



for use BETWEEN SOLICITORS AND COUNSEL

1. **DEFINITIONS**

In this agreement:

**"Counsel"** means: «Barrister\_Name»

and any other counsel who performs work under this agreement.

Case Ref: «Case\_ID»

**"The Solicitor"** means the firm: «Company Name»

Sol's Ref «Case\_ContactRef»

**"The Client"** means «CFA Client»

acting by his/her Litigation Friend «CFA LitigationFriend»

or the Client's personal representatives (on death) or the Client's litigation friend (on loss of capacity).

**"Success"** means (subject to clause 5 below) that the Client's claim is finally decided in his or her favour, whether by a court decision or an agreement to pay damages and/or costs or in any other way that results in the Client deriving a benefit (whether by way of costs, damages or otherwise) from pursuing the Claim.

**"Finally"** means that the Opponent is not allowed to appeal against the court decision; or has not appealed in time; or has lost any appeal.

**"Failure"** means if the case is lost or on Counsel's advice ends without success.

**"The Opponent"** means any Defendant or proposed Defendant in an action brought or contemplated by the Claimant in respect of his or her claim for damages for personal injury, death or disease.

The current Opponents are: «CFA Opponents»

## 2. THE CLAIM

This Agreement forms the basis on which instructions are accepted by Counsel from the Solicitor to act on a conditional fee basis for the Client in his/her claim for damages for personal injury, disease or death arising from the incident / events identified in Counsel's instructions and/or from other related incidents / events.

## INCORPORATION OF PARKLANE PLOWDEN'S STANDARD TERMS AND CHAMBERS' COMPLAINTS PROCEDURE

3. This Agreement forms the basis on which instructions are accepted by Counsel from the Solicitor to act under a conditional fee agreement and incorporates PIBA's standard terms and conditions for CFAs in personal injuries and clinical negligence cases which are available on the PIBA and APIL websites and are incorporated in, but not annexed to, this agreement [**"the Standard Terms"**] If, at any time you or your client experience any cause for complaint in your dealings with any member of chambers or member of staff please refer to our documented complaints procedure on our website <http://www.parklaneplowden.co.uk/complaints/>

## THE AGREEMENT

4. This agreement is a contract enforceable at law.

## 5. SOLICITOR'S OBLIGATION TO PAY

- (1) Upon success, subject as provided below, the Solicitor is liable to pay Counsel's fees.
- (2) The amounts of fees and expenses payable to Counsel under this agreement are payable whether or not the Solicitor is or will be paid by the Client or Opponent.
- (3) Upon success the Solicitor will promptly conclude by agreement or assessment the question of costs and will pay Counsel promptly and in any event not later than one month after receipt of such costs as are recovered from the Opponent/s the full sum due under this agreement.
- (4) Where an interim award of costs is made in the Client's favour which includes an element of Counsel's fees, then such fees shall be paid over to Counsel within 28 days of the interim order being made, regardless of whether or not the Claim ultimately succeeds.
- (5) Where a hearing is adjourned due to lack of judicial time or other failing on the part of HMCTS, the Solicitor will pay to Counsel any fee recovered from HMCTS in respect of the abortive hearing, regardless

of whether or not the Claim ultimately succeeds. The Solicitor agrees that, in such cases, it will make a prompt written application for Counsel's fee to HMCTS using either the pro forma letter available from Counsel's clerk or other suitable letter drafted by the Solicitor and/or Counsel.

- (6) In the event of failure, the Solicitor's obligation to pay Counsel's fees is as set out in clause 10 of the Standard Terms.

**6. THIS SCOPE OF THIS AGREEMENT IS AS FOLLOWS:**

**(1) What is covered by this agreement:**

This agreement relates to and covers:

- all work already done and all further work to be undertaken by Counsel in respect of the Claim until the Claim is won, lost or otherwise concluded, or this agreement is terminated
- \*, is limited to part only of proceedings as set out below

specifically: \_\_\_\_\_.

**(2) What is not covered by this agreement:**

- Any Part 20 claim against the Client;
- Any appeal, unless the parties agree that it shall be covered
- Any counter claim or defence by way of set off which is still in existence after the claim has settled or been won, lost or otherwise concluded;
- Any application under an award of provisional damages that might be obtained in these proceedings or to vary any order for periodical payments that might be made in these proceedings;
- Enforcement of any judgment or order.

**DELIVERY OF THE BRIEF BY THE SOLICITOR**

7. The Solicitor agrees to deliver the brief for trial not less than 21 days before the trial of all issues or of any preliminary issue and the **brief shall be deemed delivered 21 days** before the trial for the purpose of Counsel's entitlement to a brief fee.

## COUNSEL'S NORMAL FEES

### COUNSEL'S FEES

8. (a) It is accepted by both parties that there are multiple case-specific factors which make a precise pre-estimate of counsel's fees impractical. The fee charged by counsel will be influenced by factors such as:
- The complexity and volume of materials counsel is expected to consider.
  - The value of the case.
  - The amount of time required to complete the hearing or other work.
  - The distance counsel is expected to travel for any hearing, conference or other work.
  - The need for skeleton arguments or other forms of written submissions.
  - The need for special expertise over and above the general level expected of common law counsel.
  - The urgency of a matter and/or the requirement for Counsel to work unsociable hours.
  - The likelihood of extended waiting time at court (e.g. short hearings placed in a general list).
  - The application of any fixed fee or similar scheme limiting recovery of inter partes costs (the parties agreeing that such fee levels with only apply between solicitor and Counsel where it is explicitly agreed that they will do so).

It is agreed that, given such wide variability of factors, the parties will negotiate in good faith to agree a suitable level of remuneration for Counsel on each occasion that counsel is instructed under the terms of this CFA.

As a guide, and with a view to providing a genuine pre-estimate of Counsel's likely fees, counsel's normal rates for routine work are generally:

- **Advisory work, conferences and drafting:** Work is generally performed at an hourly rate of £«CFA\_AdvisoryWork» but a fee calculated by reference to other factors (potentially higher or lower than the hourly rate) may be charged where agreed.
  - **Brief fees for a trial, refreshers and joint settlement meetings:** Counsel's normal daily rate is a fixed fast track CPR rate or is £..... Counsel will (subject to the factors set out above) usually charge 2 x daily rate for a matter lasting one day or less. 1 x daily rate will be charged for each additional day of any continuous hearing. Where is adjourned part-heard and/or relisted, counsel will be entitled to a re-preparation fee in addition to the daily rate.
  - **Brief fees for interlocutory hearings:** The parties agree that the

type and nature of such hearings is so variable that no reliable fee estimate can be given. Suffice it to say that it is acknowledged that Counsel's brief fee for such hearings is unlikely to be less than 50% of the normal daily rate and may on occasion exceed the normal daily rate.

- **Travel time:** Will be charged in addition at full hourly rates where not expressly agreed as part of any fee.
- **Expenses:** In addition to the above fees, Counsel will be entitled to payment of any reasonable out of pocket expenses including, but not limited to: accommodation costs, train tickets, mileage (at £0.50 per mile), sustenance etc.

(b) **Reasonableness of Counsel's fees**

For the avoidance of doubt, the solicitor expressly confirms that the fee structure set out above is considered by the Solicitor to represent a genuine pre-estimate of the fees likely to be charged for Counsel's anticipated work in respect of this claim.

(c) **Inflation Review**

Counsel's fees will increase on each successive anniversary of this agreement by not more than 3% per annum.

## **COUNSEL'S SUCCESS FEE**

9. The rate of Counsel's success fee will be **0%**.

### **REASON FOR THE SUCCESS FEES:**

10. The percentage increase reflects the prospects of success estimated by Counsel.

No part of these percentages relates to the postponement of the payment of Counsel's fees.

### **PAYING COUNSEL'S SUCCESS FEE**

11. [1] If the Client wins and Counsel has charged a success fee then the Solicitor is liable to pay Counsel's success fee.
- [2] Counsel's success fee is capped in the Conditional Fee Order 2013 at a maximum of a sum including VAT equivalent to 25% of the damages recovered by the Client for pain, suffering and loss of amenity and past pecuniary loss including VAT and interest (the Cap).

- [3] In circumstances when the Cap applies Counsel's success fee will be payable by the solicitor but will be reduced pro rata in accordance with the proportion that Counsel's normal fees bear to the Solicitor's normal fees (exclusive of disbursements and expenses).
- [4] In the event that the figure for past loss and general damages has (a) not been determined at trial or assessment; and (b) Counsel and Solicitor are unable to agree the appropriate level of general damages and past loss; and (c) Counsel's entitlement to fees is in dispute, the parties shall follow the procedure set out in 9(5) of the Terms and Conditions.

**Dated:** «CaseCreatedDate»

**Signed by Counsel:** \_\_\_\_\_



**or by his/her clerk [with Counsel's authority]:**

**Additional interlocutory Counsel:** \_\_\_\_\_

**Additional interlocutory Counsel:** \_\_\_\_\_

**Signed by Solicitor:** \_\_\_\_\_

**«Company\_Name»      «Case\_ID»**

*By signing and today returning to counsel the last page of this agreement by email, the Solicitor agrees to instruct Counsel under the terms of this agreement and undertakes to furnish Counsel within 14 days of today with hard copies of the signed agreement together with any documents under paragraph 5 of this agreement which are not already in Counsel's possession.*