its work includes lobbying, developing and considering proposals for law reforms and any matters affecting the administration of justice. The Bar Council also provides to its members advice and services, including assistance in obtaining payment of fees. The Bar Standards Board is responsible for regulating barristers called to the Bar of England and Wales and for drafting and upholding the Bar Code of Conduct.

Law Society and Solicitors Regulation Authority

As with the Bar, the solicitors' professional body separated its regulatory and representative functions. The Law Society represents solicitors in England and Wales and the Solicitors Regulation Authority regulates solicitors. The Solicitors Regulation Authority also drafts and upholds the Solicitors' Code of Conduct.

Legal Services Act 2007 and Legal Services Board

The Legal Services Act 2007 established a new regime for the provision and regulation of legal services. It created the Legal Services Board, the oversight regulator of the legal profession. Individuals who wish to provide legal services must be regulated by an Approved Regulator and the governing rules of the Approved Regulators have to be approved by the Legal Services Board. Until the 31 December 2009, this role was undertaken by the Ministry of Justice. The Bar Council is the Approved Regulator for the Bar but has delegated its regulatory functions to the Bar Standards Board.

The regulatory objectives of the Legal Services Act [s.1(1)] are

- (a) protecting and promoting the public interest;
- (b) supporting the constitutional principle of the rule of law;
- (c) improving access to justice;
- (d) protecting and promoting the interests of consumers;
- (e) promoting competition in the provision of services within subsection (2);
- (f) encouraging an independent, strong, diverse and effective legal profession;
- (g) increasing public understanding of the citizen's legal rights and duties;
- (h) promoting and maintaining adherence to the professional principles.

The professional principles of the Legal Services Act [s1(3)] are

- (a) that authorised persons should act with independence and integrity,
- (b) that authorised persons should maintain proper standards of work,

- (c) that authorised persons should act in the best interests of their clients,
- (d) that persons who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorised persons should comply with their duty to the court to act with independence in the interests of justice, and
- (e) that the affairs of clients should be kept confidential.

As the Bar Standards Board must ensure that its policies and procedures are consistent with these objectives and professional principles, the proposals in the consultation paper have been drawn up in accordance with those objectives and principles.

Legal Services Commission

The Legal Services Commission runs the legal aid scheme in England and Wales and helps people in need receive high quality legal advice, assistance and representation. It provides financial support for advice and legal representation for people involved in civil cases (under the Community Legal Service) and for people facing criminal charges (under the Criminal Defence Service).

Solicitors Disciplinary Tribunal

The Solicitors Disciplinary Tribunal adjudicates upon alleged breaches by solicitors of rules or the Solicitors' Code of Professional Conduct. The Tribunal has power to strike off a solicitor from the Roll, suspend from practice, fine or reprimand

Annexe 9 – Consultation on Contractual Terms for the
supply of legal services by barristers to solicitors



EQUALITY IMPACT ASSESSMENT – NEW CONTRACTUAL TERMS

DATE	March 2010
ASSESSOR NAME	Implementation Committee, General Council of the Bar Janice Marshall, Fees Collection Manager, General Council of the Bar
POLICY	Introduction of standard Contractual Terms and related changes to the Cab Rank Rule of the Bar Code of Conduct
START DATE	Following approval by the Legal Services Board of the proposed changes to the Cab Rank Rule
RELEVANCE	By improving the ability of barristers to recover fees, barristers from lower socio economic groups would benefit proportionally more. Consequently this improves the opportunities and access to the Bar of women and ethnic minorities.
AIM OF POLICY	<p>To replace the present standard Terms of Work with a new basic form of legally binding Contractual Terms upon which, in default of other arrangements, barristers would accept instructions from solicitors in respect of privately funded work or where the instructing solicitor, although paid from public funds, is obliged to pay the barrister direct.</p> <p>Barristers and solicitors would continue to be free to negotiate different terms. However, in the absence of alternative terms being agreed, the new Contractual Terms are to apply.</p> <p>The present standard terms, entitled "The Terms of Work on which Barristers offer their Services and the Withdrawal of Credit Scheme", replicated in Annexe G1 of the Code of Conduct, suffer from numerous deficiencies, including:</p>

	<p>(1) lack of clarity to the detriment of all involved, including the lay client.</p> <p>(2) the present standard Terms are non-contractual, which means that none of their terms can be enforced through the Courts. Consequently self-employed barristers, being unable to sue for their fees, may suffer considerable delay in receiving payment or may even be forced to write-off their fees as irrecoverable. This operates particularly to the disadvantage of the younger and more vulnerable members of the Bar. There is a contractual version of the present standard terms, in Annexe G2 of the Code of Conduct, but it is rarely used.</p> <p>(3) The Law Society's rule that failure on the part of a solicitor to pay counsel's fees could constitute professional misconduct has been abolished.</p> <p>(4) the only means to secure payment is for barristers to lodge a complaint with the Bar Council under the Withdrawal of Credit Scheme, which was designed purely to protect the Bar as a whole from solicitors who consistently fail to pay for no good reason. Such complaints do result in some payment but analysis shows that only about 40% of fees are collected under that Scheme.</p>
AVAILABLE EVIDENCE	<p>(1) Self-evidently, the difficulties in recovering fees have greater impact on those from disadvantaged backgrounds who are generally less able to bear the financial burden of non-payment. A bar-wide survey for the Development of the Quality Assurance for Advocates Scheme in 2007 identified that women and BME self-employed barristers have disproportionately lower earnings than white and male barristers, although this was to some extent related to years in practice.</p> <p>(2) The annual Bar survey of barristers changing their practising status identifies the key factors that influence barristers' decisions to leave. Barristers in self-employed practice are most influenced by "uncertainty over future levels of income" (49%), "level of income" (44%) and then "non-payment of fees" (32%). 49% of BME barristers, 37% of female barristers and 14% of disabled barristers cited "non-payment of fees" as a significant factor in their decision to leave self-employed practice. This suggests that the impact of the failure to recover fees from solicitors has had a significant impact on barristers, particularly BME and female barristers.</p> <p>(3) Statistics on complaints of unpaid fees made under the Withdrawal of Credit Scheme over the last 3 years show an average of about 40% of fees being paid.</p>
EVIDENCE GAPS	<p>(1) impact on barristers of change to contractual terms and the Code amendments – consultation to be carried out Spring 2010</p> <p>(2) impact on solicitors of change to contractual terms and the Code</p>

	amendments – consultation to be carried out Spring 2010
INVOLVEMENT & CONSULTATION	<p>The introduction of standard Contractual Terms has been a matter of discourse between the Bar Council and the Law Society since 2001. In addition, the Bar Council consulted Circuit Leaders and Bar Associations in 2003 and 2007 and the entire Bar in 2004 together with the Bar Council's committees in respect of earlier drafts of the contractual terms and the principle of introducing those terms as standard. All the Circuit Leaders and Bar Associations respondents were positive to the change, with many making suggestions to the text of the contractual terms. Of the consultation of the entire Bar in 2004, 89% of the respondents were in favour of the replacement by new standard contractual terms.</p> <p>With regard to the current draft of the new contractual terms and proposed Code amendments, approval has been given by the principal committees of the Bar, namely the General Management Committee of the Bar Council, the Standards Committee and the Bar Standards Board.</p> <p>However, further consultation will be carried out in Spring 2010 with the Bar (including Specialist Bar Associations, Circuits, committees of the Bar Council and Bar Standards Board and other representative Bar groups), solicitors' organisations, diverse lawyer groups and other interested parties.</p>
WHAT IS THE LIKELY IMPACT OF THE CHANGES	<p>(1) abolition of the Withdrawal of Credit Scheme and transfer of details of solicitors against whom a direction has been made to the new Advisory List of Defaulting Solicitors. Barristers will no longer be prohibited under the Bar Code of Conduct from taking instructions on a credit basis against those named solicitors, thus enhancing competition in the provision of legal services.</p> <p>(2) the new Advisory List of Defaulting Solicitors provides a warning list to barristers of the small minority of solicitors who default in their obligations to ensure barristers are paid, despite, for example, court judgements or a joint tribunal award.</p> <p>(3) whilst barristers and solicitors are free to negotiate any terms, the change to the Cab Rank Rule enables barristers to refuse instructions if the solicitors insist on terms other than the new Contractual Terms. This would enable a barrister to refuse instructions on such terms which might impede the proper execution of the barrister's work or impose unreasonable terms, yet still ensure that the Cab Rank Rule operates to ensure equal access to justice and promotion of competition in the provision of legal services to all.</p> <p>(4) the Advisory List of Defaulting Solicitors is also to apply to those solicitors who fail to carry out their obligations to ensure barristers are paid in respect of those civil cases covered by full publicly funded certificates. To fail to provide this protection mechanism for barristers would be contrary to encouraging and supporting an effective legal profession and</p>

	force many barristers out of the market for economic reasons. By the very nature of these cases, the lay clients are predominantly in the lower socio-economic groups and therefore a strong and effective legal profession is essential for their protection.
IMPACT ON EQUALITY	<p>There is believed to be no adverse impact on gender, race or disability equality</p> <p>On the contrary, as the introduction of the contractual terms would more likely benefit lower socio-economic groups, the impact would most likely be positive.</p> <p>Nevertheless, these assumptions will be revisited following the outcome of the consultations.</p>
MONITORING & REVIEW	<p>(1) review the proposed new Terms and Code amendments following the results of the consultations.</p> <p>(2) review the effectiveness and operation of the new Terms and Code amendments six months after the introduction and annually thereafter.</p> <p>(3) Monitor complaints received about the operation of the scheme.</p>



ANSWER SHEET for the

CONSULTATION ON CONTRACTUAL TERMS

OF WORK FOR THE SUPPLY OF LEGAL SERVICES

BY BARRISTERS TO SOLICITORS

How to respond

The Bar Council would like your views on the introduction of new Contractual Terms of Work for barristers receiving instructions from solicitors. If more convenient to you, you can use the attached answer sheet to respond by following these steps:

1. Please type and save your answers using this MS Word Answer Sheet. Put in X in the Yes/No text boxes as appropriate.
2. Return the answer sheet to the Bar Council by attaching it to an email and sending to: contractconsultation@barcouncil.org.uk or posting it to Janice Marshall, Bar Council, 289-293 High Holborn, London WC1V 7HZ (DX 240 London Chancery Lane). You may find it easier to save your answer before sending it to the Bar Council.
3. **Please ensure your response is received by the Bar Council by the 31 July 2010**

If you have any difficulties in accessing this Answer Sheet or have queries relating to this consultation, please contact Janice Marshall on contractconsultation@barcouncil.org.uk or ring her on 020 7611 1375.

DEADLINE FOR ALL RESPONSES IS 31 JULY 2010



CONSULTATION ON CONTRACTUAL TERMS OF WORK FOR THE SUPPLY OF LEGAL SERVICES BY BARRISTERS TO SOLICITORS

Question 1

- a. Should the existing (non-contractual) Terms of Work and the (contractual) 2001 Terms now be abolished?

Yes

No

- b. If so, should they be replaced by the proposed New Contractual Terms?

Yes

No

- c. If the answer to either a. or b. above is in the negative, what alternative suggestions do you have?

NOTE: as you complete your answer, the size of this text box will expand

Question 2

- a. Do you agree that the draft New Contractual Terms should become the de facto default terms of work for barristers, in the absence of alternative terms having been agreed?

Yes

No

b. If not, what alternative(s) do you suggest?

NOTE: as you complete your answer, the size of this text box will expand

Question 3 Should the Code be amended as proposed so that barristers are not obliged to accept instructions other than on the New Contractual Terms?

- Yes
- No

Question 4

a. Do you think it is appropriate that the existing Withdrawal of Credit Scheme be abolished and replaced with an Advisory List of Defaulting Solicitors?

- Yes
- No

b. Do you agree that, unless payment accompanies the instructions, barristers should not be obliged to accept work from solicitors' practices named on the Advisory List of Defaulting Solicitors?

- Yes
- No

c. If you consider that the answer to either a. or b. should be in the negative, what alternatives do you suggest?

NOTE: as you complete your answer, the size of this text box will expand

Question 5 Do you agree that barristers should be able to lodge complaints to the Bar under the scheme for the Advisory List of Defaulting Solicitors for publicly funded matters where barristers are prevented from being paid due to solicitors' failure in carrying out their obligations?

- Yes
- No

Question 6

- a. Do you think there will be any negative consequence for any group arising from the proposed changes and, if so, how might they be mitigated?

Yes

No

NOTE: as you complete your answer, the size of this text box will expand

- b. Do you think that there are opportunities to promote greater equality?

Yes

No

NOTE: as you complete your answer, the size of this text box will expand

It would also be appreciated if you could comment on how you consider that the proposed changes would affect you, or your colleagues or (where appropriate) the members of your organisation.

NOTE: as you complete your answer, the size of this text box will expand

We intend to publish a report on all the responses to this consultation on our website unless a respondent expressly requests that a specific part of the response, or its entirety, should be kept confidential. With confidential responses, we will record the identity of the respondent and the fact that they have submitted a confidential response. If you prefer any part or all of your response to be treated as confidential, please ensure that you advise us accordingly.

NOTE: as you complete your answer, the size of this text box will expand

Name of Respondent
(CAPITAL LETTERS please)

Organisation (if relevant)

Address

.....

Thank you for your time

Please email your response to contractconsultation@barcouncil.org.uk or post it to Janice Marshall, Bar Council, 289-293 High Holborn, London WC1V 7HZ (DX 240 London Chancery Lane). The closing date is 31 July 2010.