Client Care Letters in Public Access Cases

Purpose:	To draw attention to good practice in relation to client care letters in public access cases
Scope of application:	All barristers qualified to accept public access instructions
Outline:	Requirements of the Code of Conduct, the Consumer Contract Regulations and the Provision of Service Regulations in relation to client care letters – drafting points relating to: legal aid and alternative funding; insurance and limitation of liability; confidentiality, UK GDPR and retention of papers; money laundering, unfair terms in consumer contracts – draft template letters for a consumer client and a business client
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Status:	**Please see the notice at the end of this document. This is not 'guidance' for the purposes of BSB Handbook I6.4.**

Introduction

1. Since the introduction of public access in 2004, model client care letters have been produced for barristers to use when instructed on this basis. These were initially on the Bar Council's website and, subsequent to its creation in 2006, moved on to the BSB's website. The current model letters can be found on the 'Code

Guidance' page of the BSB's website[1]. There are three model letters: one for cases where the public access client instructs a barrister directly, the others for instructions via an intermediary. This paper is principally concerned with the usual situation[2] where no intermediary is involved and therefore references to the model letter are to the 'no intermediary' version on the BSB's website.

2. Much of the wording in the model letter has changed little since 2004. However, a significant change was made to its format in 2010 with a move to a short covering letter setting out what work the barrister is going to do and the fee charged with a longer attachment setting out terms and conditions. Further changes were made in 2014 in light of the additional information required by the Consumer Contract Regulations 2013. A report in October 2016 jointly commissioned by the BSB and other legal regulators recommended that client care letters should be clearer, less generic and written in plain language. No changes have been made to the model letter following this report. Nor have any changes yet been made in the light of the introduction of the UK GDPR in May 2018.

3. In response to the joint LSB/BSB public access survey in 2016, 80% of public access barristers said they had or do use the BSB model letter. However, nearly half of those (45%) had made adaptations to it. It is likely this figure is much higher in light of the need to be aware of and adapt to regulatory changes. Different requirements for different clients mean that public access barristers may well have to consider adapting the BSB model letter and the purpose of this paper is to give guidance on how to do so.

4. One complaint made by some barristers doing commercial work is that the model letter is geared more towards clients who are individuals rather than business clients. For example, the model letter is drafted on the basis that the client is a consumer, as defined by the Consumer Contract Regulations 2013, and that the client might qualify for legal aid. According to the 2016 BSB/LSB survey, almost exactly half of public access clients were not individuals. In those cases it can be appropriate to leave out those paragraphs in the model letter which relate to public funding and the 2013 Regulations. There are a number of paragraphs about complaints to the Legal Ombudsman but most businesses will not be able to avail themselves of this scheme. Annexed to this paper is a draft letter which may be used

[1] https://www.barstandardsboard.org.uk/regulatory-requirements/bsb-handbook/code-guidance/

[2] According to the BSB/LSB Public Access Survey 2016 nearly 90% of public access instructions do not come via an intermediary.

or adapted for use when engaged by a consumer client (Annex A) as well as a draft letter to a business client (Annex B).

Code of Conduct requirements

5. Rule C22 in the BSB Handbook requires you to 'confirm in writing acceptance of the instructions and the terms and/or basis on which you will be acting, including the basis of charging'. This applies whether you are instructed by a professional client (e.g. an instructing solicitor) or directly by a lay client.

6. Rule C125 specifically applies to public access cases. It requires a barrister who accepts public access instructions to 'forthwith notify your public access client in writing, and in clear and readily understandable terms' of nine things. These include the work the barrister has agreed to perform, the fees to be charged, contact details and complaints procedure. Note however that sub-rule 5 sets out a requirement which applies only in intermediary cases.

7. The usual way barristers comply with rC125 is to send a client care letter incorporating the required information. Indeed, rC126 confirms that, save in exceptional circumstances, a barrister will have complied with the above requirements if they have written promptly to their public access client in the terms of the model letter provided on the BSB website. Therefore if you do not use the BSB model version you should ensure that your client care letter includes the nine areas of information required by rC125.

8. One of the nine requirements relates to the conduct of litigation. Rule C125.3 states:

> *'unless authorised to conduct litigation by the Bar Standards Board, the fact that you cannot be expected to perform the functions of a solicitor or other person who is authorised to conduct litigation and in particular to fulfil obligations arising out of or related to the conduct of litigation'*

9. If you use the BSB model letter, paragraphs 7 and 8 will need tailoring depending on whether you are or are not authorised to conduct litigation.

10. Rule C125.9 (which applies to public access cases) and rC99A (which applies generally) requires you to give details of your complaints procedure. Rule C99A says:

> *1 You must have a first-tier complaints handling procedure which:*

a) enables clients to make a complaint free of charge;

b) is prominent and accessible;

c) sets out the steps that will be taken in resolving a complaint;

d) explains how a complaint will be handled;

e) provides information on the possible outcomes of a complaint;

f) is effectively communicated to each client in a format or formats reasonably tailored for the client's circumstances, having due regard to their information needs; and

g) makes provision for a client to be able to make a complaint in a way that is reasonable and accessible to the client.

11. Some clients will have the right, if they are not satisfied with the way you deal with the complaint in house, to take the complaint to the Legal Ombudsman. However, most businesses do not have this right. Paragraph 6.2 of Annex B (Template for Businesses) and 7.2 of Annex A (Template for Consumers) annexed to this paper contains a suggested form of wording which explains each of these points. You should ensure you are aware of the detailed provisions of the BSB First Tier Complaints guidance (updated June 2026).[3]

Other requirements

Consumer Contract Regulations 2013

12. If your public access client is a consumer, the Consumer Contract (Information, etc.) Regulations 2013 will apply to the contract. A consumer is defined as someone acting wholly or mainly outside of their trade, business, craft or profession. The Regulations give consumer clients certain rights including, depending upon where the contract was concluded, a 14-day cooling-off period during which they can cancel the contract.

13. The Bar Council has produced detailed guidance[4] on how these Regulations affect barristers. Anyone contracting directly with clients who are individuals is advised to familiarise themselves with the Regulations and this guidance. A failure

[3] Available at **https://www.barstandardsboard.org.uk/for-barristers/bsb-handbook-and-code-guidance/code.html**

[4] Available at **http://www.barcouncilethics.co.uk/documents/consumer-contracts-information-etc-regulations2013/**

to comply with the Regulations can, in certain circumstances, amount to a criminal offence. The Bar Council's guidance also suggests that a serious failure to comply with the Regulations may amount to misconduct.

14. The Regulations require you to give consumer clients certain information, including where appropriate information about the right to cancel. Some of these are covered in any event by the requirements of rC125 (for example, details about fees and complaints procedure). The additional information requirements, which are summarised in the bullet points below, have been incorporated into the BSB model letter:

- Geographical address, telephone, fax and email.
- Information on the conditions, time limits and procedure for exercising a right to cancel.
- Notification that if the client expressly asks you to start work within the cancellation period, he will be responsible for paying the reasonable costs of your services.
- Circumstances in which the right to cancel may be lost.
- Model cancellation form.
- The time by which you undertake to perform the services.
- Information on how you client can obtain a copy of the Code of Conduct.

15. If the cancellation rights under the Regulations apply, you should not do any work for your client within the 14-day cooling off period unless you have an express request from your client to do so. For those contracts categorised by the Regulations as 'off-premises' this request must be made on a 'durable medium' which includes paper, fax and email. Further details are set out in the Bar Council's guidance paper on the Regulations, which indicates that the use of a tick-box option in a client care letter which the client signs and returns to you[5] can satisfy this requirement.

Provision of Services Regulations

16. The Provision of Services Regulations 2009 require a barrister to 'make available' certain information to his lay client. This applies whether a barrister is

[5] As to signing and returning letters generally, see paragraph 30 below.

instructed directly or by an instructing solicitor. Detailed guidance as to how these Regulations affect barristers is available on the Bar Council's website[6]

17. Many of these requirements are replicated in Rule C125 (e.g. providing a geographical address, legal status, details of service to be provided, price, complaints procedure, etc.). In most cases the only additional requirements will be:

17.1. Professional title (barrister, KC)

17.2. VAT registration number

17.3. Registered name on BSB register

17.4. Any choice of law or jurisdiction (NB: the BSB model letter includes a provision that any disputes will be determined by the law of England and Wales)

17.5. That the barristers have professional liability insurance provided by the Bar Mutual Indemnity Fund Limited; contact details for the Bar Mutual; and a statement of the territorial coverage of the Bar Mutual insurance cover held.

18. This information must be 'made available' to the lay client before the contract is concluded or the service is provided. The Bar Council's guidance suggests this will often be done by including this information on your Chambers' website. However that is not the only method. Some barristers include this information in their client care letter. Annexed to this paper are draft template letters and wording used in section 10 (for businesses) and 11 (for consumers) 'Regulatory matters and insurance' may be used or adapted to give information required by the Provision of Services Regulations.

Confidentiality, data protection (UK GDPR) and document retention

19. Core Duty 6 and Rules C5 and C15.5 in the Code of Conduct requires you to keep the affairs of every client confidential. The BSB model letter makes it clear to the lay client that you will comply with this duty and will only disclose information to others if the client consents or you are under a legal obligation to do so.

20. On 25 May 2018, the General Data Protection Regulation (GDPR) came into force. This was replaced by the UK GDPR following Brexit, although its provisions closely mirror the EU GDPR. The UK GDPR covers the 'processing' of 'personal

[6] www.barcouncilethics.co.uk/documents/provision-services-regulations-2009/

data' as defined in the Regulation. Barristers who process personal data, whether that relates to their own client or another individual, are data controllers under the Regulation. A full explanation of the UK GDPR's requirements is beyond the scope of this paper. Barristers should refer to the Bar Council's comprehensive UK GDPR guidance.[7] However, as the UK GDPR requires data controllers to provide certain notifications to persons whose personal data they collect or process, this guidance addresses how they may be provided within or alongside client care letters.

21. Any new clients taken on after 25 May 2018 must be provided with information prescribed by Article 13 of the UK GDPR at the time their personal data is collected.[8] This is known as a privacy notice. Existing clients will need to be given notice of this kind at such time as any *additional* personal data is collected from them. A privacy notice should be written in clear and truthful language and contain the following information:

- the categories of data collected / processed
- why the data is collected (purpose)
- how the data is used (processed)
- the lawful basis for processing the data
- how the data is stored and how long for, and how security is ensured
- who / which organisations data is shared with and why
- what those organisations will do with the data
- individuals' rights over their data (including right of access)
- contact details (for queries)

A template privacy notice prepared by Riliance, consultants who have been working on the UK GDPR with the Bar Council, is attached at Annex C. It is envisaged this template will be tailored to suit the individual circumstances of the case. The approach suggested in the attached template letters is to signpost to your privacy notice. You would then provide the privacy notice as an annex to the letter or a link

[7] http://www.barcouncilethics.co.uk/documents/UK GDPR-guide-barristers-chambers/

[8] The items prescribed by Articles 13 and 14 are summarised on the ICO website: https://ico.org.uk/fororganisations/guide-to-the-general-data-protection-regulation-UK GDPR/the-right-to-be-informed/what-is-the-rightto-be-informed-and-why-is-it-important/

to your website. Alternatively, you could incorporate your privacy notice information within the body of the letter (though this carries the risk of making the letter confusingly long).

22. Moreover, where you envisage outsourcing any support services to other persons (within the meaning of rC86) or using the assistance of a pupil or devil, these need to be specified as processors in an Article 13 notice.

23. The client care letter may have to go further and seek UK GDPR-compliant consent from the client if you are processing personal data in the Special Categories (Article 9) and processing is not necessary for the establishment, exercise or defence of legal claims (for example where advice is being given on the drafting of a will).

24. Rule C129 requires that "*you must either yourself retain or take reasonable steps to ensure that the lay client will retain for at least seven years after the date of the last item of work done":* Whilst this permits the retention of the papers by the lay client, there is no guidance as to what might constitute 'reasonable steps to ensure'. The final decision has to be that of the barrister, but a barrister should be aware of the risks of a client failing to keep all the necessary papers for the full 7 years. The retention of papers requirement includes instructions, written advice or other paperwork, notes of advice given in conference or over the telephone and 'the originals, copies or a list of all documents enclosed with any instructions'. The UK GDPR only permits you to retain personal data for as long as is necessary for the purposes of your processing. For more detailed information on this see the Bar Council's Data Retention Policy guidance.[9] Whilst retention for 7 years can be justified, given that it is mandatory under rC129, it may be difficult to justify keeping personal data for a period longer than this. As a matter of good practice, you should set out the maximum retention period in your client care letter or accompanying privacy notice.

25. Rule C131 provides:

> *'Save where otherwise agreed:*
>
> *.1 a barrister shall be entitled to copy all documents received from his lay client, and to retain such copies permanently;*
>
> *.2 a barrister shall return all documents received from his lay client on demand, whether or not the barrister has been paid for any work done for the lay client'*

[9] **http://www.barcouncilethics.co.uk/documents/data-retention-policy/**

.3 you shall not be required to deliver to your lay client any documents drafted by you in advance of receiving payment from the lay client for all work done for that client.

The model letter is drafted on the bases set out in the sub rules above. However, it is clear from the stem of the rule that it is possible to agree with your client alternative provisions relating to retaining or returning documents, and if so these ought to be set out clearly in your client care letter. You may also want to consider including provision for the payment of reasonable photocopying costs in the event that you are required to make copies of documents in order to retain or return them.

Other points

Legal aid and alternative funding

26. There is no longer an absolute prohibition on barristers being directly instructed by clients who are likely to be eligible for public funding (aka legal aid). Since 2013 the operative rule has been Rule C120.3 which requires you to:

> *'Take such steps as are reasonably necessary to ensure that the client is able to make an informed decision about whether to apply for legal aid or whether to proceed with public access.'*

27. There are six paragraphs in the model letter under the heading 'Legal Aid'. Although there is no obligation under rC125 to include these paragraphs in your client care letter, in a case where your client may be eligible for public funding it would be sensible to do so. However, simply incorporating these paragraphs into your client care letter is unlikely of itself to satisfy your obligation under rC120.3 if your client is likely to be eligible for public funding.

28. On the other hand, if there is no prospect that your client could obtain public funding – for example, if you are acting for a business client in a commercial dispute – then you may leave these paragraphs out of your client care letter.

29. It is considered good practice to discuss with your client whether they have an alternative means of funding their legal representation, such as an insurance policy or union backing.[10] One way of initiating that discussion might be to include a requirement in your client care letter for your client to check whether they have any alternative means of funding their case and, if so, to bring it to your attention before agreeing your terms.

[10] See **BSB Public and Licensed Access Guidance for Clerks,** paragraph 14.

Signing and returning the client care letter

30. There is no requirement in the Public Access Rules for your client to sign and return a copy of the client care letter. The requirements in rC125 are satisfied by you 'forthwith' notifying your client of them in writing. Thus, provided your client has received an appropriate care letter, your obligations under this rule have been met.

31. However, it is clearly sensible to get your client to sign and return a copy of the letter as confirmation both of its receipt and of your client's acceptance of your terms. It is noteworthy that in a significant number of cases where barristers have been disciplined for breaching the public access rules at least one of the charges related to failing to send a client care letter.

32. Note also that:

32.1. in cases where your client might be eligible for legal aid, paragraph 17 in the attachment in the BSB model letter envisages that your client will sign and return a copy of the letter to confirm they have made an informed decision to instruct you on a public access basis rather than take advantage of any public funding that he might be entitled to;

32.2. in a case where the client has cancellation rights under the Consumer Contract Regulations 2013, you may only provide your services during the 14 days cancellation period if the client has expressly requested you to do so (see paragraph 15 above).

33. Rule C125 requires written notification to be sent 'forthwith' upon accepting instructions. Rule C24 requires you to confirm acceptance of instructions and the terms or basis on which you will act before doing any work 'unless that is not reasonably practicable, in which case you should do so as soon as reasonably practicable'. Therefore, in an emergency it may be possible to do work before sending a client care letter. Even in such a case you should agree with the client what work you are going to do and what you are going to charge for it and, if at all possible, provide a draft client care letter (for example, by sending a copy of a standard template letter that you use or directing you client to the model letter on the BSB's website).

Insurance and limitation of liability

34. There is no requirement in the Handbook to include details of your BMIF insurance in your client care letter. However you are required to notify your public access client that you are bound by the Code of Conduct (rC125.2) and it is a requirement of the Code (rC76) that that you have adequate insurance which covers the legal services you supply to the public.

35. As noted above (see paragraph 17), the Provision of Services Regulations require you to make details of your insurance cover available to your lay client. This requirement can be satisfied by including the relevant details in your client care letter or by posting them on your Chambers' website. The Bar Council guidance paper on these Regulations says:

> 'a. Regulation 8(1)(n) requires that *"where the provider is subject to a requirement to hold any professional liability insurance or guarantee"* information about the insurance or guarantee must be made available *"and in particular (i) the contact details of the insurer or guarantor, and (ii) the territorial coverage of the insurance or guarantee"*.
>
> b. The view of the Ethics Committee is that this requires the provision of information only about such insurance as is professionally compulsory i.e. the minimum cover which barristers must have as members of the Bar Mutual Indemnity Fund (currently £500,000). There is no requirement to provide information about any additional insurance or additional level of cover that a barrister may have taken out (whether with the Bar Mutual or with other insurers); and indeed there is no requirement to specify the level of cover which is professionally required; though this will be apparent from the Terms of Cover which appear on the Bar Mutual Website.'

36. Some barristers include clauses in their client care letters seeking to limit their liability to their clients to a specified sum in the event they are found to have been negligent or in breach of contract. The Handbook expressly contemplates the use of such limitations in guidance gC114 (accompanying Rules rC76–rC78), which cautions BSB regulated persons who seek to exclude or limit liability to consider carefully the requirements of the Unfair Contract Terms Act 1977, together with other applicable legislation and case law.

37. The draft letters at Annexes A and B include wording for a clause to state the £100,000 liability cap on BMIF insurance in relation to purely contractual liabilities.

38. Whilst purely contractual liabilities are less likely to occur in public access work, BMIF nonetheless envisions the possibility of a barrister agreeing to a term with their direct access client which would create a purely contractual liability. For example, a barrister could agree to a Data Sharing Agreement relating to the storage or protection of the client's data with unlimited liability and/or an indemnity for losses caused by a breach of such terms, or a late fee penalty for not providing advice by a specific date. Whilst BMIF will provide indemnity for purely contractual liabilities that would not otherwise exist under the common law, in equity or under statute, that is only where the contract imposing such liabilities is in a form approved by BMIF.

39. The SRA expressly prohibits regulated firms from excluding or attempting to exclude liability below the minimum level of cover required by the SRA Indemnity Insurance Rules. It is suggested that you approach the question of a limitation of liability clause with great care bearing in mind:

39.1. it may be difficult to justify a clause limiting your liability to a level below that of your insurance cover[11]; and

39.2. your level of cover should normally be adequate to cover the services you are supplying.

Disputes and confidentiality

40. There may be circumstances where, in the event of a dispute concerning your work on a case, you would wish to disclose or rely on information that would normally be regarded as confidential. The Bar Council's practice paper on 'Fee Disputes and Privilege/Confidentiality'[12] says you may wish to consider inserting the following in contracts with public access clients:

(a) A term stating that fee notes may be disclosed to a debt recovery agency to the extent necessary in order to recover unpaid fees; and

(b) A term stating that privileged documents can be referred to, disclosed and adduced as evidence in court or in an arbitration by the barrister or the public access client in the event of litigation or a dispute between them, insofar as may be necessary for the barrister to protect or defend his/her

[11] Under the SRA Indemnity Insurance Rules.
[12] http://www.barcouncilethics.co.uk/documents/fee-disputes-privilegeconfidentiality/

interests. You should also consider providing to your public access clients a note or other explanatory material that explains that the above is in light of the general law that where there is litigation between a lawyer and client there is an implied waiver of privilege.

41. It is not suggested that it is a requirement in every case to include such terms. Clearly (a) would only be relevant if there was a possibility that you might instruct a debt recovery agency. The BSB model letter includes a clause stating that confidential information can be disclosed in accordance with statutory or other legal requirements. That may be sufficient to cover (b) above but you may take the view that the safer course is that the contract should specifically state that privilege will be waived in the event of a dispute over fees.

42. The Bar Council's Standard Contractual Terms[13] includes the following clause, which permits the barrister in the event of a dispute to share confidential information with their legal advisers and BMIF:

> '10.2 If the Lay Client or Authorised Person[14] makes a complaint about the Barrister's work or brings a claim against them or if the Barrister reasonably thinks that there is the potential for a claim, complaint or other similar issue to arise in the future, then both the Authorised Person and the Lay Client (by the Authorised Person as agent for the Lay Client) hereby give permission in advance (and irrevocably) for the barrister to share any information and documents (including confidential and privileged information and documents) with the Barrister's professional indemnity insurers and any legal or other advisers who are appointed by the Barrister or the professional indemnity insurers in relation thereto. For the avoidance of doubt, any confidential documents will be supplied to the professional indemnity insurers and/or advisers on the basis that they should keep any such information and documents confidential.'

43. The draft letters at Annexes A and B include suggested wording for a clause which would cover this issue.

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[13] www.barcouncilethics.co.uk/wp-content/uploads/2017/10/Bar-Council-Standard-Contractual-Terms-2026.pdf

[14] An instructing solicitor is an Authorised Person for the purposes of this clause.

Mini-pupils and confidentiality

44. It is highly unlikely that a student under the age of 18 can be effectively bound by contractual duties of confidence, and the risks arising from the disclosure of personal data are equally significant. More generally, mini-pupils who have not been called to the Bar are not subject to the professional obligations imposed on barristers by the BSB Handbook, including the duty of confidentiality under Rule C15.5 and Guidance C46. Barristers being shadowed by a mini-pupil should therefore refer to the Bar Council guidance, *Mini-Pupils: Implications for your Practice*[15] and *Note on Confidentiality and Data Protection Issues*[16] with regard to Student Placements, and ensure that appropriate safeguards are in place before permitting access to confidential information or case papers. In light of the above, you might consider including a provision in your client care letter obtaining the client's informed consent where you may be accompanied by a mini-pupil.

Money Laundering etc. Regulations 2017

45. In many cases where barristers are instructed on a public access basis, and in particular where litigation is on foot or contemplated, it will not be necessary to do the money laundering checks on your client. This is because the requirements of these Regulations only apply to barristers giving tax advice or who are assisting in the planning or execution of the following transactions:

45.1. the buying and selling of real property or business entities;

45.2. the organisation of contributions necessary for the creation, operation or management of companies

45.3. the creation, operation or management of trusts, companies or similar structures.

46. Detailed information for barristers on the application of the Money Laundering Regulations is contained in the Bar Council's Guidance section concerning Money Laundering, Terrorist Financing and the Proceeds of Crime[17].

47. To accommodate the possibility that it may be necessary in some cases to ask your client to provide evidence of identity to satisfy the requirements of these Regulations, it may be prudent to include a warning to that effect in your client care

[15] https://www.barcouncilethics.co.uk/documents/mini-pupils-implications-practice/
[16] https://www.barcouncilethics.co.uk/documents/confidentiality-and-data-protection-issues-with-regard-to-student-placements/
[17] https://www.barcouncilethics.co.uk/documents/money-laundering-terrorist-financing/

letter. In addition, you may think it good practice to obtain identity documents from each PA client on a "Know Your Client" risk assessment basis.

Consumer Rights Act 2015

48. Public access clients who fall within the definition of 'consumer' in the Consumer Rights Act 2015 have the protections against unfair contractual terms afforded by that Act. Consumer is defined as an individual acting for purposes that are wholly or mainly outside that individual's trade, business, craft or profession.

49. An illustration of how this may affect public access barristers is provided by ***Glaser & Anr v Atay* [2024] EWCA Civ 1111**[18]**.** Leading and junior counsel were engaged by a public access client to represent her at a ten-day final hearing. Their client care letter provided that their full fees were payable even if the trial did not go ahead. In the event, the trial was adjourned and the barristers were dis-instructed. The barristers' claim for their full fees failed on the basis that the payment term was unfair and, under the 2015 Act, therefore unenforceable. The Court of Appeal found that the requirement to pay the full fee whether or not the trial went ahead put all the risk on the client and therefore created a significant imbalance between the parties.

50. Nugee LJ said, at paragraph 148:

> 'I do not mean to say that counsel can never stipulate for payment if a case goes off at a late stage: under the traditional model of brief fee and refreshers of course, an adjournment after briefs had been delivered would entitle counsel to payment of the brief fee but not the refreshers with, in complex cases, the possibility of the brief fee itself becoming due in stages. Nothing I have said is intended to prevent counsel from devising and agreeing with their clients contracts that fairly balance their own interests in not being left with gaps in their diaries with the interests of their clients in not paying for work that is not carried out.'

51. The template letters annexed to this guidance document have been drafted with those words in mind. It is important to note, however, that whether a particular term is going to be fair or not is fact specific and whilst *Glaser v Atay* is authority on an arrangement which will be regarded as unfair, there is currently no authority on what will be regarded as fair. Care must be taken therefore in every arrangement

[18] **https://www.bailii.org/ew/cases/EWCA/Civ/2024/1111.html**

that requires payments at different stages. The template letters must be adapted according to the client's particular circumstances and with *Glaser* in mind.

Outsourcing

52. Barristers are permitted to engage third parties, such as litigation assistants or research assistants, to assist them in carrying out their instructions. In such circumstances, you should ensure you are familiar with rC86 on 'Outsourcing'. The Bar Council has produced a guidance paper on 'Outsourcing and the use of litigation assistants'[19] to which reference ought also to be made. In particular, it is important to ensure your agreement with the third party to whom you have outsourced the work complies with the requirements of rC86 as to confidentiality, data protection, your duties under the Handbook and Code of Conduct and investigations by the BSB.

53. The BSB model letter is drafted on the basis that you will not outsource any of the work you are instructed to do. Paragraph 1 of the letter of engagement says 'I (and not my chambers) will be responsible for doing the work under this agreement'. Thus, you should not outsource work without making appropriate amendments to the model letter. A suggested form of words is included in the draft letters annexed to this paper[20]. Your duty not to mislead your client is likely to require you to be open and transparent in your client care letter about any proposed outsourcing arrangement.

Repeat business and ongoing retainers

54. The BSB Public Access Scheme Guidance for Barristers[21] makes it clear that it may not be necessary to send a full version of the client care letter when you have repeat business from a client in respect of a matter you have previously been instructed upon. Paragraph 30 of the Guidance says:

> 'where the client has previously instructed you in respect of the same matter it may well be unnecessary for you to provide a full client care letter in respect of every new instruction received. Barristers must still ensure that the fundamentals of the client care letter are set out in respect of each new instruction i.e. the work that is to be undertaken, the cost and the payment mechanism. Other matters which you are required to inform your client about, such as the barrister's limitations (if any) with respect to litigation, how

[19] **http://www.barcouncilethics.co.uk/documents/outsourcing-use-litigation-assistants/**
[20] Paragraph 1.2 of the Letter of Engagement.
[21] **Public-Access-Guidance-for-Barristers.pdf (barstandardsboard.org.uk)**

to complain and the fact the barrister may have to withdraw can be covered by referring the client to the original client care letter.'

55. Note however that each new instruction is likely to be regarded as a new contract. Therefore if the Consumer Contracts Regulations 2013 apply you will need to provide the required information each time you accept a new instruction. The same may apply to the information that you are required to give to comply with the Provision of Services Regulations 2009. Therefore the safer course may be to supply a full client care letter for each instruction.

56. Some barristers try to avoid the need to repeatedly send out client care letters by agreeing with their client at the outset that they carry out all the work they are instructed to do on a case for a fixed fee or, more usually, at a specified hourly rate. This is not prohibited by the BSB Guidance, which states at paragraph 31:

> 'It may also be possible in limited circumstances for you to enter into a retainer or novel fee arrangement with a public access client. However, care should be taken to ensure you continue to observe your general Handbook duties around independence and conflict of interest.'

57. It is suggested that caution should be exercised before entering into such an arrangement for two reasons:

> 50.1 You are required to set out in clear and readily understandable terms the work you have agreed to perform for your client (Rule C125.1). It may be difficult to word a general retainer in such a way as provides both you and your client with clarity about what work you are actually agreeing to do.
>
> 50.2 There may be scope for confusion between you and your client as to what responsibilities you have taken on.

<u>Escrow accounts</u>

58. The use of an escrow service is permitted by rC74. The essence of the arrangement is that you and your client agree terms which provide for your client to deposit a sum of money into an escrow account, thereby giving you the security of knowing that funds are held in escrow and available to meet your fees when they fall due. This might be particularly useful where you have agreed an hourly rate to do work for your client but you do not know how long that work will take; or you have agreed a daily rate to represent a client at trial but you cannot tell in advance how long the trial will last. Provided you comply with rC74 and rC75 and the

associated guidance in gC108-111, such an arrangement will not breach the rule prohibiting you from holding client money.

59. You are required to set out in writing the terms on which you are acting (rC22). Therefore if it is a condition of your instructions that your public access client uses an escrow payment service this ought to be set out in your client care letter. The details of the arrangement (for example, as to how much must be deposited) will vary from case to case; however, a suggested form of words is as follows:

> 'In order to ensure funds are available to meet my fees when they fall due in accordance with this agreement, you and I agree that you will open a [*Insert escrow service*] account with [*Insert service provider*] and deposit into that account the sum of £…….. on or before ……. You and I agree that we will execute such documents and provide such information to [*Insert escrow service*] as it may reasonably require and that we will be bound by the terms and conditions of [*insert escrow service*] . Payment of my fees may then be made from the [*Insert escrow service*] account in accordance with the terms of this agreement and of the [*Insert escrow service*] terms and conditions.'

60. A separate guidance paper on the use of escrow services in public access cases is available on the Ethics hub.[22] This guidance should be read carefully before setting up any escrow arrangement.

Costs warning

61. There does not appear to be any general duty to warn a public access client (either in the client care letter or otherwise) that the fees they pay you may not be recovered from the other side, even if they are successful.

62. In *May v Wavell Group plc*[23], Master Rowley suggested, obiter, that in a civil case a barrister instructed to conduct the litigation should warn his client that disproportionate costs will not be recovered. In the majority of public access cases, however, the barrister is not instructed to conduct the litigation. The lay client should be capable of managing his own case (see oC32, Public Access Rules).

63. It is not mandatory to provide a costs warning to your public access client though you may consider, in the circumstances of the particular case, it would be

[22] **https://www.barcouncilethics.co.uk/wp-content/uploads/2021/08/Escrow-guidance-August-2021.docx.pdf** update link to July 2026 Escrow Guidance, once uploaded.
[23] [2016] EWHC B16 (Costs).

appropriate to do so. Even solicitors conducting litigation are not under a mandatory duty to warn their clients that their fees may not be recovered. There may, though, be situations where you should give your client a costs warning. This is likely to include, as in *May v Wavell Group plc*, where you are instructed to conduct the litigation and your overall fees are likely to be disproportionate to the potential damages. It would doubtless also include situations where the scope of your instructions requires you to give your client advice about the possible costs implications of the litigation. In addition, a barrister may remind a client that the barrister's fees remain payable notwithstanding any costs orders which may be made by the court.

The ADR Regulations

64. The EU Directive on alternative consumer dispute resolution came into force on 1 October 2015[24]. Put simply, this requires you to inform a consumer client whether you are willing to submit a dispute to ADR and identify an approved ADR body. However, this requirement only arises if you have been unable to resolve a complaint to the client's satisfaction through your Chambers' complaints procedure. There is therefore no need to include this information in a client care letter.

Liens

65. The BSB Guidance states:

> 'We are not aware of any authority by which barristers gain a general lien on documents belonging to the client until the fees are paid, although there seems to be nothing in the law to invalidate an express agreement made between a barrister and a client permitting the barrister to exercise such a lien.'

66. Whilst it seems that it may be possible for a barrister to agree a lien with their public access client, caution should be exercised. Further guidance on this issue is contained in the Public Access FAQs on the Ethics hub[25].

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[24] Implemented into UK law by The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015. Available at **The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 (legislation.gov.uk).**

[25] **www.barcouncilethics.co.uk/documents/public-access-faqs/**

Business clients

67. As noted above, the terms of the BSB's model client care letter are more appropriate for a client who is an individual than a corporate or business client. Annex B to this paper is a suggested draft for a client care letter which can be sent to a business client. The main differences from the BSB's model letter are:

67.1. It is assumed for the purposes of the attached draft that the client will not fall within the definition of 'consumer' in the Consumer Contract Regulations 2013. Therefore the parts of the model letter which relate to the requirements of these Regulations have been excluded.

67.2. It is also assumed that there is no likelihood the client will be eligible for public funding. Therefore the section in the model letter under the heading 'Legal Aid' has been excluded.

67.3. The Legal Ombudsman scheme is mainly for the benefit of individuals and does not apply to most businesses. The attached draft makes this clear.

68. A number of factors have to be considered when drafting a client care letter and it follows that whilst the attached draft may be appropriate for some clients it will not necessarily suit all situations.

Important Notice

This document has been prepared by the Bar Council to assist barristers on matters of professional conduct and ethics. It is not "guidance" for the purposes of the BSB Handbook I6.4, and neither the BSB nor a disciplinary tribunal nor the Legal Ombudsman is bound by any views or advice expressed in it. It does not comprise – and cannot be relied on as giving – legal advice. It has been prepared in good faith, but neither the Bar Council nor any of the individuals responsible for or involved in its preparation accept any responsibility or liability for anything done in reliance on it. For fuller information as to the status and effect of this document, please see **here**.

ANNEX A

Draft Letter of Engagement for Consumers

THIS DOCUMENT IS PROVIDED AS A TEMPLATE ONLY, AND SHOULD NOT BE USED WITHOUT THE BARRISTER FIRST SATISFYING THEMSELVES THAT IT IS APPROPRIATE FOR THEIR PARTICULAR CLIENTS AND CIRCUMSTANCES, AND COMPLIES WITH THEIR PROFESSIONAL AND REGULATORY OBLIGATIONS IN EACH CASE.

[INSERT DATE OF AGREEMENT]

Dear [INSERT NAME OF CLIENT]

Re: [INSERT NAME OF CASE OR MATTER]

This is a letter of engagement. It sets out the terms on which I would be prepared to act for you. If you are happy with what I propose, please sign and return a copy.

Below is a link to the Bar Standard Board's guidance for lay clients. This explains how the Public Access scheme works. If you have any questions, please do not hesitate to contact me (or my clerks).

https://www.barstandardsboard.org.uk/resources/public-access-guidance-for-lay-clients.html

1. Who I am and how to contact me

1.1 My name is [INSERT]. I am a barrister who is a member of [INSERT NAME AND ADDRESS OF CHAMBERS]. I am registered with the Bar Standards Board and hold a current Bar Council practising certificate.

1.2 A barristers' chambers is not a law firm; it is a collection of independent, self-employed barristers who share premises and administrative services. This agreement is with me personally rather than my chambers. This means that I (and not my chambers) will be responsible for doing the work under this agreement, and this will be so despite the fact that my clerks may act on my behalf. For the avoidance of doubt, I am self-employed; I am not employed by chambers (or by any regulated entity).

1.3 You are welcome to contact me by email (at [INSERT EMAIL ADDRESS]) or by phone on [INSERT PHONE NUMBER]. If I am not available (or if you prefer), you can contact me via my clerks at [INSERT EMAIL ADDRESS] on [INSERT PHONE NUMBER OF CHAMBERS]. Whilst you are welcome to contact me directly during normal business hours, queries concerning my fees or any administrative queries are normally best dealt with by my clerks.

1.4 My business hours are from 9 am to 6 pm every weekday (excluding Bank Holidays). I will not always be available, however. If I am not available, you should contact my clerks.

2. The scope of this agreement

2.1 The work that I will carry out for you under this agreement is as follows: [INSERT DESCRIPTION OF CASE OR MATTER].

2.2 I have carefully considered your instructions and can confirm that I have sufficient experience and competence to undertake the work you have asked me to do.

2.3 Unless we agree otherwise, I will perform these services by [INSERT DATE OR OTHER DESCRIPTION OF TIMESCALE].

3. The fees I will charge (and when you must pay them)

[Option 1: Fixed fee]

3.1 My fee for the work described above will be a fixed fee of £[INSERT] (plus VAT).

3.2 My reasons for charging you this fixed fee are as follows: [INSERT BRIEF JUSTIFICATION FOR THE FEE].

3.3 This fixed fee has been set on the basis of the documents you have provided to me as of the date of this letter, namely [LIST DOCUMENTS]. It will not include any work that may arise out of any other documents that you may subsequently send me.

3.4 Once you have agreed to the terms of this letter, I will send you a fee note; the fixed fee will be payable immediately upon receipt. The details of my bank account for payment are:

- Bank: [INSERT NAME OF BANK]
- Account name: [INSERT ACCOUNT NAME]
- Sort Code: [INSERT SORT CODE]
- Account number: [INSERT NUMBER]

3.5 I will not be obliged either to complete the work or to send it to you until you have paid the fee. If you do not pay the fee within a reasonable period of time, I will write to you to remind you to pay. If you do not then pay the fee promptly, I will be at liberty to terminate this agreement, and I will therefore not undertake the agreed work for you.

3.6 A receipted fee note will be sent to you shortly after payment. If you need this promptly, please telephone my clerks to let them know that you have made the payment.

3.7 Where I carry out work that is not covered by the fixed fee, my fees will be based on an hourly rate of £[INSERT] per hour (plus VAT). Save where this agreement provides otherwise (such as where this agreement is terminated), I will not charge you fees based on my hourly rate without having agreed it between us and evidenced in writing that I may do this.

[Option 2: hearing (one day or less)]

3.1 My fee for appearing as an advocate at the hearing referred to above is £[INSERT] (plus VAT)(this being known as my 'brief fee'). This will include all work in preparation for the hearing, the attendance at the hearing (assuming it lasts no more than one day), and drafting a note of the order that the court may make.

3.2 I will be entitled to send you a fee note for the brief fee immediately upon making this agreement. You agree to pay the brief fee in full by no later than 4 pm on [INSERT DATE: NOTE: THIS DATE MUST BE AFTER THE LAST DATE REFERRED TO IN THE PARAGRAPH DEALING WITH ABATED FEES BELOW]. The details of my bank account for payment are:

- Bank: [INSERT NAME OF BANK]
- Account name: [INSERT ACCOUNT NAME]
- Sort Code: [INSERT SORT CODE]
- Account number: [INSERT NUMBER]

3.3 A receipted fee note will be sent to you shortly after payment. If you need this promptly, please telephone my clerks to let them know that you have made the payment.

3.4 If you fail to pay the brief fee on time, then provided I have given you notice of my intention to do so, I will be at liberty to terminate this agreement and to not represent you at the hearing.

3.5 If, for any reason, the hearing does not go ahead (or if this agreement is terminated before the hearing), I will, in certain circumstances, charge you a lower fee (known as an 'abated brief fee'). In particular:

3.5.1 If I am stood down prior to [INSERT DATE], I will charge you nothing;

3.5.2 If I am stood down after that date but before [INSERT NUMBER] days prior to the hearing, I will charge you 25 percent of my brief fee;

3.5.3 If am stood down after then but prior to [INSERT NUMBER] days before the hearing, I will charge you 50 percent of my brief fee; and

3.5.4 If am stood down after then but prior to [INSERT NUMBER] days before the hearing, I will charge you 75 percent of my brief fee.

In all other circumstances, I will be entitled payment of my full brief fee.

3.6 If, however, the hearing is adjourned to another day, we will be at liberty to vary this agreement so as to cover that new hearing date. Subject to my other professional commitments, I must not unreasonably refuse to do this. I may, however, ask you to pay for any work that I have done as a result of the adjournment; my fees for this will be based on my usual hourly rate (see below).

3.7 Where I carry out work that is not covered by the brief fee, my fees will be based on an hourly rate of £[INSERT] per hour (plus VAT). I will not charge you any such fees without having agreed it between us and evidenced in writing that I will do this.

3.8 Where appropriate, I will prepare a final fee note within seven days of this agreement being terminated or the hearing coming to an end (whichever comes first).

[Option 3: hearing (more than one day)]

3.1 My fee for appearing as an advocate for the first day of hearing referred to above is £[INSERT] (plus VAT)(this being known as my 'brief fee'). This will include all work in preparation for the hearing, the attendance on the first day, and drafting a note of the order that the court may make.

3.2 In addition, I will charge a separate daily fee for each day (or part thereof) after the first day; that fee is known as a 'refresher' and is £[INSERT] (plus VAT). That fee (which is not refundable) will become payable at 5 pm on the day prior to each additional day (or part thereof) after the first day. So, if (for example) the first day of the hearing is on Monday, and if the hearing lasts until Wednesday, I will be entitled to a refresher at 5 pm on Monday and then again at 5 pm on Tuesday, and this would so even if the court finished early on Wednesday.

3.3 The hearing is expected to last [INSERT NUMBER] days. As such, I anticipate that my total fees for the hearing (including refreshers) will be [INSERT] (plus VAT).

3.4 My professional rules do not allow me to accept payments on account of my fees. As such, you must pay me my fees only once I have become entitled to payment. In view of this, you agree that you will pay the brief fee in stages:

3.4.1 You must pay me £[INSERT] by no later than 5 pm on [INSERT DATE];

3.4.2 You must pay me £[INSERT] by no later than 5 pm on [INSERT DATE];

3.4.3 You must pay me £[INSERT] by no later than 5 pm on [INSERT DATE]; and

3.4.4 By no later than 5 pm on [INSERT DATE], you must pay me the balance of £[INSERT].

These stage payments must be paid in cleared funds by the dates and times stipulated; they will not be refundable (as they will represent fees for work which will have already been carried out at the material stage, or, where appropriate, fees payable for having reserved dates in my diary). The refreshers

must be paid immediately upon them becoming due (which is 5 pm on the day before I am due to reappear in court).

3.5 If you do not pay my fees within the timescales referred to above, then provided I have given you reasonable notice of my intention to do so, I will be at liberty to terminate this agreement and to not represent you at the hearing.

3.6 Please note that I am not permitted to accept payment of refreshers unless they have become payable. In practical terms, this means that you must pay my refreshers daily (rather than in advance). As such, you must ensure that you are able transfer money into my bank account at very short notice (namely, on each day before I am due to reappear in court). If you fail to pay any refresher by the time I have stipulated, I will be permitted to remind you to pay; if you fail to heed that reminder and fail to pay before 8 am on the day I am to appear in court, then I will be permitted immediately to terminate this agreement and to decline to represent you.

3.7 The details of my bank account for payment are:

- Bank: [INSERT NAME OF BANK]
- Account name: [INSERT ACCOUNT NAME]
- Sort Code: [INSERT SORT CODE]
- Account number: [INSERT NUMBER]

3.8 A receipted fee note will be sent to you shortly after discharge of each payment. If you need these promptly, please telephone my clerks to let them know that you have made the payment.

3.9 If the hearing does not go ahead (or if this agreement is terminated), I will be entitled to whatever fees have become due at the point at which I was stood down.

3.10 Where I carry out work that is not covered by the fees referred above, my fees will be based on an hourly rate of £[INSERT] per hour (plus VAT). I will not charge you fees based on my hourly rate without having given you written notice of my intention to do so.

[Option 4: payment by the hour]

3.1 At the time of making this agreement, I do not know how much work will be involved in your instructions taken as a whole. As a result, I am unable to

offer you a fixed fee. I will therefore charge you on a time basis at £[INSERT] an hour (plus VAT).

3.2 I will not charge you for more than [INSERT] hours of work [or 'I will not carry out work that will cost you more than £[INSERT] (plus VAT)] without your permission.

3.3 My clerk will send you a fee note either once the work has been completed or, where appropriate, as and when the work is carried out. This may be done in arrears, but I may also do this in advance if I believe I can estimate the time I will spend carrying out any given part of the work.

3.4 For the avoidance of doubt, if you ask me to carry out any additional work, I may charge for that on an hourly rate basis too.

3.5 Any fee note must be paid without delay (and in any event within seven days of receipt). You are, of course, are at liberty to request an up-to-date interim fee note at any time.

3.6 You and I agree that I will not send you the work (or, where relevant, the part of the work for which I have sent you a fee note) until you have paid the whole of my fees.

4. <u>The work I am not obliged to carry out</u>

4.1 The work that I will do will be limited to what is described under the heading 'The Scope of this Agreement' above.

4.2 For the avoidance of doubt, we agree that I will not be responsible for the following: [INSERT DESCRIPTION OF WORK THAT IS EXCLUDED FROM THE RETAINER].

4.3 If subsequent work is needed (or if significant work is required that is not within the scope of what is set out above), I will normally ask you to agree to another letter of engagement. Because I carry out all my work personally and cannot predict what other professional responsibilities I may have in the future, I am unable to guarantee that I will be able to accept instructions for all subsequent work; if, however, I am not available, then I will tell you as soon as practicable.

[If not able to conduct litigation]

4.4 A barrister is not the same as a solicitor; indeed, there are certain things that I cannot do. In particular, the things that I cannot do include the following:

4.4.1 *Firstly*, I am unable to handle client money. As such, I will not be able to hold money on your behalf, and this will include any monies that you may need to pay to a third party (such as court fees or fees to experts). As such, you will need to make arrangements to deal with these things.

4.4.2 *Secondly*, I am not permitted to undertake the organisation or management of your case; in particular, I am not permitted to serve court documents for you, nor am I permitted to file documents at court on your behalf. I will be able to advise you on how to do these things, but you will need to make arrangements for them actually to be done.

4.4.3 *Thirdly*, I am not able to go on the court record or to provide my address as being your address for service of court documents. This means that (unless you have also instructed a solicitor), you must go on the court record as a litigant in person and provide the court with an address for service. In practice, this also means that you will be responsible for receiving and sending correspondence.

4.5 By making this agreement, you acknowledge the above limitations, and you agree to make suitable arrangements for doing the things I am unable to do. The following are examples:

4.5.1 If a court fee is payable, I will be able to advise that it is payable and tell you how much it is, but I will not be able to pay it for you on your behalf; you must do this.

4.5.2 If an expert needs to be instructed, I will be able to advise you about who to instruct and to draft the instructions to the expert, but you will need to make arrangements to pay the expert's fees.

4.5.3 If a court document needs to be filed, I will be able to prepare the draft document, but I will not be able to send it to court; you must make arrangements to do this.

4.5.4 If there is correspondence with the court, I will be able to advise you what to say (and may be able to draft correspondence for you), but I

will not be able to send or receive that correspondence myself. You must do this.

4.5.5 If you need to serve, say, Particulars of Claim on your opponent, I will be able to draft the Particulars of Claim, but you will have to certify the statement of truth and either serve the document yourself or arrange for someone else to serve it.

4.6 If you do not feel able to do the things listed above, you ought to give serious thought to instructing a solicitor (or some other suitable lawyer or professional) rather than me.

4.7 Please note that I am under a professional duty to keep these matters under review; in particular, I must at all times consider whether a solicitor needs to be instructed in your own interests or the interests of justice. If there comes a point at which I consider you need a solicitor, I will no longer be able to act for you without the involvement of a solicitor. If I foresee that situation arising, I will give you as much notice as is practicable.

[If able to conduct litigation]

4.4 A barrister is not the same as a solicitor; indeed, there are certain things that I cannot do. In particular, I am unable to handle client money. As such, I will not be able to hold money on your behalf, and this will include any monies that you may need to pay to a third party (such as court fees or fees to experts). As such, you will need to make arrangements to deal with these things.

4.5 By making this agreement, you acknowledge the above limitations, and you agree to make suitable arrangements for doing the things I am unable to do. The following are examples:

4.5.1 If a court fee is payable, I will be able to advise that it is payable and tell you how much it is, but I will not be able to pay it for you on your behalf; you must do this.

4.5.2 If an expert needs to be instructed, I will be able to advise you about who to instruct and to draft the instructions to the expert, but you will need to make arrangements to pay the expert's fees.

4.6 If do not feel able to do the things listed above, you ought to give serious thought to instructing a solicitor rather than me.

4.7 Please note that I am under a professional duty to keep these matters under review; in particular, I must at all times consider whether a solicitor needs to be instructed in your own interests or the interests of justice. If there comes a point at which I consider you need a solicitor, I will no longer be able to act for you without the involvement of a solicitor. If I foresee that situation arising, I will give you as much notice as is practicable.

5. Other forms of funding and alternatives to instructing me

5.1 You are instructing me privately (which means that you, and you alone, will be responsible for paying my fees).

5.2 In order to ensure that you receive the best service possible, I would like to make sure that you have considered if there are any better ways in which you may receive legal services (other than instructing me on a private basis). Specifically, I would like to make sure that you have considered all the alternatives that may be available to you. I will deal with each in turn.

Legal expenses insurance

5.3 The first is that it is possible that you already have legal expenses insurance that provides you with cover for your claim or matter. This is also known as before-the-event (or BTE) insurance. It is commonly the case that such insurance comes bundled with either your household insurance or your car insurance; alternatively, it is possible that you have a stand-alone BTE policy. In view of these things, you should check your policies to see if you have suitable cover. If you are in any doubt, please let me have copies of your policies. If you do have BTE cover, I will not be able to make enquiries of the insurer on your behalf, but I would be happy to provide the insurer with any information that they require.

5.4 Please note that if you do have BTE insurance, it is unlikely that the insurer would be willing to allow you to use that insurance to pay for my services. This is because most insurers have 'panel firms' (namely, firms of solicitors who do work for the insurer, often at reduced rates); it is rarely the case that BTE insurers would pay for a barrister directly. As such, if you want to use BTE insurance, you would (in general) not be able to instruct me directly.

Trade union membership

5.5 The next point is a very similar one. It is possible that you are a member of a trade union, and that your union provides legal assistance as a benefit of your membership. If you are a member of a union, then it may be worth asking your union representative about this. Again, however, trade unions tend to use panel firms, so it is unlikely that they would be willing to pay my fees.

Legal aid

5.6 Next, it is possible that you qualify for legal aid (often known as public funding). Legal aid is not commonly available for civil disputes but may be available in family cases or criminal cases. If this is a civil or a family case, you can check if you are likely to be eligible by using the on-line tool at **www.gov.uk/check-legal-aid**. You can also speak with an advisor by phoning 0845 345 4345.

5.7 If legal aid is available, I am afraid that it could not be used to pay for you instructing me directly; this is because, as a barrister, I cannot do legal aid work unless I have been instructed by a solicitor.

5.8 If you want to talk to someone in more detail about getting legal aid, you should contact a solicitor who does legal aid work. You can find out more information on the www.gov.uk website: **https://www.gov.uk/legal-aid**.

Other contractual arrangements

5.9 And finally, I should mention that in addition to paying privately, there are many other ways in which it is possible to pay for legal services. In particular, if you have a claim that is not a family matter or (with certain very limited exceptions) a criminal matter, it may be possible to instruct a lawyer on 'no-win, no-fee' basis known as a conditional fee agreement. This would mean that you would only pay the lawyer if the claim was successful. There are many variations on this theme (such as 'no-win, low-fee' agreements known as discounted conditional fee agreements, and 'share-of-the-damages' arrangements known as damages-based agreements).

5.10 Unfortunately, even if your claim is suitable for such an arrangement, I would not be prepared to act on such terms. If you wanted to consider such an arrangement, you must speak to a solicitor or to another direct access barrister.

5.11 By making this agreement, you confirm that both of the following apply:

5.11.1 *Firstly*, that either:

- You have considered all of the above, and you do not believe that any other means of funding your claim or matter is available to you; or
- You have considered all of the above, and you would still prefer to instruct me privately even if other means of funding are or may be available to you.

5.11.2 *Secondly*, that you confirm that you do not require any further information from me at this stage concerning other means of funding, and you do not need any further advice or information from me in that regard.

5.12 You should sign this agreement only if you agree with both of these points.

6. Your right to cancel this agreement

[Delete if client is not a consumer or if the agreement was made in chambers]

6.1 You have the right to cancel this contract within 14 days of it being made. You may do this for any reason or for no reason.

6.2 To exercise your right to cancel, you must inform me of your decision to cancel this contract by a clear statement (e.g. a letter sent by post or e-mail to the contact details provided above). You may use the attached cancellation form, but the use of that form is not obligatory. To meet the cancellation deadline, it is sufficient for you to send your communication concerning your exercise of the right to cancel before the cancellation period has expired.

6.3 If this contract is cancelled, I will, where appropriate, reimburse you for any monies you have previously paid. Whether I reimburse you in full will depend on whether you asked me to begin working during the before the end of the 14-day cancellation period. Where you did not ask me to begin work during that period, I will reimburse you in full; where, on the other hand, you did ask me to begin work during that period, I will be entitled to payment of a reasonable fee for having carried out whatever work I have done. Unless we

agree otherwise, this will be based on my ordinary hourly rate, which is £[INSERT] ph (plus VAT).

6.4 Where you are due a refund, I will make the reimbursement without undue delay, and not later than 14 days after the day on which I was informed about your decision to cancel this contract. Unless you have expressly agreed otherwise, I will make the reimbursement using the same means of payment as you used for the initial transaction; in any event, you will not incur any fees as a result of the reimbursement.

7. My complaints procedure

7.1 I hope you will be happy with the professional services I provide. However, if you are not satisfied, you should first refer the matter either to me (or to my chambers) in line with my chambers' complaints procedure. A copy of that policy may be found here: [INSERT WEB ADDRESS]. For the avoidance of doubt, a complaint may include a dispute about the amount of my fees.

7.2 If you are not happy with my reply or my chambers' reply, then you can contact the Legal Ombudsman. The Legal Ombudsman is a free, impartial and independent service set up by the Government which deals with complaints about the service you have received.

7.3 You must complain to the Ombudsman within six months of receiving a final response to your complaint from myself or from my chambers (provided the response specifically notifies you of your right to complain to the Ombudsman and of the six-month time-limit). A complaint to the Ombudsman must also be made not more than one year after the act or omission complained about, or not more than one year from the date when you should reasonably have known that there were grounds for complaint. The Ombudsman may extend this deadline where it considers it fair and reasonable to do so.

7.4 For further details about how to make a complaint to the Legal Ombudsman, please contact the Legal Ombudsman directly at:

Legal Ombudsman,
PO Box 6167,
Slough,
SL1 0EH

Email: enquiries@legalombudsman.org.uk
Phone: 0300 555 0333

8. Termination (general provisions)

8.1 You may terminate this agreement at any time and for any (or no) reason. If you terminate this agreement, you are welcome to tell me why, but you are under no obligation to do so.

8.2 I, on the other hand, may terminate this agreement only if it would be professionally proper for me to do so. Where I terminate this agreement, I will normally try to do this with your consent, but if I am unable to do this, I will (to the extent that the law allows me to) give you my reasons, in writing, for having terminated this agreement.

8.3 Please note that there are circumstances in which my Code of Conduct would leave me with no option but to terminate this agreement and stop acting for you. These include the following:

8.3.1 Where you refuse to allow me to disclose something to the court that I believe ought to be disclosed to the court; and

8.3.2 Where I believe that a document should be disclosed and (contrary to my advice) you either fail or refuse to allow it to be disclosed.

9. Furthermore, there are circumstances in which I may choose to terminate this agreement and to stop acting for you. These include the following:

9.1.1 Where you have failed to pay my fees in accordance with the terms of this agreement (but only where I have reminded that you in writing that non-payment of fees may result in me terminating this agreement, and only where I have given you reasonable opportunity to pay the outstanding fees);

9.1.2 Where my professional conduct is being called into question;

9.1.3 Where, despite all reasonable efforts to prevent the clash, a hearing becomes fixed for a date on which I already have another professional engagement;

9.1.4 Where I become unavailable by reason of illness, injury, bereavement, pregnancy, childbirth, etc;

9.1.5 Where I am unavoidably required to attend on jury service; and

9.1.6 Where there is some other substantial reason for ending this agreement.

9.2 Where the agreement is terminated, I will not pass your instructions on to anyone else without your consent. That said, If I am unable to carry out work I have agreed to do, I will (where appropriate) warn you as soon as I can; I will then (where appropriate) suggest the name of another suitably qualified and experienced barrister who is willing to accept your case under the same terms as this agreement. I may not be able to do this in all circumstances, however.

9.3 If I do suggest another barrister, you would then need to decide whether you want to instruct that barrister. Please note, however, that this agreement does not place me under a contractual obligation to find another barrister to accept your instructions, nor does it impose any obligation on me to meet any of your costs of instructing another barrister (or any other lawyer).

9.4 Finally, please be aware that my Code of Conduct requires me to consider if it is better for you to instruct a solicitor. If there comes a point at which I consider you need a solicitor I will no longer be able to act for you without the involvement of a solicitor. If I foresee that situation arising, I will give you as much notice as possible.

10. Termination (fees)

10.1 If this agreement is terminated in circumstances in which I have carried out work on your claim or matter but have not completed all the work I have been asked to do, I will be entitled to a reasonable fee in payment for that work. For the avoidance of doubt, it is agreed that this agreement is not an 'entire contract' (namely, a contract where I will be entitled to payment only on completion of the task in hand).

10.2 If this agreement provides for certain fees to be payable in the event of termination, then it is agreed that those fees will be payable and that they are reasonable fees.

10.3 If, on the other hand, this agreement does not stipulate what fees will be payable in the event of termination, then it is agreed that I will be entitled to

payment of my fees calculated on an hourly rate basis at my usual hourly rate (but limited to the total amount that would have been payable had this agreement not been terminated and had all the work under this agreement been completed).

10.4 We will, however, be at liberty to agree any other payment or means of determining the appropriate payment.

11. Regulatory matters and insurance

11.1 As a barrister, I must follow the Bar Code of Conduct. I must also comply with the Scope of Practice and Authorisation Rules which govern barristers. The Code of Conduct and the Scope of Practice and Authorisation Rules are contained in Parts 2 and 3 of the Bar Standards Board Handbook. I can supply you with a copy of this Handbook on request or you can find it on the Bar Standards Board website at: www.barstandardsboard.org.uk/regulatory-requirements/bsb-handbook/

11.2 I have professional indemnity insurance with the Bar Mutual Indemnity Fund, 90 Fenchurch Street, London EC3M 4ST. The limit of cover with that insurer is £2.5 million. Additionally, I have top-up insurance with [INSERT DETAILS] which provides and additional £[INSERT FIGURE] of cover. The amount of that top-up cover is not fixed and may vary from time-to-time. The geographical cover of the insurance is worldwide.

11.3 In the event that I am prevented from completing the work by reason of my professional duties or conflicting professional obligations, I will, without delay, inform you of this fact and, where appropriate, tell you your options.

11.4 If you make a complaint about my work or bring a claim against me or if I reasonably think that there is the potential for a claim, complaint or other similar issue to arise in the future, then you hereby give permission in advance (and irrevocably) for me to share any information and documents (including confidential and privileged information and documents) with the my professional indemnity insurers and any legal or other advisers who are appointed by me or the professional indemnity insurers in relation thereto. For the avoidance of doubt, any confidential documents will be supplied to the professional indemnity insurers and/or advisers on the basis that they should keep any such information and documents confidential.

11.5 Subject to Clause 11.7 below, I am not liable:

11.5.1 for any loss or damage, however suffered, by any person other than you;

11.5.2 for any loss or damage, however suffered, which is caused by inaccurate, incomplete or late Instructions; or

11.5.3 for any indirect or consequential loss however suffered.

11.6 Notwithstanding clause 11.5 above and subject to Clause 11.7 below, in order to comply with rules rC76 and rC77 of the Code and in view of the limitations on cover imposed by the Bar Mutual Indemnity Fund Limited and top-up insurers, to the extent that I might incur any liability under this contract to any person, which liability would not have arisen had I provided services pursuant to the instructions on a noncontractual basis, such liability shall be limited to £100,000 in respect of any breach on my part, with the same single aggregate limit of £100,000 to apply to all such contractual liability in respect of any breaches arising from:

11.6.1 the same act or omission;

11.6.2 a series or group of related acts or omissions;

11.6.3 a series or group of similar acts or omissions; or

11.6.4 the same originating cause.

11.7 Nothing in Clauses 11.5 or 11.6 above shall operate so as to exclude liability where such exclusion is prohibited by law.

12. Value added tax

12.1 I am registered in the UK for VAT purposes (VAT No [INSERT VAT NUMBER]).

12.2 Unless the law provides otherwise, I will add VAT at the prevailing rate to my fees. VAT may also be added to expenses, where appropriate. If the law permits me to do so (such as where the rate of VAT changes), I may elect the rate of VAT to be applied. Where appropriate, VAT may be apportioned.

12.3 If you believe that VAT ought not to be added (as may happen if you are resident overseas), you must provide all relevant information; if that

information proves to be incorrect, you irrevocably agree to reimburse me on demand for any interest, penalties or legal costs (on the indemnity basis) that I incur as a result.

13. Electronic communications

13.1 For the purposes of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 and generally, you agree that information may be given by electronic means, including by email. A paper copy will be provided should you ask for it.

13.2 Specifically, you agree to the use of email (including the use of email with attachments) as a means by which the agreement may be made, confirmed and managed. You confirm that you agreed to this prior to the agreement being made. You also agree to the delivery of fee notes by that method.

14. Miscellaneous terms

14.1 Where there is more than one client who enters into this agreement in respect of the same claim or matter, the rights and obligations of each client under this agreement will be joint and several in respect of those persons; references to 'you', 'the client', etc should be read as being references to each and every such person.

14.2 Unless I specifically agree otherwise in writing, I will act only on behalf of you; the Contracts (Rights of Third Parties) Act 1999 will not apply. Any legal advice that the I give is for your own use only. I will not be liable to anyone else in relation to that advice, including anyone to whom you pass or transmit that advice.

14.3 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.

14.4 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 severed from it 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 originally not been contained in this agreement.

14.5 If either party to this agreement is prevented from discharging their obligations under this agreement by reason of a factor that is beyond their control, then they will not be prejudiced by reason of any delay in performing those obligations, and this will be so even if that delay leads to total or partial non-performance of those obligations. In particular, no party will incur any liability to pay damages in that regard.

15. Confidentiality and documents

15.1 Ideally, I would prefer it if you provided documents to me in electronic format (such as PDF).

15.2 If this is not convenient for you and if you need to send me paper documents, please try to send me copies rather than originals.

15.3 Please note the following:

15.3.1 If you send me paper document that need to be copied, I may charge a reasonable fee for making those copies.

15.3.2 I am entitled to keep copies of any documents you give me for my own professional records for seven years in accordance with Rule C129 of the BSB Handbook; and

15.3.3 I will return all your original paper documents to you when I have carried out the work you have instructed me to do (this being in accordance with Rule C131 of the BSB Handbook).

15.4 In signing these terms, you confirm that you have given me your consent to process your personal data for the purpose of carrying out your instructions, and that the legal basis for processing your data is the performance of this agreement. You have a right to withdraw consent, but if you do so I will not be able to carry out your instructions.

15.5 Also, in certain circumstances, the Money Laundering Regulations 2007 require me to obtain evidence to verify the identity of my clients and people related to them (such as beneficial owners). If this applies in your case, I will

ask you to provide the necessary evidence and I will be obliged to keep copies of it for at least five years.

15.6 The information which you give me will be received in professional confidence. This means that I must maintain the confidentiality of any information you have shared with me and can only tell others about it if you give your consent for me to do so (which I would obtain if and when needed).

15.7 The only exception to the above is that statutory and other legal requirements may mean that I have to disclose (i.e. reveal) your information to governmental or other regulatory authorities, e.g. organisations, whose rules I must meet, without your consent and without telling you that I have made the disclosure. Statutory and legal requirements are rules or regulations that an individual must, by law, follow.

15.8 I have a privacy policy which may be found here: [INSERT WEB ADDRESS OF PRIVACY POLICY]. By making this agreement, you consent to your data being held and processed in accordance with that policy.

16. Non-payment of fees

16.1 In the event that you do not pay my fees, I may instruct a debt collection agency to recover the same. You irrevocably consent to the disclosure to a debt collection agency of any fee notes or other information that may reasonably be required to allow me to collect those fees.

16.2 Furthermore, in the event that I need to bring court proceedings to recover unpaid fees (or in the event that there is any dispute between us relating to this agreement or the work I do under this agreement), you irrevocably consent to any documents (including privileged documents) being disclosed and adduced as evidence in any such proceedings.

[If the client is not a business]

16.3 In the event that my fees are not paid for a period of 14 days or more after they have fallen due under the terms of this agreement, then I will be entitled to charge simple interest at 3 percent per annum above the Bank of England base rate from that date (namely, 14 days after the fees should have been paid) up to the date of payment.

17. Client's confirmation of acceptance

17.1 By signing this letter of engagement, you confirm that you have read, understand, and agree to be bound by its terms.

[If the client is a consumer and the work is to begin immediately]

17.2 By signing this letter of engagement, you instruct me to begin work immediately and you confirm that you understand that if you cancel this letter of engagement, you must pay for any work done I may have done prior to it being cancelled.

…….. Signature

…….. Print name

…….. Date

Cancellation Form

NOTICE OF RIGHT TO CANCEL

You have the right to cancel this agreement within 14 days without giving any reason.

The cancellation period will expire after 14 days from the day of the conclusion of the contract (which is the date on which this agreement was made).

To exercise the right to cancel, you must inform me of your decision to cancel this contract by any clear statement (e.g., a letter sent by post, or e-mail). The person to whom a request to cancel can be sent is: [INSERT NAME AND ADDRESS]; that person's e-mail address is [INSERT EMAIL ADDRESS] and they can be contacted by post, or by phone on [INSERT TELEPHONE NUMBER]. You may use the attached cancellation form (see below), but this is not obligatory.

To meet the cancellation deadline, it is sufficient for you to send your communication concerning you exercise of the right to cancel before the cancellation period has expired.

Effect of cancellation

If you cancel this contract, I will reimburse to you all payments received from you. I will make the reimbursement without undue delay, and no later than 14 days after the day on which I am informed about your decision to cancel this contract.

I will make the reimbursement using the same means of payment as you used for the initial transaction, unless you have expressly agreed otherwise; in any event, you will not incur any fees as a result of the reimbursement.

If you requested me to begin performance of the services during the cancellation period, you must pay me a reasonable amount for the services that I have provided which will be based on my normal hourly rate.

#.....

Cancellation Form

(NB This form is to be returned only if you do not want the me to continue to act for you.) To [INSERT NAME AND ADDRESS] (who may be contacted by phone on [INSERT TELEPHONE NUMBER], by post, or at [INSERT EMAIL ADDRESS]):

I hereby give notice that I cancel my contract for the supply of legal services as set out in the letter of engagement dated [INSERT DATE OF AGREEMENT].

…… Date / /

ANNEX B

Draft Letter of Engagement for Businesses

THIS DOCUMENT IS PROVIDED AS A TEMPLATE ONLY, AND SHOULD NOT BE USED WITHOUT THE BARRISTER FIRST SATISFYING THEMSELVES THAT IT IS APPROPRIATE FOR THEIR PARTICULAR CLIENTS AND CIRCUMSTANCES, AND COMPLIES WITH THEIR PROFESSIONAL AND REGULATORY OBLIGATIONS IN EACH CASE.

[INSERT DATE OF AGREEMENT]

Dear [INSERT NAME OF CLIENT]

Re: [INSERT NAME OF CASE OR MATTER]

This is a letter of engagement. It sets out the terms on which I would be prepared to act for you. If you are happy with what I propose, please sign and return a copy.

In this letter, where I refer to 'you', am referring to the business that is [INSERT NAME OF BUSINESS].

Below is a link to the Bar Standard Board's guidance for lay clients. This explains how the Public Access scheme works. If you have any questions, please do not hesitate to contact me (or my clerks).

https://www.barstandardsboard.org.uk/resources/public-access-guidance-for-lay-clients.html

1. Who I am and how to contact me

1.1 My name is [INSERT]. I am a barrister who is a member of [INSERT NAME AND ADDRESS OF CHAMBERS]. I am registered with the Bar Standards Board and hold a current Bar Council practising certificate.

1.2 A barristers' chambers is not a law firm; it is a collection of independent, self-employed barristers who share premises and administrative services. This agreement is with me personally rather than my chambers. This means that I (and not my chambers) will be responsible for doing the work under this

agreement, and this will be so despite the fact that my clerks may act on my behalf. For the avoidance of doubt, I am self-employed; I am not employed by chambers (or by any regulated entity).

1.3 You are welcome to contact me by email (at [INSERT EMAIL ADDRESS]) or by phone on [INSERT PHONE NUMBER]. If I am not available (or if you prefer), you can contact me via my clerks at [INSERT EMAIL ADDRESS] on [INSERT PHONE NUMBER OF CHAMBERS]. Whilst you are welcome to contact me directly during normal business hours, queries concerning my fees or any administrative queries are normally best dealt with by my clerks.

1.4 My business hours are from 9 am to 6 pm every weekday (excluding Bank Holidays). I will not always be available, however. If I am not available, you should contact my clerks.

2. <u>The scope of this agreement</u>

2.1 The work that I will carry out for you under this agreement is as follows: [INSERT DESCRIPTION OF CASE OR MATTER].

2.2 I have carefully considered your instructions and can confirm that I have sufficient experience and competence to undertake the work you have asked me to do.

2.3 Unless we agree otherwise, I will perform these services by [INSERT DATE OR OTHER DESCRIPTION OF TIMESCALE].

3. <u>The fees I will charge (and when you must pay them)</u>

[Option 1: Fixed fee]

3.1 My fee for the work described above will be a fixed fee of £[INSERT] (plus VAT).

3.2 My reasons for charging you this fixed fee are as follows: [INSERT BRIEF JUSTIFICATION FOR THE FEE].

3.3 This fixed fee has been set on the basis of the documents you have provided to me as of the date of this letter, namely [LIST DOCUMENTS]. It will not include any work that may arise out of any other documents that you may subsequently send me.

3.4 Once you have agreed to the terms of this letter, I will send you a fee note; the fixed fee will be payable immediately upon receipt. The details of my bank account for payment are:

- Bank: [INSERT NAME OF BANK]
- Account name: [INSERT ACCOUNT NAME]
- Sort Code: [INSERT SORT CODE]
- Account number: [INSERT NUMBER]

3.5 I will not be obliged either to complete the work or to send it to you until you have paid the fee. If you do not pay the fee within a reasonable period of time, I will write to you to remind you to pay. If you do not then pay the fee promptly, I will be at liberty to terminate this agreement, and I will therefore not undertake the agreed work for you.

3.6 A receipted fee note will be sent to you shortly after payment. If you need this promptly, please telephone my clerks to let them know that you have made the payment.

3.7 Where I carry out work that is not covered by the fixed fee, my fees will be based on an hourly rate of £[INSERT] per hour (plus VAT). Save where this agreement provides otherwise (such as where this agreement is terminated), I will not charge you fees based on my hourly rate without having agreed it between us and evidenced in writing that I will do this.

[Option 2: hearing (one day or less)]

3.1 My fee for appearing as an advocate at the hearing referred to above is £[INSERT] (plus VAT)(this being known as my 'brief fee'). This will include all work in preparation for the hearing, the attendance at the hearing (assuming it lasts no more than one day), and drafting a note of the order that the court may make.

3.2 I will be entitled to send you a fee note for the brief fee immediately upon making this agreement. You agree to pay the brief fee in full by no later than 4 pm on [INSERT DATE: NOTE: THIS DATE MUST BE AFTER THE LAST DATE REFERRED TO IN THE PARAGRAPH DEALING WITH ABATED FEES BELOW]. The details of my bank account for payment are:

- Bank: [INSERT NAME OF BANK]
- Account name: [INSERT ACCOUNT NAME]

- Sort Code: [INSERT SORT CODE]
- Account number: [INSERT NUMBER]

3.3 A receipted fee note will be sent to you shortly after payment. If you need this promptly, please telephone my clerks to let them know that you have made the payment.

3.4 If you fail to pay the brief fee on time, then provided I have given you notice of my intention to do so, I will be at liberty to terminate this agreement and to not represent you at the hearing.

3.5 If, for any reason, the hearing does not go ahead (or if this agreement is terminated before the hearing), I will, in certain circumstances, charge you a lower fee (known as an 'abated brief fee'). In particular:

3.5.1 If I am stood down prior to [INSERT DATE], I will charge you nothing;

3.5.2 If I am stood down after that date but before [INSERT NUMBER] days prior to the hearing, I will charge you 25 percent of my brief fee;

3.5.3 If am stood down after then but prior to [INSERT NUMBER] days before the hearing, I will charge you 50 percent of my brief fee; and

3.5.4 If am stood down after then but prior to [INSERT NUMBER] days before the hearing, I will charge you 75 percent of my brief fee.

In all other circumstances, I will be entitled payment of my full brief fee.

3.6 If, however, the hearing is adjourned to another day, we will be at liberty to vary this agreement so as to cover that new hearing date. Subject to my other professional commitments, I must not unreasonably refuse to do this. I may, however, ask you to pay for any work that I have done as a result of the adjournment; my fees for this will be based on my usual hourly rate (see below).

3.7 Where I carry out work that is not covered by the brief fee, my fees will be based on an hourly rate of £[INSERT] per hour (plus VAT). I will not charge you any such fees without having agreed it between us and evidenced in writing that I will do this.

3.8 Where appropriate, I will prepare a final fee note within seven days of this agreement being terminated or the hearing coming to an end (whichever comes first).

[Option 3: hearing (more than one day)]

3.1 My fee for appearing as an advocate for the first day of hearing referred to above is £[INSERT] (plus VAT)(this being known as my 'brief fee'). This will include all work in preparation for the hearing, the attendance on the first day, and drafting a note of the order that the court may make.

3.2 In addition, I will charge a separate daily fee for each day (or part thereof) after the first day; that fee is known as a 'refresher' and is £[INSERT] (plus VAT). That fee (which is not refundable) will become payable at 5 pm on the day prior to each additional day (or part thereof) after the first day. So, if (for example) the first day of the hearing is on Monday, and if the hearing lasts until Wednesday, I will be entitled to a refresher at 5 pm on Monday and then again at 5 pm on Tuesday, and this would so even if the court finished early on Wednesday.

3.3 The hearing is expected to last [INSERT NUMBER] days. As such, I anticipate that my total fees for the hearing (including refreshers) will be [INSERT] (plus VAT).

3.4 My professional rules do not allow me to accept payments on account of my fees. As such, you must pay me my fees only once I have become entitled to payment. In view of this, you agree that you will pay the brief fee in stages:

3.4.1 You must pay me £[INSERT] by no later than 5 pm on [INSERT DATE];

3.4.2 You must pay me £[INSERT] by no later than 5 pm on [INSERT DATE];

3.4.3 You must pay me £[INSERT] by no later than 5 pm on [INSERT DATE]; and

3.4.4 By no later than 5 pm on [INSERT DATE], you must pay me the balance of £[INSERT].

These stage payments must be paid in cleared funds by the dates and times stipulated; they will not be refundable (as they will represent fees for work

which will have already been carried out at the material stage, or, where appropriate, fees payable for having reserved dates in my diary). The refreshers must be paid immediately upon them becoming due (which is 5 pm on the day before I am due to reappear in court).

3.5 If you do not pay my fees within the timescales referred to above, then provided I have given you reasonable notice of my intention to do so, I will be at liberty to terminate this agreement and to not represent you at the hearing.

3.6 Please note that I am not permitted to accept payment of refreshers unless they have become payable. In practical terms, this means that you must pay my refreshers daily (rather than in advance). As such, you must ensure that you are able transfer money into my bank account at very short notice (namely, on each day before I am due to reappear in court). If you fail to pay any refresher by the time I have stipulated, I will be permitted to remind you to pay; if you fail to heed that reminder and fail to pay before 8 am on the day I am to appear in court, then I will be permitted immediately to terminate this agreement and to decline to represent you.

3.7 The details of my bank account for payment are:

- Bank: [INSERT NAME OF BANK]
- Account name: [INSERT ACCOUNT NAME]
- Sort Code: [INSERT SORT CODE]
- Account number: [INSERT NUMBER]

3.8 A receipted fee note will be sent to you shortly after discharge of each payment. If you need these promptly, please telephone my clerks to let them know that you have made the payment.

3.9 If the hearing does not go ahead (or if this agreement is terminated), I will be entitled to whatever fees have become due at the point at which I was stood down.

3.10 Where I carry out work that is not covered by the fees referred above, my fees will be based on an hourly rate of £[INSERT] per hour (plus VAT). I will not charge you fees based on my hourly rate without having given you written notice of my intention to do so.

[Option 4: payment by the hour]

3.1 At the time of making this agreement, I do not know how much work will be involved in your instructions taken as a whole. As a result, I am unable to offer you a fixed fee. I will therefore charge you on a time basis at £[INSERT] an hour (plus VAT).

3.2 I will not charge you for more than [INSERT] hours of work [or 'I will not carry out work that will cost you more than £[INSERT] (plus VAT)] without your permission.

3.3 My clerk will send you a fee note either once the work has been completed or, where appropriate, as and when the work is carried out. This may be done in arrears, but I may also do this in advance if I believe I can estimate the time I will spend carrying out any given part of the work.

3.4 For the avoidance of doubt, if you ask me to carry out any additional work, I may charge for that on an hourly rate basis too.

3.5 Any fee note must be paid without delay (and in any event within seven days of receipt). You are, of course, are at liberty to request an up-to-date interim fee note at any time.

3.6 You and I agree that I will not send you the work (or, where relevant, the part of the work for which I have sent you a fee note) until you have paid the whole of my fees.

4. <u>The work I am not obliged to carry out</u>

4.1 The work that I will do will be limited to what is described under the heading 'The Scope of this Agreement' above.

4.2 For the avoidance of doubt, we agree that I will not be responsible for the following: [INSERT DESCRIPTION OF WORK THAT IS EXCLUDED FROM THE RETAINER].

4.3 If subsequent work is needed (or if significant work is required that is not within the scope of what is set out above), I will normally ask you to agree to another letter of engagement. Because I carry out all my work personally and cannot predict what other professional responsibilities I may have in the future, I am unable to guarantee that I will be able to accept instructions for all subsequent work; if, however, I am not available, then I will tell you as soon as practicable.

[If not able to conduct litigation]

4.4 A barrister is not the same as a solicitor; indeed, there are certain things that I cannot do. In particular, the things that I cannot do include the following:

4.4.1 *Firstly*, I am unable to handle client money. As such, I will not be able to hold money on your behalf, and this will include any monies that you may need to pay to a third party (such as court fees or fees to experts). As such, you will need to make arrangements to deal with these things.

4.4.2 *Secondly*, I am not permitted to undertake the organisation or management of your case; in particular, I am not permitted to serve court documents for you, nor am I permitted to file documents at court on your behalf. I will be able to advise you on how to do these things, but you will need to make arrangements for them actually to be done.

4.4.3 *Thirdly*, I am not able to go on the court record or to provide my address as being your address for service of court documents. This means that (unless you have also instructed a solicitor), you must go on the court record as a litigant in person and provide the court with an address for service. In practice, this also means that you will be responsible for receiving and sending correspondence.

4.5 By making this agreement, you acknowledge the above limitations, and you agree to make suitable arrangements for doing the things I am unable to do. The following are examples:

4.5.1 If a court fee is payable, I will be able to advise that it is payable and tell you how much it is, but I will not be able to pay it for you on your behalf; you must do this.

4.5.2 If an expert needs to be instructed, I will be able to advise you about who to instruct and to draft the instructions to the expert, but you will need to make arrangements to pay the expert's fees.

4.5.3 If a court document needs to be filed, I will be able to prepare the draft document, but I will not be able to send it to court; you must make arrangements to do this.

4.5.4 If there is correspondence with the court, I will be able to advise you what to say (and may be able to draft correspondence for you), but I will not be able to send or receive that correspondence myself. You must do this.

4.5.5 If you need to serve, say, Particulars of Claim on your opponent, I will be able to draft the Particulars of Claim, but you will have to certify the statement of truth and either serve the document yourself or arrange for someone else to serve it.

4.6 If you do not feel able to do the things listed above, you ought to give serious thought to instructing a solicitor (or some other suitable lawyer or professional) rather than me.

4.7 Please note that I am under a professional duty to keep these matters under review; in particular, I must at all times consider whether a solicitor needs to be instructed in your own interests or the interests of justice. If there comes a point at which I consider you need a solicitor, I will no longer be able to act for you without the involvement of a solicitor. If I foresee that situation arising, I will give you as much notice as is practicable.

[If able to conduct litigation]

4.8 A barrister is not the same as a solicitor; indeed, there are certain things that I cannot do. In particular, I am unable to handle client money. As such, I will not be able to hold money on your behalf, and this will include any monies that you may need to pay to a third party (such as court fees or fees to experts). As such, you will need to make arrangements to deal with these things.

4.9 By making this agreement, you acknowledge the above limitations, and you agree to make suitable arrangements for doing the things I am unable to do. The following are examples:

4.9.1 If a court fee is payable, I will be able to advise that it is payable and tell you how much it is, but I will not be able to pay it for you on your behalf; you must do this.

4.9.2 If an expert needs to be instructed, I will be able to advise you about who to instruct and to draft the instructions to the expert, but you will need to make arrangements to pay the expert's fees.

4.10 If do not feel able to do the things listed above, you ought to give serious thought to instructing a solicitor rather than me.

4.11 Please note that I am under a professional duty to keep these matters under review; in particular, I must at all times consider whether a solicitor needs to be instructed in your own interests or the interests of justice. If there comes a point at which I consider you need a solicitor, I will no longer be able to act for you without the involvement of a solicitor. If I foresee that situation arising, I will give you as much notice as is practicable.

5. Other forms of funding and alternatives to instructing me

5.1 You are instructing me privately (which means that you, and you alone, will be responsible for paying my fees).

5.2 In order to ensure that you receive the best service possible, I would like to make sure that you have considered if there are any better ways in which you may receive legal services (other than instructing me on a private basis). Specifically, I would like to make sure that you have considered all the alternatives that may be available to you. I will deal with each in turn.

Legal expenses insurance

5.3 The first is that it is possible that you already have legal expenses insurance that provides you with cover for your claim or matter. This is also known as before-the-event (or BTE) insurance. It is occasionally the case that such insurance comes bundled with either your general business insurance or your car (or fleet) insurance; alternatively, it is possible that you have a stand-alone BTE policy. In view of these things, you should check your policies to see if you have suitable cover. If you are in any doubt, please let me have copies of your policies. If you do have BTE cover, I will not be able to make enquiries of the insurer on your behalf, but I would be happy to provide the insurer with any information that they require.

5.4 Please note that if you do have BTE insurance, it is unlikely that the insurer would be willing to allow you to use that insurance to pay for my services. This is because most insurers have 'panel firms' (namely, firms of solicitors who do work for the insurer, often at reduced rates); it is rarely the case that BTE insurers would pay for a barrister directly. As such, if you want to use BTE insurance, you would (in general) not be able to instruct me directly.

Litigation funding

5.5 If you are a claimant and your claim is a very large one (usually high seven figures), it is possible that you may be able to obtain litigation funding. This is where you, in essence, borrow money from a third-party on the basis that you will pay back that money (plus a usually significant multiple), but only if you are successful. Litigation funding is very rarely available where you have not instructed a solicitor, but if you this is something you would like to discuss, please let me know.

Other contractual arrangements

5.6 I should mention that in addition to paying privately, there are many other ways in which it is possible to pay for legal services. In particular, if you have a claim that is not a family matter or (with certain very limited exceptions) a criminal matter, it may be possible to instruct a lawyer on 'no-win, no-fee' basis known as a conditional fee agreement. This would mean that you would only pay the lawyer if the claim was successful. There are many variations on this theme (such as 'no-win, low-fee' agreements known as discounted conditional fee agreements, and 'share-of-the-damages' arrangements known as damages-based agreements).

5.7 Unfortunately, even if your claim is suitable for such an arrangement, I would not be prepared to act on such terms. If you wanted to consider such an arrangement, you must speak to a solicitor or to another direct access barrister.

5.8 By making this agreement, you confirm that both of the following apply:

5.8.1 <u>*Firstly*</u>, that either:

- You have considered all of the above, and you do not believe that any other means of funding your claim or matter is available to you; or
- You have considered all of the above, and you would still prefer to instruct me privately even if other means of funding are or may be available to you.

5.8.2 <u>*Secondly*</u>, that you confirm that you do not require any further information from me at this stage concerning other means of

funding, and you do not need any further advice or information from me in that regard.

5.9 You should sign this agreement only if you agree with both of these points.

6. My complaints procedure

6.1 I hope you will be happy with the professional services I provide. However, if you are not satisfied, you should first refer the matter either to me (or to my chambers) in line with my chambers' complaints procedure. A copy of that policy may be found here: [INSERT WEB ADDRESS]. For the avoidance of doubt, a complaint may include a dispute about the amount of my fees.

6.2 If you are not happy with my reply or my chambers' reply, then you can contact the Legal Ombudsman, but only if you are a sole trader, a micro-enterprise, a charity with a net income of less than £1 million per year, a club, association or organisation managed by its members with a net income of £1 million per year.

6.3 Where you are able to complain to the Legal Ombudsman, they provide a free, impartial and independent service which deals with complaints about the service you have received.

6.4 You must complain to the Ombudsman within six months of receiving a final response to your complaint from myself or from my chambers (provided the response specifically notifies you of your right to complain to the Ombudsman and of the six-month time-limit). A complaint to the Ombudsman must also be made not more than one year after the act or omission complained about, or not more than one year from the date when you should reasonably have known that there were grounds for complaint. The Ombudsman may extend this deadline where it considers it fair and reasonable to do so.

6.5 For further details about how to make a complaint to the Legal Ombudsman, please contact the Legal Ombudsman directly at:

Legal Ombudsman,
PO Box 6167,
Slough,
SL1 0EH

Email: enquiries@legalombudsman.org.uk
Phone: 0300 555 0333

7. Termination (general provisions)

7.1 You may terminate this agreement at any time and for any (or no) reason. If you terminate this agreement, you are welcome to tell me why, but you are under no obligation to do so.

7.2 I, on the other hand, may terminate this agreement only if it would be professionally proper for me to do so. Where I terminate this agreement, I will normally try to do this with your consent, but if I am unable to do this, I will (to the extent that the law allows me to) give you my reasons, in writing, for having terminated this agreement.

7.3 Please note that there are circumstances in which my Code of Conduct would leave me with no option but to terminate this agreement and stop acting for you. These include the following:

7.3.1 Where you refuse to allow me to disclose something to the court that I believe ought to be disclosed to the court; and

7.3.2 Where I believe that a document should be disclosed and (contrary to my advice) you either fail or refuse to allow it to be disclosed.

8. Furthermore, there are circumstances in which I may choose to terminate this agreement and to stop acting for you. These include the following:

8.1.1 Where you have failed to pay my fees in accordance with the terms of this agreement (but only where I have reminded that you in writing that non-payment of fees may result in me terminating this agreement, and only where I have given you reasonable opportunity to pay the outstanding fees);

8.1.2 Where my professional conduct is being called into question;

8.1.3 Where, despite all reasonable efforts to prevent the clash, a hearing becomes fixed for a date on which I already have another professional engagement;

8.1.4 Where I become unavailable by reason of illness, injury, bereavement, pregnancy, childbirth, etc;

8.1.5 Where I am unavoidably required to attend on jury service; and

8.1.6 Where there is some other substantial reason for ending this agreement.

8.2 Where the agreement is terminated, I will not pass your instructions on to anyone else without your consent. That said, If I am unable to carry out work I have agreed to do, I will (where appropriate) warn you as soon as I can; I will then (where appropriate) suggest the name of another suitably qualified and experienced barrister who is willing to accept your case under the same terms as this agreement. I may not be able to do this in all circumstances, however.

8.3 If I do suggest another barrister, you would then need to decide whether you want to instruct that barrister. Please note, however, that this agreement does not place me under a contractual obligation to find another barrister to accept your instructions, nor does it impose any obligation on me to meet any of your costs of instructing another barrister (or any other lawyer).

8.4 Finally, please be aware that my Code of Conduct requires me to consider if it is better for you to instruct a solicitor. If there comes a point at which I consider you need a solicitor I will no longer be able to act for you without the involvement of a solicitor. If I foresee that situation arising, I will give you as much notice as possible.

9. Termination (fees)

9.1 If this agreement is terminated in circumstances in which I have carried out work on your claim or matter but have not completed all the work I have been asked to do, I will be entitled to a reasonable fee in payment for that work. For the avoidance of doubt, it is agreed that this agreement is not an 'entire contract' (namely, a contract where I will be entitled to payment only on completion of the task in hand).

9.2 If this agreement provides for certain fees to be payable in the event of termination, then it is agreed that those fees will be payable and that they are reasonable fees.

9.3 If, on the other hand, this agreement does not stipulate what fees will be payable in the event of termination, then it is agreed that I will be entitled to

payment of my fees calculated on an hourly rate basis at my usual hourly rate (but limited to the total amount that would have been payable had this agreement not been terminated and had all the work under this agreement been completed).

9.4 We will, however, be at liberty to agree any other payment or means of determining the appropriate payment.

10. Regulatory matters and insurance

10.1 As a barrister, I must follow the Bar Code of Conduct. I must also comply with the Scope of Practice and Authorisation Rules which govern barristers. The Code of Conduct and the Scope of Practice and Authorisation Rules are contained in Parts 2 and 3 of the Bar Standards Board Handbook. I can supply you with a copy of this Handbook on request or you can find it on the Bar Standards Board website at: www.barstandardsboard.org.uk/regulatory-requirements/bsb-handbook/

10.2 I have professional indemnity insurance with the Bar Mutual Indemnity Fund, 90 Fenchurch Street, London EC3M 4ST. The limit of cover with that insurer is £2.5 million. Additionally, I have top-up insurance with [INSERT DETAILS] which provides and additional £[INSERT FIGURE] of cover. The amount of that top-up cover is not fixed and may vary from time-to-time. The geographical cover of the insurance is worldwide.

10.3 In the event that I am prevented from completing the work by reason of my professional duties or conflicting professional obligations, I will, without delay, inform you of this fact and, where appropriate, tell you your options.

10.4 If you make a complaint about my work or bring a claim against me or if I reasonably think that there is the potential for a claim, complaint or other similar issue to arise in the future, then you hereby give permission in advance (and irrevocably) for me to share any information and documents (including confidential and privileged information and documents) with the my professional indemnity insurers and any legal or other advisers who are appointed by me or the professional indemnity insurers in relation thereto. For the avoidance of doubt, any confidential documents will be supplied to the professional indemnity insurers and/or advisers on the basis that they should keep any such information and documents confidential.

10.5 Subject to Clause 11.7 below, I am not liable:

10.5.1 for any loss or damage, however suffered, by any person other than you;

10.5.2 for any loss or damage, however suffered, which is caused by inaccurate, incomplete or late Instructions; or

10.5.3 for any indirect or consequential loss however suffered.

10.6 Notwithstanding clause 11.5 above and subject to Clause 11.7 below, in order to comply with rules rC76 and rC77 of the Code and in view of the limitations on cover imposed by the Bar Mutual Indemnity Fund Limited and top-up insurers, to the extent that I might incur any liability under this contract to any person, which liability would not have arisen had I provided services pursuant to the instructions on a noncontractual basis, such liability shall be limited to £100,000 in respect of any breach on my part, with the same single aggregate limit of £100,000 to apply to all such contractual liability in respect of any breaches arising from:

10.6.1 the same act or omission;

10.6.2 a series or group of related acts or omissions;

10.6.3 a series or group of similar acts or omissions; or

10.6.4 the same originating cause.

10.7 Nothing in Clauses 11.5 or 11.6 above shall operate so as to exclude liability where such exclusion is prohibited by law.

11. Value added tax

11.1 I am registered in the UK for VAT purposes (VAT No [INSERT VAT NUMBER]).

11.2 Unless the law provides otherwise, I will add VAT at the prevailing rate to my fees. VAT may also be added to expenses, where appropriate. If the law permits me to do so (such as where the rate of VAT changes), I may elect the rate of VAT to be applied. Where appropriate, VAT may be apportioned.

11.3 If you believe that VAT ought not to be added (as may happen if you are resident overseas), you must provide all relevant information; if that

information proves to be incorrect, you irrevocably agree to reimburse me on demand for any interest, penalties or legal costs (on the indemnity basis) that I incur as a result.

12. Electronic communications

12.1 You agree that information may be given by electronic means, including by email. A paper copy will be provided should you ask for it.

12.2 Specifically, you agree to the use of email (including the use of email with attachments) as a means by which the agreement may be made, confirmed and managed. You confirm that you agreed to this prior to the agreement being made. You also agree to the delivery of fee notes by that method.

13. Miscellaneous terms

13.1 You must ensure that any person who gives me instructions on your behalf has authority to do so. If I have reason to doubt that a person who purports to give me instructions has authority to do so, I will be permitted not to act on those instructions until you have confirmed that that person has the requisite authority. Moreover, unless you tell me otherwise in writing (such as by providing me with a list of persons who are authorised to give me instructions), I will be permitted to take instructions from any person who is your director, member or senior employee.

13.2 My duty of care is limited solely to advising and representing you as a business; my duty of care does not extend to any of your directors, shareholders, members, employees, etc.

13.3 Where there is more than one client who enters into this agreement in respect of the same claim or matter, the rights and obligations of each client under this agreement will be joint and several in respect of those persons; references to 'you', 'the client', etc should be read as being references to each and every such person.

13.4 Unless I specifically agree otherwise in writing, I will act only on behalf of you (as a business); the Contracts (Rights of Third Parties) Act 1999 will not apply. Any legal advice that the I give is for your own use only. I will not be liable to anyone else in relation to that advice, including anyone to whom you pass or transmit that advice. For the avoidance of doubt, I will have no liability to any

director, member, shareholder, employee, etc to whom my advice is made available.

13.5 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.

13.6 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 severed from it 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 originally not been contained in this agreement.

13.7 If either party to this agreement is prevented from discharging their obligations under this agreement by reason of a factor that is beyond their control, then they will not be prejudiced by reason of any delay in performing those obligations, and this will be so even if that delay leads to total or partial non-performance of those obligations. In particular, no party will incur any liability to pay damages in that regard.

14. Confidentiality and documents

14.1 Ideally, I would prefer it if you provided documents to me in electronic format (such as PDF).

14.2 If this is not convenient for you and if you need to send me paper documents, please try to send me copies rather than originals.

14.3 Please note the following:

14.3.1 If you send me paper document that need to be copied, I may charge a reasonable fee for making those copies.

14.3.2 I am entitled to keep copies of any documents you give me for my own professional records for seven years in accordance with Rule C129 of the BSB Handbook; and

14.3.3 I will return all your original paper documents to you when I have carried out the work you have instructed me to do (this being in accordance with Rule C131 of the BSB Handbook).

14.4 In signing these terms, you confirm that you have given me your consent to process your personal data for the purpose of carrying out your instructions, and that the legal basis for processing your data is the performance of this agreement. You have a right to withdraw consent, but if you do so I will not be able to carry out your instructions.

14.5 Also, in certain circumstances, the Money Laundering Regulations 2007 require me to obtain evidence to verify the identity of my clients and people related to them (such as beneficial owners). If this applies in your case, I will ask you to provide the necessary evidence and I will be obliged to keep copies of it for at least five years.

14.6 The information which you give me will be received in professional confidence. This means that I must maintain the confidentiality of any information you have shared with me and can only tell others about it if you give your consent for me to do so (which I would obtain if and when needed).

14.7 The only exception to the above is that statutory and other legal requirements may mean that I have to disclose (i.e. reveal) your information to governmental or other regulatory authorities, e.g. organisations, whose rules I must meet, without your consent and without telling you that I have made the disclosure. Statutory and legal requirements are rules or regulations that an individual must, by law, follow.

14.8 I have a privacy policy which may be found here: [INSERT WEB ADDRESS OF PRIVACY POLICY]. By making this agreement, you consent to your data being held and processed in accordance with that policy.

15. Non-payment of fees

15.1 In the event that you do not pay my fees, I may instruct a debt collection agency to recover the same. You irrevocably consent to the disclosure to a debt collection agency of any fee notes or other information that may reasonably be required to allow me to collect those fees.

15.2 Furthermore, in the event that I need to bring court proceedings to recover unpaid fees (or in the event that there is any dispute between us relating to this agreement or the work I do under this agreement), you irrevocably consent to any documents (including privileged documents) being disclosed and adduced as evidence in any such proceedings.

15.3 In the event that my fees are not paid for a period of 14 days or more after they have fallen due under the terms of this agreement, then (pursuant to the Late Payment of Commercial Debts Act 1998) I will be entitled to charge simple interest at 8 percent per annum above the Bank of England base rate from that date (namely, 14 days after the fees should have been paid) up to the date of payment; in addition, I will be entitled to a debt recovery fee of between £40 and £100.

16. Client's confirmation of acceptance

16.1 By signing this letter of engagement, you confirm that you have read, understand, and agree to be bound by its terms.

…….. Signature

…….. Status (e.g., Director)

…….. Print name

…….. Date

ANNEX C

Privacy Notice - General Data Protection Regulation ("UK GDPR")

Please read the following information carefully. This privacy notice contains information about the information collected, stored and otherwise processed about you and the reasons for the processing. It also tells you who I share this information with, the security mechanisms I have put in place to protect your data and how to contact me in the event you need further information.

Who Am I?

[Insert name] collects, uses and is responsible for personal information about you. When I do this I am the 'controller' of this information for the purposes of the UK GDPR and the Data Protection Act 2018.

If you need to contact me about your data or the processing carried out you can use the contact details at the end of this document.

What do I do with your information?

Information collected

When carrying out the provision of legal services or providing a reference I collect some or all of the following personal information that you provide:

[DELETE AS APPROPRIATE]

a. personal details
b. family details
c. lifestyle and social circumstances
d. goods and services
e. financial details
f. education, training and employment details
g. physical or mental health details
h. racial or ethnic origin
i. political opinions
j. religious, philosophical or other beliefs
k. trade union membership
l. sex life or sexual orientation
m. genetic data

n. biometric data for the purpose of uniquely identifying a natural person
o. criminal proceedings, outcomes and sentences, and related security measures
p. other personal data relevant to instructions to provide legal services, including data specific to the instructions in question.

Information collected from other sources.

The same categories of information may also be obtained from third parties, such as other legal professionals or experts, members of the public, your family and friends, witnesses, courts and other tribunals, investigators, government departments, regulators, public records and registers,
[*FILL IN ANY ADDITIONAL SOURCES. DELETE ANY INAPPROPRIATE SOURCES*]

How I use your personal information: Purposes

I may use your personal information for the following purposes:

i. to provide legal services to my clients, including the provision of legal advice and representation in courts, tribunals, arbitrations, and mediations
ii. to keep accounting records and carry out office administration
iii. to take or defend legal or regulatory proceedings or to exercise a lien
iv. to respond to potential complaints or make complaints
v. to check for potential conflicts of interest in relation to future potential cases
vi. to promote and market my services
vii. to carry out anti-money laundering and terrorist financing checks
viii. to train other barristers and when providing work-shadowing opportunities
ix. to respond to requests for references
x. when procuring goods and services
xi. to publish legal judgments and decisions of courts and tribunals
xii. as required or permitted by law.

[DELETE AS NECESSARY/INSERT ADDITIONAL PURPOSES, AS REQUIRED]

Whether information has to be provided by you, and why

If I have been [*instructed by you or on your behalf on a case or if you have asked for a reference*], your personal information has to be provided, to enable me [*to provide you with advice or representation or the reference, and to enable me to comply with my professional obligations, and to keep accounting records*]. [COMPLETE AS APPROPRIATE]

The legal basis for processing your personal information

I rely on the following as the lawful bases on which I collect and use your personal information:

- If you have consented to the processing of your personal information, then I may process your information for the Purposes set out above to the extent to which you have consented to me doing so.
- If you are a client, processing is necessary for the performance of a contract for legal services or in order to take steps at your request prior to entering into a contract.
- In relation to information which is in categories (g) to (o) above (these being categories which are considered to include particularly sensitive information and which include information about criminal convictions or proceedings) I rely on your consent for any processing for the purposes set out in purposes (ii), (iv), (vi), (viii) and (ix) above. I need your consent to carry out processing of this data for these purposes. However, if you do not consent to processing for purposes (iv) and (ix) (responding to potential complaints and providing a reference) I will be unable to take your case or to provide a reference. This is because I need to be able to retain all the material about your case until there is no prospect of a complaint and to provide an informed and complete reference.
- In relation to information in categories (g) to (o) above (these being categories which are considered to be particularly sensitive information and include information about criminal convictions or proceedings), I am entitled by law to process the information where the processing is necessary for legal proceedings, legal advice, or otherwise for establishing, exercising or defending legal rights.
- In relation to information which is not in categories (g) to (o) above, I rely on my legitimate interest and/or the legitimate interests of a third party in carrying out the processing for the Purposes set out above.
- In certain circumstances processing may be necessary in order that I can comply with a legal obligation to which I am subject (including carrying out anti-money laundering or terrorist financing checks).

- The processing is necessary to publish judgments or other decisions of courts or tribunals.

Who will I share your personal information with?

If you are a client, some of the information you provide will be protected by legal professional privilege unless and until the information becomes public in the course of any proceedings or otherwise. As a barrister I have an obligation to keep your information confidential, except where it otherwise becomes public or is disclosed as part of the case or proceedings.

It may be necessary to share your information with the following:

- data processors, such as my Chambers staff, IT support staff, email providers, data storage providers [*FILL IN ANY OTHERS*]
- other legal professionals
- experts and other witnesses
- prosecution authorities
- courts and tribunals
- the staff in my chambers
- trainee barristers
- lay clients
- family and associates of the person whose personal information I am processing
- in the event of complaints, the Head of Chambers, other members of Chambers who deal with complaints, the Bar Standards Board, and the Legal Ombudsman
- other regulatory authorities
- current, past or prospective employers
- education and examining bodies
- business associates, professional advisers and trade bodies, e.g. the Bar Council
- the intended recipient, where you have asked me to provide a reference.
- the general public in relation to the publication of legal judgments and decisions of courts and tribunals [*this requires the production of a policy document to comply with this obligation – DPA Bill sch. 1 Part 2. para. 5(1)*].

I may be required to provide your information to regulators, such as the Bar

Standards Board, the Financial Conduct Authority or the Information

Commissioner's Office. In the case of the Information Commissioner's Office, there is a risk that your information may lawfully be disclosed by them for the purpose of any other civil or criminal proceedings, without my consent or yours, which includes privileged information.
I may also be required to disclose your information to the police or intelligence services, where required or permitted by law.

Sources of information

The personal information I obtain may include information which has been obtained from:

- other legal professionals
- experts and other witnesses
- prosecution authorities
- courts and tribunals
- trainee barristers
- lay clients
- family and associates of the person whose personal information I am processing
- in the event of complaints, the Head of Chambers, other members of Chambers who deal with complaints, the Bar Standards Board, and the Legal Ombudsman
- other regulatory authorities
- current, past or prospective employers
- education and examining bodies
- business associates, professional advisers and trade bodies, e.g. the Bar Council
- the intended recipient, where you have asked me to provide a reference.
- the general public in relation to the publication of legal judgments and decisions of courts and tribunals [*this requires the production of a policy document to comply with this obligation – DPA Bill sch. 1 Part 2. para. 5(1)*].
- data processors, such as my Chambers staff, IT support staff, email providers, data storage providers [*FILL IN ANY OTHERS*]
- public sources, such as the press, public registers and law reports.

Transfer of your information outside the European Economic Area (EEA) Does this need a post-Brexit tweak?

This privacy notice is of general application and as such it is not possible to state whether it will be necessary to transfer your information out of the EEA in any particular case or for a reference. However, if you reside outside the EEA or your case or the role for which you require a reference involves persons or organisations or courts and tribunals outside the EEA then it may be necessary to transfer some of your data to that country outside of the EEA for that purpose. If you are in a country outside the EEA or if the instructions you provide come from outside the EEA then it is inevitable that information will be transferred to those countries. If this applies to you and you wish additional precautions to be taken in respect of your information please indicate this when providing initial instructions.

Some countries and organisations outside the EEA have been assessed by the European Commission and their data protection laws and procedures found to show adequate protection. The list can be found here. Most do not. If your information has to be transferred outside the EEA, then it may not have the same protections and you may not have the same rights as you would within the EEA.

[I may transfer your personal information to the following which are located outside the European Economic Area (EEA):

- [cloud data storage services based in the USA who have agreed to comply with the EU-U.S. Privacy Shield, in order to enable me to store your data and/or backup copies of your data so that I may access your data when they need to. The USA does not have the same data protection laws as the EU but the EUU.S. Privacy Shield has been recognised by the European Commission as providing adequate protection. To obtain further details of that protection see https://ec.europa.eu/info/law/law-topic/data-protection/data-transfers-outsideeu/eu-us-privacy-shield_en.]
- [cloud data storage services based in Switzerland, in order to enable me to store your data and/or backup copies of your data so that I may access your data when I need to. Switzerland does not have the same data protection laws as the EU but has been recognised by the European Commission as providing adequate protection; see https://ec.europa.eu/info/law/law-topic/dataprotection/data-transfers-outside-eu/adequacy-protection-personal-data-noneu-countries_en.]

If I decide to publish a judgment or other decision of a Court or Tribunal containing your information then this will be published to the world.

I will not [otherwise] transfer personal information outside the EEA [except as necessary for providing legal services or for any legal proceedings].

If you would like any further information please use the contact details at the end of this document.

How long will I store your personal data?

I will normally store all your information:

- [until at least 1 year after the expiry of any relevant limitation period (which will usually be 6 years, but may be 12 years, or longer where the case includes information relating to a minor), from [the date of the last item of work carried out, the date of the last payment received or the date on which all outstanding payments are written off, *whichever is the latest/whatever other end point is chosen*]. This is because it may be needed for potential legal proceedings/ other period – *provide justification*]. At this point any further retention will be reviewed and the data will be marked for deletion or marked for retention for a further period. The latter retention period is likely to occur only where the information is needed for legal proceedings, regulatory matters or active complaints. Deletion will be carried out (without further notice to you) as soon as reasonably practicable after the data is marked for deletion.
- I will store some of your information which I need to carry out conflict checks for the rest of my career. However, this is likely to be limited to [your name and contact details/ the name of the case/anything else]. This will not include any information within categories (g) to (o) above.
- [Information related to anti-money laundering checks will be retained until five years after the completion of the transaction or the end of the business relationship, whichever is the later;]
- Names and contact details held for marketing purposes will be stored indefinitely or until I [or my clerks] become[s] aware or am[/are] informed that the individual has ceased to be a potential client.

Consent

As explained above, I am relying on your explicit consent to process your information in categories (g) to (o) above. You provided this consent when [you agreed that I would provide legal services/you asked me to provide a reference].

You have the right to withdraw this consent at any time, but this will not affect the lawfulness of any processing activity I have carried out prior to you withdrawing your consent. However, where I also rely on other bases for processing your information, you may not be able to prevent processing of your data. For example, if

you have asked me to work for you and I have spent time on your case, you may owe me money which I will be entitled to claim.

If there is an issue with the processing of your information, please contact my clerks using the contact details below.

Your Rights

Under the UK GDPR, you have a number of rights that you can exercise in certain circumstances. These are free of charge. In summary, you may have the right to:

- Ask for access to your personal information and other supplementary information;
- Ask for correction of mistakes in your data or to complete missing information I hold on you;
- Ask for your personal information to be erased, in certain circumstances;
- Receive a copy of the personal information you have provided to me or have this information sent to a third party. This will be provided to you or the third party in a structured, commonly used and machine-readable format, e.g. a Word file;
- Object at any time to processing of your personal information for direct marketing;
- Object in certain other situations to the continued processing of your personal information;
- Restrict my processing of your personal information in certain circumstances;
- Request not to be the subject to automated decision-making which produces legal effects that concern you or affects you in a significant way.

If you want more information about your rights under the UK GDPR please see the Guidance from the Information Commissioners Office on Individual's rights under the UK GDPR.

If you want to exercise any of these rights, please:

- Use the contact details at the end of this document;
- I may need to ask you to provide other information so that you can be identified;

- Please provide a contact address so that you can be contacted to request further information to verify your identity;
- Provide proof of your identity and address;
- State the right or rights that you wish to exercise.

I will respond to you within one month from when I receive your request.

Marketing Emails

[Please note if you wish to unsubscribe from any marketing emails that you have signed up for, you can do so by following the instructions here [*insert link].* It may take [*insert days]* for this to become effective.]

How to make a complaint?

The UK GDPR also gives you the right to lodge a complaint with the Information

Commissioners' Office if you are in the UK, or with the supervisory authority of the Member State where you work, normally live or where the alleged infringement of data protection laws occurred. The Information Commissioner's Office can be contacted at http://ico.org.uk/concerns/.

[DELETE UNLESS USING AUTOMATED DECISION-MAKING]

Automated Decision-Making

I use automated decision making to *[explain where it is used].* An explanation of the logic behind this decision-making can be found [*insert link].* The significance and envisaged consequences of these decisions are *[insert consequence]*.

You have the right to object to the use of your personal information for automated decision-making, please see 'your rights'.

Future Processing

I do not intend to process your personal information except for the reasons stated within this privacy notice. If this changes, this privacy notice will be amended and [placed on the website / *insert notice mechanism*].

Changes to this privacy notice

This privacy notice was published on [*insert date]* and last updated on [*insert date].*

I continually review my privacy practices and may change this policy from time to time. When I do it will be [placed on the website/ *insert notice mechanism]*.

Contact Details

If you have any questions about this privacy notice or the information I hold about you, please contact me or my clerks [*insert details* or [if appointed, Data Protection Officer].

The best way to contact me is to [write to me at [my Chambers address] or contact

[my clerks by email at email address DP@..... or by phone at [no].]

[If appointed

My EU Representative]

[If applicable insert details of EU representative].

My Data Protection Officer]

[Insert details of Data Protection Officer if one has been appointed].

Sign

Please read this privacy notice carefully and contact me if you have any queries. Please then tick the box below and sign to confirm that you have read and understood the privacy notice. If you are acting in a representative capacity (for example as an officer of a company) please also confirm that you have authority to sign on behalf of the client by ticking the second box below and signing.

- ◎ I have read and understood this privacy notice
- ◎ I have authority to sign on behalf of the client

Signature: .....

Date: