Contractual terms for civil (non-family) legal aid work

Guidance

1. When Counsel accepts instructions in a civil (non-family) legally aided matter there has hitherto been no contract created between the solicitor (or Authorised Person) and Counsel. If the solicitor applies for a legal aid assessment in the normal way and the Legal Aid Agency then pays Counsel, the absence of any such contract should not matter, even now when contracts have become the norm. However, because circumstances can arise where this does not happen, a short and simple set of standard contractual terms and conditions has been prepared to deal with these.

2. The standard contractual terms and conditions recommended by the Bar Council provide (clause 3) that without undue delay solicitors will take all steps necessary to procure that the Legal Aid Agency is able to make interim and final assessments and payments of fees, that Counsel will upon request provide the solicitor with all necessary documents and information to procure this and that they will keep each other informed about the progress and date of interim and final assessments and payments. Absent this clause, it is by no means clear that solicitors have any obligation to apply to the Legal Aid Agency for assessment and payment of Counsel's fees.

3. The standard contractual terms and conditions also deal with three situations in which no payment of Counsel's fees will be made by the Legal Aid Agency (clause 4). They are firstly, where no assessment and/or payment is sought by the solicitor, most commonly because the case has been won or has settled on terms that payment of costs be made to the solicitor by the other side. Secondly, where to the knowledge of the solicitor, Counsel's fees will not be paid by the Legal Aid Agency, for example because the Legal Aid Certificate has been discharged or the work is not authorised by the Certificate or a limit or condition in the Certificate has been or will be exceeded. And thirdly, where the solicitor unreasonably fails to submit the whole or any part of Counsel's work or fees for assessment by the Legal Aid Agency. In each of these situations, the solicitor becomes contractually liable for payment of Counsel's fees at the appropriate inter-partes rate. In the second and third situations, such liability arises because the solicitor's conduct is expressly wrongful. In the first situation, such liability arises because the solicitor has agreed with the other side to deal with costs on a party and party basis instead of involving the Legal Aid Agency. Since the solicitor is thereby arranging that the Agency will not be responsible for meeting Counsel's fees, they must

undertake such responsibility himself and must bear this in mind when negotiating terms with the other side.

4. It is recommended that Chambers inform the solicitors who instruct their members in civil (non-family) legal aid matters that all such instructions will in future be accepted upon Chambers' standard terms and conditions applicable to civil (non-family) legal aid matters.

Bar Council
September 2026

STANDARD CONTRACTUAL TERMS GOVERNING THE ACCEPTANCE OF LEGAL AID INSTRUCTIONS FOR THE SUPPLY OF LEGAL SERVICES BY BARRISTERS TO AUTHORISED PERSONS IN CIVIL (NON-FAMILY) CASES

1. Definitions and Interpretation

1.1 The definitions and interpretation set out in clause 1 of the Standard Conditions of Contract for the Supply of Legal Services by Barristers to Authorised Persons 2012 ("the Conditions") shall be incorporated herein and apply hereto save where inconsistent with the express terms hereof or the statutory provisions and regulations governing Legal Aid.

2. Applicability

2. These terms shall apply whenever:

2.1 The Authorised Person instructs the Barrister to act in a Case for a Lay Client who has the benefit of non-family Civil Legal Aid (which expression includes Controlled Work and Licensed Work as defined by the 2010 and 2013 Standard Civil Contracts), and

2.2 The Barrister accepts such instructions on the basis that they will be paid in due course either by the Legal Aid Agency in accordance with the statutory provisions and regulations governing Legal Aid or by the Authorised Person as hereinafter appears.

3. Procuring payment by the Legal Aid Agency

3.1 The Authorised Person shall without undue delay take all steps necessary (including making all necessary applications and providing all necessary documents and information) to procure that the Legal Aid Agency is able to make interim and final assessments and payments of the Barrister's fees.

3.2 The Barrister shall without undue delay provide the Authorised Person upon request with all necessary documents and information required to enable the Authorised Person to procure that the Legal Aid Agency is able to make interim and final assessments and payments of the Barrister's and/or the Authorised Person's fees

3.3 The Barrister and the Authorised Person shall keep each other informed about the progress and date of interim and final claims and assessments and the payments of the Barrister's and/or Authorised Person's fees by the Legal Aid Agency or any other person

4. Where no payment or only part payment is made by the Legal Aid Agency

4.1 Where circumstances arise which result in no claim being made by the Authorised Person for assessment and/or payment of all or any part of the Barrister's fees by the

Legal Aid Agency (for example because the case has been won or has settled on terms that payment of costs be made to the Authorised Person by the other side in the Case) then the Authorised Person shall promptly inform the Barrister and the Authorised Person shall be personally responsible for payment of the Barrister's aforesaid fees at the appropriate inter-partes rate.

4.2 Where the Authorised Person instructs the Barrister in circumstances where to the knowledge of the Authorised Person the Barrister's fees resulting from such instructions will not be paid by the Legal Aid Agency (for example because the Lay Client's Legal Aid Certificate has been discharged, or the work is not authorised by the Certificate, or a limit or condition therein has been or will be exceeded) then the Authorised Person shall be personally responsible for payment of the Barrister's aforesaid fees the appropriate inter-partes rate.

4.3 Where the Authorised Person unreasonably fails to submit the whole or any part of the Barrister's work or fees for assessment by the Legal Aid Agency with the result that the Legal Aid Agency fails or refuses to pay for or pay the same and/or seeks repayment from the Barrister of any interim payment for or of the same then the Authorised Person shall be personally responsible for payment of the Barrister's aforesaid fees the appropriate inter-partes rate.

4.4 In the circumstances described in paragraphs 4.1, 4.2 and 4.3 above, clauses 10, 11, 12, 15, 16, 18 and 19 of the Conditions shall be incorporated herein and apply in respect of the Barrister's aforesaid fees save where inconsistent with the express terms hereof or the statutory provisions and regulations governing Legal Aid.