



Conditional Fee Agreement  
for use by

**TJL Solicitors LLP**

**PART TWO**

The following are the fixed terms published by TJL Solicitors LLP on 14 June 2014; where, in respect of any client, a "Part One" document has been completed, then this document and that document ought to be read as forming a single contract of retainer and as if they were contained within the same written instrument. The Part One document may qualify and amend the provisions of this document.

TJL Solicitors LLP  
Warwick House  
Talbot Road  
Old Trafford  
Manchester  
M16 0QQ

## **1. What is covered by this Agreement**

1. This document (along with the Part One document) will create a contract of retainer which governs the way in which the Solicitors are paid for representing the Client in the Claim. Unless it is agreed otherwise, this Agreement will cover the following:
  - 1.1.1. the Claim, including costs incurred prior to this Agreement being made;
  - 1.1.2. any appeal by the Opponent;
  - 1.1.3. any appeal the Client makes against an interim order;
  - 1.1.4. any pre-issue applications relating or potentially relating to the Claim;
  - 1.1.5. any work ancillary to the Claim, such as attending relevant proceedings before tribunals or courts other than the civil courts;
  - 1.1.6. ADR (including mediation) relating to the Claim; and
  - 1.1.7. negotiations about and/or a court assessment of the costs of the Claim.
- 1.2. The provisions set out above must be read in a common sense way which is not overly restrictive. As a general guide to interpretation, where there is doubt as to whether work falls within the ambit of the Agreement, that doubt must be resolved in favour of it being included rather than excluded.
- 1.3. The definition of "the Opponent" is irrelevant for the purposes of defining the ambit of this Agreement; this is because this Agreement will cover a claim against any defendant where that claim has arisen out of the facts alluded to in the description of "the Claim" above.
- 1.4. Any person who gives instructions in such a way as to give the impression that they were relying on this agreement as governing the relationship between that person and the Solicitors will be deemed to be included within the definition of "the Client". If instructions are given by a person other than the person whose claim it is, that person provides a warranty that they have the authority to act on behalf of the person whose claim it is and to bind that person such that both persons are regarded as being jointly the Clients under this agreement. If the person whose claim it is then accepts legal services, they will be deemed to have assented to this.
- 1.5. Unless other arrangements are put in place, this Agreement will continue to apply in any relevant costs proceedings, appeals, etc., and this will be so notwithstanding the fact that they may take place after the Claim has Concluded.

## **2. What is not covered by this Agreement (unless it is agreed otherwise)**

2. Unless it is agreed otherwise (such agreement being capable of being implied by the counterparties' conduct), this Agreement does not cover the following:
  - 2.1.1. any proceedings taken by or against the Client to enforce a judgment order; and
  - 2.1.2. any counterclaim;
  - 2.1.3. any appeal the Client may make against the final judgment order; and
  - 2.1.4. any work the Solicitors do which ordinarily would be funded by way of commission, such as the task of selecting certain ATE insurers.
- 2.2. For the avoidance of doubt, where the Solicitors carry out work which is not covered by this Agreement (by implication or otherwise), the costs associated with that work (including Disbursements) will be payable unconditionally and upon the Solicitors' general Terms and Conditions (or upon other terms as may be agreed); if the Solicitors have not separately specified hourly rates in this regard, then the hourly rates set out herein will apply for the relevant period. For further avoidance of doubt, this Agreement does not cover ATE Premiums; this is because any such monies are governed by their own policies rather than by this Agreement.

## **3. Paying for the Solicitors' services**

3. The following provisions will apply:
  - 3.1. If the Claim is Lost, then unless there is agreement to the contrary, Disbursements will be payable. Unless they have already become due by reason of previous Interim Hearing, there will be no liability for Basic Charges and there will be no Success Fee.
  - 3.2. Basic Charges are unaffected by Part 36 Offers and will be payable regardless of whether a Part 36 Offer has or has not had a bearing on the recovery of costs. If a Part 36 offer has been made and not accepted and if the court deprives the Client of costs as a result of the that offer having been

made and not accepted, the Success Fee (if any) will cease to be payable for the period during which the court has deprived the Client of costs.

- 3.3. Subject to the relevant provisions set out above and in paragraph below, if the Client Wins the Claim, the Client will be liable for Basic Charges, Disbursements, and Success Fee (if any). In most circumstances the Client will be entitled to seek recovery from the Opponent of part or all of those monies save for the Success Fee (if any), which must be paid by the Client. It will be open to the Solicitors to agree not to enforce any right to payment of monies not recovered from an Opponent or legal expenses insurer (i.e., it will be open to the Solicitors to agree to waive their rights to payment of part of the Shortfall), but subject to the provisions of paragraph 3.8 below, there ought to be no expectation that this will happen.
- 3.4. If any monies become payable during the lifetime of the Claim, those monies may (and upon request by Client, will) be invoiced at any time after they become payable.
- 3.5. For the avoidance of doubt, if this Agreement ends as a result of the Client (or anyone acting in his stead) having failed to discharge their obligations under “the Client’s Responsibilities”, the Client will be liable to pay Basic Charges and Disbursements in full and the Solicitors will be entitled to enforce payment of those monies in full; this will be regardless of whether there has been a Win. If the Client then goes on to Win the Claim, the Client will also pay a Success Fee (if any). For the avoidance of doubt, the provision in 3.8 will not apply.
- 3.6. If on the way to Winning or losing the Claim the Client Wins an Interim Hearing, then (subject to the provisions set out above and to the provisions in the Conditions and Qualifications) the Solicitors are entitled to immediate payment of Basic Charges and Disbursements relating to that hearing. If the Client subsequently Wins overall, a Success Fee (if there is one) will, in addition, be payable.
- 3.7. Save as expressly indicated or agreed (see paragraph 3.8 below), the Shortfall will be payable by the Client to the Solicitors (usually out of any damages recovered). In particular, the Success Fee (if any) is payable by the Client and cannot be recovered (either in part or in whole) from the Opponent.
- 3.8. Unless this Agreement has ended as a result of the Client (or anyone acting in his stead) having failed to discharge their obligations under “the Client’s Responsibilities”, then the Solicitors agree to ring-fence the damages such that they will not enforce against the Client any part of the Shortfall that exceeds the amount stated in paragraph **Error! Reference source not found.** of Part One. For the avoidance of doubt, the amount stated in paragraph **Error! Reference source not found.** of Part One is exclusive of VAT. This provision will apply only if and when the Client has taken all reasonable steps to recover costs from the Opponent (or other person who may be liable to pay costs, such as a legal expenses insurer).
- 3.9. For the avoidance of doubt, the provision in paragraph 3.8 above will apply during the claim as well as at the end; in practical terms, this means that the Client will not be asked to pay any part of the Shortfall until damages have been awarded or agreed.
- 3.10. It may be that the court awards costs against the Opponent in respect of the Claim in circumstances in which the Claim has been dismissed, discontinued or otherwise brought to an end in a way that means that the only benefit derived by the Client is an award of costs. In those circumstances, Basic Charges will be payable for that work to which the order relates, but no Success Fee or other Basic Charges will be payable. The provisions in paragraph 3.8 will apply, but the “amount stated” will be nil.

#### **4. The Success Fee**

4. The following provision apply to the Success Fee:

- 4.1. The Success Fee may or may not be payable depending on what is set out in Part One of this Agreement; if it is payable, then that fee (inclusive of VAT) is subject to the following maximum limits:
  - 4.1.1. in proceedings at first instance (i.e. the Claim itself before any appeal), 25 percent of the Applicable Damages; and
  - 4.1.2. in all other proceedings (i.e. any appeal), 100 percent of the Applicable Damages.

To the extent that it is necessary for the purposes of complying with section 58 of the Courts and Legal Services Act 1990 (as amended), the Success Fee exclusive of VAT will additionally be subject to those same maximum limits.

- 4.2. For the avoidance of doubt, where it is payable, the Success Fee is calculated by applying the appropriate Percentage Increase to the Basic Charges (which is the amount of the fees which would have been payable had this matter not been funded by way of a conditional fee agreement).
- 4.3. Where it is payable, the Success Fee will apply throughout. It will apply to any interim appeal brought by the Client, any pre-issue applications, any costs proceedings, etc.; this will be the case regardless of whether the Claim has Concluded. Where the Success Fee relates to costs proceedings, it will be claimed at the same level as the success fee which related to the Claim itself. Where it relates to an appeal, the appeal shall be treated as if it were a claim in its own right but, if the Success Fee (if any) is a single-stage Percentage Increase, it will be based on the Percentage Increase that applies to the Claim itself.
- 4.4. No part of the Percentage Increase mentioned above will relate to the postponement of payment of the Solicitors' fees.

## **5. Basic Charges**

5. Basic Charges are calculated according to the provisions below:
  - 5.1. Basic Charges are calculated for each hour (or part thereof in six-minute units) engaged on the matter. Routine letters and telephone calls will be charged as units of one-tenth of an hour. Other letters and telephone calls will be charged on a time basis. There will be no charge for short incoming letters, but longer incoming letters will be charged on a time basis.
  - 5.2. The hourly rates may be set out in correspondence to the Client and/or in the attached Part One document. If there is a difference between the rates set out in the Part One document and the rates mentioned in correspondence, the latter will prevail. The same will be true of the method used to calculate the costs. Subject to these points, the hourly rates are as set out in the Part One document.
  - 5.3. The Solicitors will seek to notify the Client of any increase to these rates (such an increase being permissible under this Agreement). If no such notice is given, the rates shall be deemed to be increased by 3 percent each year, rounded up to the nearest five pounds sterling
  - 5.4. It may be that fixed fees apply to the Claim; Fixed fees are defined by the rules of Court and/or associated protocols and practice directions. Where there is a difference between the amounts payable under this Agreement and Fixed Fees, it is recorded that the Client consents to paying that difference (and any associated taxes and/or Success Fee) and that to that extent, the Client's rights under s 74(3) of the Solicitors Act 1974 are waived, as it is the Client's right to rely on the presumption relating to "unusual costs" in CPR rule 46.9(3)(c).

## **6. Other points**

6. The following miscellaneous provisions will apply:
  - 6.1. Unless the Solicitors have agreed otherwise and subject to what is set out below, this Agreement replaces any previously-made conditional fee agreement or other retainer ("the Old Agreement"), and it does so as if this Agreement had applied from the time the Client first instructed the Solicitors (or from 1 November 2005, whichever is the later). This, however, assumes that the retainer created by this Agreement is enforceable; if this is not the case, then the most recent Old Agreement (or, if no such agreement exists, an implied contract for payment of a reasonable fee) shall exist, survive and continue to have effect.
  - 6.2. This Agreement incorporates the Conditions and Qualifications; where, however, this Agreement makes provisions which are different from or incompatible with the provisions in that document, this Agreement shall prevail. Where there is more than one contract of retainer created under this Agreement, the terms will apply to each retainer as if they had been set out individually in that retainer
  - 6.3. The parties acknowledge and agree that neither this Agreement nor any retainer created under it is to be regarded as being a contentious business agreement within the terms of the Solicitors Act 1974.
  - 6.4. This Agreement is governed by the law of England and Wales. Save for enforcement proceedings and save where an English court orders otherwise, any dispute pertaining to it must be litigated exclusively within that jurisdiction.
  - 6.5. In the event that any term or condition or provision of this Agreement is held to be a violation of any applicable law or statute or regulation, the same shall be deemed to be deleted from this Agreement and shall be of no force and effect and this Agreement shall remain in full force and effect as if such

term and condition or provision had not originally been contained in this Agreement. This provision is without prejudice to the provisions in the first paragraph under "other points" above.

- 6.6. It is recorded that prior to signing this Agreement, the Solicitors explained the following (where applicable) and that the following consents were given:
  - 6.6.1. The Solicitors explained the circumstances in which the Client may be liable for the costs and whether the Solicitors will seek payment of those costs from the client, if entitled to do so;
  - 6.6.2. The Solicitors explained, if relevant, the fact that if Fixed Costs apply to the Claim, further costs may be payable notwithstanding the fact that those further costs are not (as a matter of principle) recoverable from the Opponent;
  - 6.6.3. The Solicitors explained, if relevant, that where a Success Fee is payable, it is based on risk and that it is payable by the Client (and is not recoverable from the Opponent);
  - 6.6.4. The Solicitors explained the Client's right to an assessment of costs;
  - 6.6.5. The Solicitors' explained the client's right to Cancel the Agreement and the effect of doing so;
  - 6.6.6. The Solicitors explained that Part One of this Agreement contains a Notice of Consumer's Rights and the Client agreed that he had made himself aware of what was said in that Notice;
  - 6.6.7. The Solicitors explained the Client's entitlement to take independent legal advice upon the matters set out herein, if that is what the Client wishes to do;
  - 6.6.8. The Client consented to the use of email for any purpose, including the making and recording of this Agreement; and
  - 6.6.9. The Client actively requested the Solicitors immediately to start work on the Claim (i.e., during the cancellation period).
- 6.7. If the parties' conduct is such that it is appropriate, where this agreement has been signed by a person other than by a director and/or where the Solicitors' signature has not been witnessed, this agreement will be deemed to have been made by way of the Solicitors' company seal.
- 6.8. To be effective (and unless the court orders otherwise), any variation of or supplement to this Agreement must be made in writing (which may include correspondence).
- 6.9. If either the Client or the Solicitors (or both) are prevented from meeting their obligations under this Agreement by reason of any of the reasons listed below, then the obligations shall be suspended for the period of the delay and the period of the performance of any such act shall be extended accordingly: act of God, fire, flood, or other natural disaster, malicious injury, strikes, lock-outs, or other labour troubles, riots, insurrection, war or other reason of like nature not the fault of the party in performing under this Agreement.
- 6.10. In compliance with the Provision of Services Regulations 2009: the following details are given:
  - 6.10.1. The Solicitors' contact details, etc., are set out above (see paragraph of **Error! Reference source not found.** Part One); and
  - 6.10.2. The Solicitors have full professional liability insurance with International Insurance Company of Hannover Plc, whose registered office is Global Professional Risk Solutions, Lockton Companies LLP, The St Botolph Building, 13 Houndsditch, London, EC3A 7AG]; and
  - 6.10.3. The ambit of the insurance that the Solicitors have is worldwide coverage up to a maximum of £3,000,000.00.

## Conditions and Qualifications

### 7. Payments on account

7. The following provisions apply to payments on account:
  - 7.1. Where the Agreement provides that monies are to be paid regardless of whether the claim is Won or Lost, the Solicitors will be entitled to ask the Client to pay those monies as and when they are incurred. The Solicitors will do this no more frequently than every month.
  - 7.2. Where an invoice is submitted before the Claim has Concluded, then (unless the contrary is stated on the face of the invoice) it will be deemed to be a request for a payment on account rather than an interim statute bill.

- 7.3. If the Client fails to pay any monies that are due to the Solicitors, the Solicitors may exercise lien over any papers or other property that they hold.
- 7.4. In the event that an interim payment of damages is made, the Solicitors will be permitted to render an invoice for (i) no more than a reasonable amount on account of costs incurred or to be incurred in the conduct of the Claim and (ii) no more than one quarter the amount ordered. Unless stated otherwise, that invoice will be a request for a payment on account made in accordance with section 65 of the Solicitors Act 1974. The Solicitors undertake to repay any monies that ultimately found not to be due to them.

## **8. Success Fee**

8. The following provision apply to the calculation of the Percentage Increase and Success Fee:
  - 8.1. Unless a fixed success fee applies, the Success Fee (if there is one) is as set out in the Agreement and/or the Part One document. It reflects the following: -
    - 8.1.1. the fact that if the Client loses, the Solicitors will not earn anything;
    - 8.1.2. the Solicitors' assessment of the risks of the Claim; and
    - 8.1.3. any other appropriate matters (which, in many cases, would include the fact that the Solicitors bear the risk of not recovering all of the Solicitors' fees from the Opponent even if the Client does win but fails to beat a Part 36 offer).
  - 8.2. The Client agrees that the reasons for setting the Success Fee (if any) and Percentage Increase at the amounts stated may be disclosed:
    - 8.2.1. to the Court and any other person required by the court; and
    - 8.2.2. to the Opponent in order to gain his or her agreement to pay the Success Fee.
  - 8.3. It may happen that the Opponent makes an offer of a single sum of money which includes payment of the damages, Basic Charges, Success Fee (if any) and Disbursement. If so, unless the Solicitors consent, the Client agrees not to instruct the Solicitors to accept that offer without the Solicitors' consent, such consent not to be unreasonably withheld.

## **9. Value added tax (VAT)**

9. The following provisions relate to VAT:
  - 9.1. The Solicitors add VAT at the prevailing rate to the total of the Basic Charges and Success Fee (if any). VAT may also be added to Disbursements, but only in certain circumstances.
  - 9.2. If the law permits the Solicitors so to do, the Solicitors may elect the rate of VAT to be applied.
  - 9.3. Where VAT is to be calculated for the purposes of applying the ring-fencing in paragraph 3.8 above, the Client will, where appropriate, be given the full benefit of any the fact that not all of the Disbursements will have been subject to VAT.
  - 9.4. Where appropriate, VAT may be apportioned.

## **10. After the Event Insurance**

10. The following provision relate to ATE insurance:
  - 10.1. The Solicitors are not authorised by the Financial Conduct Authority for the purposes of this Agreement and cannot provide you with financial advice. They may, if you request recommend an independent financial advisor who can provide you with financial advice. However, the Law Society is a designated professional body for the purposes of the Financial Services and Markets Act 2000 and therefore we are included on the register maintained by the Financial Services Authority so that we can carry on insurance mediation activity, which is, broadly, the advising on, selling and administration of insurance contracts.
  - 10.2. Should you decide to purchase an After the Event Insurance policy, the provider of that policy will be authorised and regulated by the Financial Conduct Authority and should there be a complaint about the policy then you should raise the matter with the provider of the policy and then if the matter is not resolved, The Financial Ombudsman's Service, South Quay Plaza, 183 Marsh Wall, London E14 9SR.
  - 10.3. If the Solicitors have given the Client advice about after the event insurance, that advice will be set out in a separate letter or document.

## **11. Commission**

11. It may be the case that the Solicitors are paid commission in respect of the insurance or third-party funding that they have recommended to the Client. If so, then the following provisions will apply:

- 11.1. the Solicitors will explain this in a separate document to this Agreement. In general terms, the Client will be asked to allow the Solicitors to keep any commission paid to the Solicitors; and
- 11.2. the commission will form no part of the fees which are governed by this Agreement.

## **12. The Solicitors' responsibilities**

12. The Solicitors must:

- 12.1. always act in the Client's best interests (subject to the Solicitors' duty to the Court);
- 12.2. explain to the Client the risks and benefits of taking legal action;
- 12.3. give the Client the Solicitors' appropriate advice about whether to accept any offer of settlement; and
- 12.4. give the Client the appropriate information possible about the likely costs of the Claim.

## **13. The Client's responsibilities**

13. The Client must:

- 13.1. give the Solicitors instructions that allow the Solicitors to do their work properly and on time;
- 13.2. ensure that the Solicitors have the Client's correct and up-to-date contact details, including contact details for when the Client is away from home;
- 13.3. pay any reasonable Disbursements (including counsel's fees and premiums, if appropriate) when required to do so;
- 13.4. not ask the Solicitors to work in an improper or unreasonable way;
- 13.5. not deliberately mislead the Solicitors or anyone acting on their behalf (including any expert instructed by the Solicitors);
- 13.6. not exaggerate the Claim;
- 13.7. cooperate with the Solicitors; and
- 13.8. go to any expert examination or court hearing which the Solicitors have asked the Client to attend.
- 13.9. For the avoidance of doubt, termination of the Agreement will be deemed to be a breach of subparagraph 13.1

## **14. Unnecessary work and second opinions**

14. The following provision apply to work that is carried out against the Solicitors' advice:

- 14.1. It may be that the Client asks the Solicitors to carry out work which is unusual and which the Solicitors do not believe is needed for the purposes of dealing with the Claim. If so, the Client agrees that such costs will be deemed to have been reasonably incurred for the purposes of the liability for the Solicitors' fees. Provided the Solicitors gave the Client advance notice of the fact that the work was not necessary, the costs of such work will be payable unconditionally (i.e., regardless of whether the Claim is Won or Lost and regardless of the amounts recovered from the Opponent).
- 14.2. If the Client asks the Solicitors to obtain a second opinion from a specialist solicitor or other lawyer outside the Solicitors' firm, the Solicitors will do so. The Client must pay the cost of a second opinion and this will be so regardless of whether the Claim is Won or Lost, and regardless of the amounts recovered from the Opponent.

## **15. Payments, security and interest**

15. Payments will be dealt with in accordance with the provisions below:

- 15.1. The Client agrees to pay into a designated account any cheque received by the Client or by the Solicitors from the Opponent and made payable to the Client. Out of the money, the Client agrees to let the Solicitors take the balance of the Basic Charges, Success Fee (if any), insurance premium (if any), any remaining Disbursements, interest and VAT. The provisions in paragraph 3.8 above will apply. The Client takes the rest.
- 15.2. Where an Opponent pays interest, then the Client agrees and acknowledges that by consent the starting point is that the Solicitors are entitled to take that interest. They are, however, required to treat those monies fairly, and in that regard, they are required to look at who has borne the financial

burden of funding the claim. They are required to act reasonably in that regard, and to account to the Client for whatever amount of interest is appropriate in all the circumstances.

- 15.3. If the Client fails to pay any of the fees which are due and in respect of which the Solicitors have sent the Client an invoice, they are at liberty to charge simple interest on the unpaid amount at a rate of 8 percent per year, starting from the 31<sup>st</sup> day after the Solicitors sent the Client the relevant invoice.
- 15.4. The Solicitors have the right to preserve their lien unless another solicitor working for the Client undertakes to pay the Solicitors what they are owed including the Success Fee (if any) if the Client wins.
- 15.5. In appropriate circumstances the Solicitors may seek a charging order pursuant to section 73 of the Solicitors' Act 1974. The Solicitors may also hold lien over any or the Client's property in the Solicitors' possession.

## **16. Payment for advocacy**

16. The following provisions will apply to the costs of advocacy services:

- 16.1. The cost of advocacy and any other work by the Solicitors, or by any solicitor agent on the Solicitors' behalf, forms part of the Basic Charges. The Solicitors shall discuss with the Client the identity of any barrister instructed, and the arrangements made for payment.
- 16.2. If a barrister is instructed, the Client will be responsible for paying his fees (regardless of whether the barrister was engaged under a conditional fee agreement or not).

## **17. Cancellation and Termination**

17. Termination by the Client is not the same as Cancellation. The Agreement will have been Cancelled if the Client ended it during the Cancellation Period; If, on the other hand, the Client (or the Solicitors) ends it after the expiry of the Cancellation Period, then the Agreement will have been Terminated. The following provisions apply:

- 17.1. In order to enhance the level of protection afforded to the Client, it is recorded that if the Agreement is ended (for any reason whatsoever) during the Cancellation Period, it will be deemed to have been Cancelled, and this will be so even if the Agreement ended at the Solicitors' request. This provision in no way detracts for the Client's statutory rights.
- 17.2. The following provisions are without prejudice to the Solicitors' right (which is in their discretion) to forgo payment of Basic Charges upon Termination and instead to recover those costs only if the Claim is successful. The Solicitors will be deemed to have exercised that right if they have not requested payment prior to the day before the events, which give rise to the Claim Concluding (e.g., settlement, judgment, etc.).
- 17.3. For the avoidance of doubt, if the Solicitors do not exercise that right (i.e., if they request payment of Basic Charges immediately upon Termination) a Success Fee (if any) will, subject to the provisions below, still be payable, this being a reflection of the fact that the Solicitors bore a risk during the period prior to termination.

### **17.4. *Paying the Solicitors if the Client Terminates this Agreement***

- 17.4.1. The Client is at liberty to end this Agreement at any time and for any reason. If the Client ends the Agreement outwith the Cancellation Period and without the Solicitors' written consent (such consent not to be unreasonably withheld), then the Client must pay the Basic Charges and Disbursements (including barristers' fees where those are due) immediately upon Termination; if the Client goes on to win the claim, he must also pay the Success Fee (if there is one).
- 17.4.2. If the Client ends this Agreement with the Solicitors' consent but after the expiry of the Cancellation Period, then (unless there is agreement to the contrary), the Claim will be regarded as having been Lost; this will not be the case, however, if the Client goes on subsequently to win the Claim, in which case the Client will pay the Basic Charges.

### **17.5. *Paying the Solicitors if the Client Cancels this Agreement: the Cancellation Provisions***

- 17.5.1. What is set out below under "Right to Cancel" (paragraph 17.5) is described in this Agreement as "the Cancellation Provisions". Whilst legislation requires that these provisions should apply only to certain types of agreement, the Solicitors are content for them to apply to all contracts of retainer, including this Agreement (however made). This is strictly without prejudice to the Client's statutory and regulatory rights under the



**17.6. Right to Cancel**

- 17.6.1. The Client has the right to Cancel this Agreement within 14 days of it being made; the Client may Cancel it without giving or having any reason. The cancellation period will expire at the end of the 14 day period referred to above (that period being referred to herein as “the Cancellation Period”).
- 17.6.2. To exercise the right to Cancel, the Client must inform the Solicitors of his or her decision to Cancel; this must be done by a clear statement (e.g. a letter sent by post, fax or e-mail). It is the date on which the Cancellation was sent that will determine whether it was within the Cancellation Period, not the date on which it was received.
- 17.6.3. The Client may use the Cancellation Form attached to Part One of this Agreement, but this is by no means obligatory.

**17.7. Effect of Cancellation**

- 17.7.1. Where this Agreement is Cancelled in accordance with the Cancellation Provisions, then the obligations of the parties to perform the Agreement are brought to an end. Whilst (arguably) the Solicitors would be entitled to raise a fee upon Cancellation, any such fee is waived; this waiver overrides any other provision contained herein.
- 17.7.2. Where the Agreement is Cancelled, the Solicitors will reimburse all payments received; they will make the reimbursement(s) without undue delay, and certainly no later than 14 days after the day on which they were informed about the decision to Cancel. Unless the Client has expressly agreed otherwise, the Solicitors will make the reimbursement using the same means of payment as was used for the initial transaction; in any event, the Client will not incur any fees as a result of the reimbursement.

**17.8. Paying the Solicitors if the Solicitors end this Agreement**

- 17.8.1. If, for whatever reasons, the Solicitors end this Agreement during the Cancellation Period, then the Agreement will be deemed to have been Cancelled (in which case the provisions in the paragraphs immediately above will apply).
- 17.8.2. The Solicitors are at liberty to end this Agreement if the Client does not keep to his responsibilities as set out above under the heading “the Client’s responsibilities”. If this happens and if this is after the expiry of the Cancellation Period, the Client must pay the Basic Charges and Disbursements (including barristers’ fees where those are due) immediately upon Termination; if the Client goes on to win the Claim, he must also pay the Success Fee (if any).
- 17.8.3. The Solicitors are at liberty to end this Agreement (at any stage) if they believe the Client is unlikely to win. If the Solicitors end the Agreement in these circumstances and if this is after the expiry of the Cancellation Period, the Claim will be regarded as having been Lost, but this will not be the case if the Client goes on subsequently to win the Claim, in which case he will pay the Basic Charges. Disbursements will be payable immediately upon Termination.
- 17.8.4. The Solicitors are at liberty to end this Agreement if the Client rejects the Solicitors’ advice about making a settlement with the Opponent. If the Solicitors end the Agreement in these circumstances and if this is after the expiry of the Cancellation Period, the Claim will be regarded as having been Lost, but this will not be the case if the Client goes on subsequently to win the Claim, in which case he will pay the Basic Charges. Disbursements will be payable immediately upon Termination.
- 17.8.5. If the Solicitors transfer their business to any other legal entity, or if the Client gives instructions through a person not mentioned in this agreement, then unless it is agreed otherwise, this agreement will be automatically novated with that new entity or other person (as appropriate) and the rights and obligations under the ‘old’ agreement will be suspended until the outcome of the matter is known. The old and the new will run alongside each other and will be regarded as being linked as one continuous agreement.

**18. What happens after this Agreement ends**

- 18. After this Agreement ends, then (unless the Client has another form of funding which is used to fund the Solicitors’ continuing involvement) the Solicitors may apply to have the Solicitors’ name removed from the record of any court proceedings in which they are acting. The Client must agree to the Solicitors’ name being

removed from the record; the Client will be liable in damages if he fails to do this. If the Agreement has been Terminated (as opposed to Cancelled), the Client will be liable for the any Basic Charges, Disbursements or Success Fee (if any) incurred in making the application.

## **19. Assignment and novation**

19. The following provisions will apply:

- 19.1. The Agreement shall be binding on and shall endure for the benefit of the successors in title, assignees and personal representative of each of the parties.
- 19.2. The benefit of the Agreement shall be freely assignable by the Solicitors, and following any such assignment, all references in this Agreement to the Solicitors shall be deemed to include their assignees.
- 19.3. If the Solicitors transfer their business to any other legal entity, or if the Client gives instructions through a person not mentioned in this Agreement, then unless it is agreed otherwise, this agreement will be automatically novated with that new entity or other person (as appropriate) and the rights and obligations under the 'old' agreement will be suspended until the outcome of the matter is known. The old and the new will run alongside each other and will be regarded as being linked as one continuous agreement.

## **20. Children and patients**

20. Where the person whose claim it is is a child or a patient, the following provision will apply:

- 20.1. Where a person has entered into this Agreement on behalf of a child or a patient, that person will do so both as an express agent of the child or patient, and as litigation friend (or an express agent of the litigation friend).
- 20.2. Where the child or patient reaches majority or regains capacity, he will be deemed to ratify this agreement (or novate it, or adopt it, as the case may be) if he gives instructions under it or if he allows instruction to be given on his behalf. Such ratification (or novation or adoption) will be retrospective as well as prospective in effect, and (unless agreed otherwise) it will be irrevocable.
- 20.3. If the Client loses capacity during the currency of this Agreement, any person who subsequently gives instructions on his behalf will, in the absence of agreement to the contrary, be deemed to be acting as his agent and/or as his litigation friend, and shall be deemed to be doing so on the terms as set out in this Agreement.
- 20.4. It is recorded that the provision of legal services under this Agreement is deemed to be necessary and that those services can be regarded as being 'necessaries' within the usual legal meaning of that word.

## **21. Insolvency and successor practices**

21. The following provision will apply:

- 21.1. Any monies which have been recovered from a paying party and which relate to monies payable under this Agreement will be held on trust for the benefit of the Solicitors. Likewise, the right to any such monies is held on trust for the benefit of the Solicitors. In the event of the Client becoming insolvent the legal rights accrued under this agreement may be assigned to a third party, but only if the Solicitors consent in writing, such consent not to be unreasonably withheld. Unless the Solicitors agree otherwise, any such assignment will be subject to the aforesaid trust.
- 21.2. In the event of the Solicitors becoming insolvent or in the event of the Solicitors ceasing to trade for any reason whatsoever, then the rights and obligations under this agreement will (unless otherwise stated) automatically be assigned to the successor practice immediately upon that practice taking over conduct of the Claim. Unless otherwise stated the successor practice will be entitled to enforce the rights under this Agreement in their own name. In the absence of reason to believe otherwise (such as the successor practice making a new agreement), the terms of this Agreement will continue to apply to the successor practice as if they had made this Agreement themselves.
- 21.3. Unless the contrary is agreed (or stated) in writing (or implied by conduct), then the insolvency of either party will not have the effect of terminating this Agreement. If, for whatever reason, a new agreement or retainer is made with the successor practice, administrator, assignee, etc. or with anyone else, then (in the absence of reason to believe otherwise) this Agreement will coexist with that Agreement such that in so far as the accrued rights are concerned, monies will be payable according to the outcome of the Claim.

## 22. Death

22. The following provision will apply if the Client prior to the Claim Concluding:

- 22.1. Upon the death of the Client, the default position will be that the Agreement will (subject to what is said below) continue to exist and will not be terminated. The Solicitors will, however, be able to elect to terminate the Agreement if they do so within 56 days of learning of the Client's death.
- 22.2. If the personal representative of the deceased Client gives instructions to the Solicitors to pursue the Claim on behalf of the deceased's estate, and if he accepts legal services from them for a period of 7 days or more, then unless he indicates otherwise, he will be deemed to have: (i) adopted this Agreement as if he had always been a party to it and as if he had always had joint and several liability under it; and (ii) adopted this Agreement as being his own agreement for all costs yet to be incurred.
- 22.3. If dependant of the deceased Client (or any person acting on behalf of a dependant) gives instructions to the Solicitors to pursue a dependency claim arising out the matters that led to the original *inter vivos* claim, and if he accepts legal services for a period of 7 days or more, then unless he indicates otherwise, he will be deemed to have: (i) adopted this Agreement as if he had novated it in his own name for the purposes of perusing the dependency claim; and (ii) adopted this Agreement as being his own agreement for all costs yet to be incurred in pursuing that claim.
- 22.4. If the personal representative of the deceased Client is unable or unwilling to adopt this Agreement in accordance with the above, then the Solicitors will be at liberty to end the Agreement on the grounds of non-compliance with the obligations set out in subparagraph 13.1.
- 22.5. Nothing set out in paragraphs above will prevent the Solicitors or the personal representative of the deceased Client from agreeing some other method (or methods) of funding the Claim after the Client's death. In particular, if a new contract of retainer is made, that new retainer will apply and the retainer created by the provisions above will be terminated.

## 23. Explanation of words used

22.6. The following words are used in this Agreement:

22.6.1. **Advocacy**

Appearing for the Client at court hearings.

22.6.2. **Agreement**

Shall mean this document, and where appropriate, the general contract of retainer governed by this document.

22.6.3. **Applicable Damages**

The total of (a) general damages for pain, suffering, and loss of amenity; and (b) damages for pecuniary loss, other than future pecuniary loss, net of any sums recoverable by the Compensation Recovery Unit of the Department for Work and Pensions.

22.6.4. **ATE Premium, ATE Policy, ATE Insurer, etc, etc**

The acronym ATE stands for "After the Event" and is a reference to insurance that is purchased after the event that gave rise to the Claim.

22.6.5. **Basic Charges**

The Solicitors' charges for the provision of legal services; these are the ordinary costs that would have been charged had the Solicitors not acted under any form of conditional fee agreement.

22.6.6. **Cancel**

The Agreement is brought to an end (usually but not necessarily by the Client) during the Cancellation Period.

22.6.7. **Cancellation Period**

The period (which, by default, is 14 days after the Agreement was made) during which the Client is entitled to Cancel the Agreement in accordance with the

22.6.8. **Claim**

The Claim against the Opponent whether or not court proceedings are issued.

22.6.9. **Concluded**

Concluded means that the claim has been Won or Lost or otherwise brought to an end in a way which can properly be said to be final.

22.6.10. **Counterclaim**

A claim that the Opponent makes against the Client in response to the Claim (or, where appropriate, a claim which the Opponent considers making against the Client in response to the Claim).

22.6.11. **Damages**

Money that the Client wins (other than costs) whether by a court decision or settlement; where appropriate, damages shall mean debt.

22.6.12. **Disbursements**

Payment the Solicitors make on the Client's behalf such as (but not limited to): -

- Expenses;
- Court fees;
- Experts' fees;
- Copying fees; and
- Travelling Disbursements.

Counsel's fees are Disbursements, but they may themselves be payable under a separate conditional fee agreement. ATE Premiums are not Disbursements.

22.6.13. **Interim hearing**

A court hearing that is not final (in the sense that it will not lead to the Claim being Concluded).

22.6.14. **Lien**

The Solicitors' right to keep all papers, documents, money or other property held on the Client's behalf until all money due to the Solicitors is paid. A lien may be applied after this Agreement ends.

22.6.15. **Lite Agreement**

A type of conditional fee agreement where (with certain exceptions) the Solicitors agree not to pursue the Client for any Basic Charges, Success Fee (if any) or Disbursements beyond those which are recovered from the Opponent or payable by a third party, such as a legal expenses insurer.

22.6.16. **Lose, Lost, etc**

The Claim will be Lost if it is Lost; save where the contrary is obvious from the context, a Lost means Lost and Concluded.

22.6.17. **Part 36 Offers**

An offer to settle the Claim made in accordance with Part 36 of the Civil Procedure Rules.

22.6.18. **Percentage Increase**

The percentage by which the Basic Charges are multiplied by when calculating the Success Fee (if any).

22.6.19. **Shortfall**

The difference between the total amount payable under this Agreement (excluding VAT) and the total amounts recovered from the Opponent and/or legal expenses insurer (or other funder) in respect of the period covered by this Agreement.

22.6.20. **Success Fee**

Monies based on a percentage (i.e., the Percentage Increase) of Basic Charges that the Solicitors add to the Client's bill for profit costs if the Client wins the Claim.

22.6.21. **Termination**

The Agreement is brought to an end prior to the Conclusion of the Claim but after the expiry of the Cancellation Period.

22.6.22. **Trial**

The final contested hearing or the contested hearing of any issue to be tried separately; any reference to a claim concluding at trial includes a claim settled after the trial has commenced or a judgment.

22.6.23. **Win, Won, etc.**

Unless a different definition has been agreed between the counterparties, a Win will mean that the Claim is Concluded in the Client's favour in that the Client is able to recover damages or is awarded any other remedy which is of value. Where the claim is not a money claim (or not wholly a money claim), the Claim will be Won if the Client is awarded any aspect of what was sought (or another remedy in lieu). A compromise that achieves the same ends as any of the above will amount to a Win.

Save where the contrary is obvious from the context, a "Won" means "Won and Concluded".

Where there is disagreement as to whether the Claim has been Won, the matter may (at the Client's election) be referred to an independent barrister of not less than 10 years call who will decide the issue on the basis of written submissions; that barrister's decision will be binding on the parties and will be final.