

## COMBAR

### AMENDMENTS TO THE GENERAL TERMS

1. Clause numbers below shall refer to the clause numbers of the General Terms unless otherwise stated.
2. In all cases where the CPR rules on costs budgeting apply, the Barrister must comply with the attached Appendix and, as necessary, the General Terms are amended accordingly. In any case where the provisions of clauses 7, 8 or 9 conflict with the Appendix, the Appendix shall prevail.
3. The words "*Solicitor's or*" shall be deleted from clause 9.10(a).
4. Additional words shall be inserted at the beginning of clause 9.11 to read as follows:  
  
*"Following the expiry of not less than 28 Business Days' written notice of the Barrister's intention to make such a request, "*
5. The words "*and shall*" to "*Solicitors Act 1974*)." shall be deleted from clause 9.11.
6. The words "*is obliged, whether under clause 10.2(a), clause 10.2(c) or otherwise, to comply with that request,*" in clause 10.4, shall be substituted with the words: "*is obliged under clause 10.2(a) or clause 10.2(c) to comply with that request,*".
7. Clause 13.2 shall be renumbered 13.3.
8. Additional words shall be inserted at the beginning of clause 13.1 to read as follows:  
  
*"Subject to clause 13.2 below, "*
9. A new clause 13.2 shall be inserted to read as follows:  
  
*"The Barrister consents to copies of the Instructions, any written opinion produced by the Barrister, any note of a conference with the Barrister and any other work product being stored on the Solicitor's internal know-how system (electronically and / or in hard copy) on the basis that the Solicitor agrees that the Barrister will be acknowledged as author, the system will be secure, confidentiality will be maintained, the Solicitor will comply with any data protection regulations and with the implied undertaking on disclosure."*
10. At clause 16.4(b), the words "*ten Business Days*" shall be substituted with the words "*28 Business Days*".

## APPENDIX

### LEWIS SILKIN LLP'S AMENDMENTS TO THE COMBAR TERMS

#### **A. Introduction**

1. In all cases where the CPR rules on costs budgeting apply, legal representatives must produce a new Precedent H costs budget for the entire action.
2. The costs budget must include the Barrister's fees (1) already incurred and (2) estimated for future work, broken-down into phases.
3. The costs budget is to be agreed with the other party (parties) / approved by the Court.
4. Failure to comply with requirements regarding costs budgets may result in:
  - (a) recoverable costs being capped at the level of Court fees paid; or
  - (b) recoverable costs being capped at the amount of the costs budget last agreed / approved.
5. If at any point the legal representatives form the view that the costs budget has to be increased, agreement to / approval of any increase must be obtained before "excess" costs are incurred.
6. To comply with these new requirements, changes are needed to the systems used by solicitors and barristers for estimating, recording, monitoring and charging fees, and solicitors and barristers must collaborate more closely regarding the costs of litigation.
7. A failure by legal representatives to comply with costs budgeting requirements may result in the Lay Client being unable to recover legal costs, the Lay Client refusing to pay the fees of the legal representatives, possible claims against the legal representatives and reputational damage.
8. The risks for legal representatives are such that the Solicitor and the Barrister must have a co-ordinated and constructive approach to compliance with the costs budgeting requirements.
9. However, it is also essential that the Solicitor and the Barrister independently accept responsibility for compliance and accept the consequences of non-compliance.

#### **B. The Barrister's obligations**

As a result of the above, the Solicitor requires that the Barrister complies with the following requirements in all cases where the CPR rules on costs budgeting are applicable.

System capabilities

10. The Barrister must produce a budget (being a combination of fees already charged and future fees estimated) broken down by phases ("Barrister's Budget"). The phases of the litigation process provided by the CPR are currently as follows:

- (a) Pre-action costs
- (b) Issue / Pleadings
- (c) Case Management Conference
- (d) Disclosure
- (e) Witness Statements
- (f) Expert's Reports
- (g) Pre-trial Review
- (h) Trial Preparation
- (i) Trial
- (j) Alternative Dispute Resolution / Settlement Discussions

11. The Barrister needs to be able to add additional phases on a case by case basis as required.

12. The Barrister must not, in the absence of prior written agreement from the Solicitor, undertake any work if doing so would result in the Barrister's Budget for any phase being exceeded.

13. All fee notes must specify the phase in respect of which each item of work has been carried out and against which the fee is being charged.

Estimating and monitoring costs

14. The Barrister will need to provide his / her Barrister's Budget by a date reasonably requested by the Solicitor. The Solicitor will discuss all estimates with the Barrister

15. The Solicitor will notify the Barrister of the amounts for each phase that are agreed with the other side / approved by the Court ("Confirmed Budget").

16. If the fee budget allowed for the Barrister in the Confirmed Budget is less than the fee budget in the Barrister's Budget and the Barrister believes that they are, or will be, unable to provide the Services within the fee budgets allowed for the Barrister in the Confirmed Budget, they must inform the Solicitor in writing so that the Solicitor can raise the issue with the Lay Client and seek express agreement that the Barrister can charge the fees in the Barrister's Budget (i.e. in excess of the fees in the Confirmed Budget).

17. The Barrister must monitor their own fees within the Barrister's Budget or the Confirmed Budget, as appropriate, for each phase (fees charged, work in progress and anticipated

future work) to ensure that their fees for each phase do not exceed the amount allowed for the Barrister in the Barrister's Budget or the Confirmed Budget, as appropriate (and will not be exceeded if the Barrister carries out work requested by the Solicitor without the Barrister's Budget or the Confirmed Budget, as appropriate, for the phase being increased).

18. The Barrister must keep the Solicitor informed of the fee position on each phase.

Rendering fee notes

19. The Barrister must raise fee notes promptly.
20. Fee notes must specify, amongst other things, the phase in respect of which each item of work has been carried out and against which the fee is being charged.

Consequences of failures of compliance with costs budgeting requirements

21. The Barrister accepts responsibility for the accuracy of the Barrister's Budget in respect of each phase, and for monitoring the fees charged and to be charged by the Barrister against each of the separate phases in the Barrister's Budget or the Confirmed Budget, as appropriate.
22. The Barrister must not undertake any work unless he / she is satisfied that the fees for the work have been taken into account in the Barrister's Budget or the Confirmed Budget, as appropriate, in respect of the relevant phase (and the Barrister accepts the risk that if work is undertaken which is outside the Barrister's Budget or the Confirmed Budget for the relevant phase, fees for such work may not be chargeable / payable unless the Barrister's fees for such work have been agreed in writing in advance by the Solicitor).
23. The Barrister's fees will not be accepted / paid if they would result in the Barrister's Budget or the Confirmed Budget, as appropriate, for a phase being exceeded (unless the Solicitor has previously agreed in writing to accept such fees).
24. Fee notes will be returned if they fail to specify the phase in respect of which each item of work has been carried out and against which the fee is being charged (and, as currently required, the time spent on the item of work) and liability for the fees will not be accepted until the fee note has been corrected (all subject to the above).