



## **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**  
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