NICHOLAS WOOLF & CO
SOLICITORS

INFORMATION FOR CLIENTS ON THE HANDLING OF CASES WHICH MAY INVOLVE COURT PROCEEDINGS

Handling your dispute with another party

We are committed to achieving a worthwhile, practicable and cost-effective outcome which is satisfactory to you. If we can do this without going to court, by negotiation, mediation or another form of dispute resolution, we will do so. We set out below the requirements and obligations of clients during dispute resolution so that you can understand what will be expected of you. By dispute resolution we mean, court litigation, arbitration, mediation or any other method of resolving disputes having a formal structure.

Most dispute resolution requires a considerable personal time contribution from the client (that is you). The time and expense of working on your own case and instructing your lawyer is unlikely to be recovered.

Cost benefit analysis

This sounds frightening and it can be! Dispute resolution is often described as 'an adversarial process' - two sides are in dispute. It is therefore unpredictable both as to outcome and cost. At the beginning and at regular intervals we will need to consider with you what you can hope to achieve by litigation, at what cost and what the likely net benefit may be to you. If we doubt that it makes financial sense for you to pursue the case, we will tell you.

Legal charges and expenses

From when you first instruct this Firm, whether or not you have signed our client care letter, you will be responsible for the full amount of your own legal costs, that is, our charges and expenses (or any balance that may still be due on those costs and expenses, taking into account any payments made by you or received on account from you) and that responsibility will apply throughout whether you win or lose the case. Even if a court orders your opponent to pay your costs, you cannot rely on being repaid by your opponent. There are many reasons for this, some of which are set out below.

- In ordinary litigation the usual principle is that the loser pays the winner's costs, and the court which decided the case may make an “Order for Costs” reflecting this principle. However, this principle is not straightforward. For instance if you have only won part of your claim you might only be awarded your costs of the part of the claim on which you succeeded, and have to pay your opponent's costs of the part of the claim you did not succeed on.

- An Order for Costs is an entirely discretionary remedy and it cannot be reliably predicted how the court will exercise its discretion.

- Even if the court makes an Order for Costs in your favour it is highly unlikely you will recover all or be awarded anything near the costs you have actually spent or incurred with us. This is because most Cost Orders are awarded on what is called a standard basis. If there is some culpability or abuse on the part of the party who has to pay, costs are sometimes ordered on the more generous indemnity basis, however even on this basis there is likely to be a reduction in the amount awarded. As a rule of thumb, if costs are awarded on the standard basis, the winning party will only normally be able to claim back from the losing party between 50% to 80% of the costs that they have incurred with their solicitor, and up to 90% of such costs where costs are awarded on the indemnity basis.

- On both the standard and indemnity bases, the court will not allow costs that have been unreasonably incurred or that are unreasonable in amount. On the standard basis, which is most common, the court will also only order costs that are proportionate. When considering whether costs are proportionate, the court will have regard to the sum in issue in the proceedings, the value of any non-monetary relief sought, the complexity of the litigation, any additional work caused by the paying party and any wider factors involved in the proceedings

such as reputation or public importance. Costs that are disproportionate will not be recoverable even when they are reasonably or necessarily incurred. However, the fact that the legal costs exceed the amount of money or property in dispute is not in itself a reason for the court to determine that the costs are disproportionate as it is not unusual for costs to exceed the amount of the claim. A solicitor is not required to conduct litigation at rates which are uneconomic and therefore in a modest claim the proportion of costs and relative value to the amount of the claim is likely to be higher than in a large claim.

- During litigation, the court has power to control and scrutinise costs and refuse to allow a particular step if the court feels the benefits do not justify the costs of taking it. The court is entitled to make Costs Orders reflecting the parties' conduct if their actions have not been cost efficient and the court may also introduce a costs cap or refuse the costs of expert evidence. The courts have greater control over high-value cases involving complex issues and trials lasting for a number of days ("multi-track claims") since 1st April 2013, known as "costs management" powers. We are happy to discuss this in detail with you if it affects your case.

- You may also be entitled to claim interest on any costs awarded to you from the date when the costs order made in your favour becomes payable. The interest allowed is currently 8% per annum, although the court will often award a lower rate.

Costs Assessment

- If not agreed by the parties, costs are quantified in an assessment process. Costs Orders may be subject to a detailed assessment by the court so that any payment may be delayed by a long time and further expenses in an intricate court process known as Detailed Assessment (please see Detailed Assessment Procedure below).

- Judges may, however, make assessments themselves or orders for payment on account. Payments will generally need to be paid within 14 days of the date of the Order. This is often referred to as a "pay as you go".

- Costs Orders can be made not only at the end of trial but can also be made at the end of any interim hearing. Where costs are awarded or ordered after an interim hearing, they are usually payable by the losing party to the winning party within 14 days of the award or order.

- If you need to apply for time to pay costs awarded against you then an application needs to be made to the court supported by a detailed witness statement as to your means so as to include all your assets and liabilities, income and expenditure. There is no guarantee such an application will succeed.

- As indicated above, if an Order for Costs is made by the court in your favour against another party that party may not have the money to pay you, or could become insolvent, or the other party may only have assets which are not traceable.

- Enforcement of an Order for Costs may involve you in further cost and enforcement may not be successful or if successful may involve you in further expense which is not recoverable.

- If your opponent is publically funded (legally aided) and loses and/or you are awarded costs from that party, you may not be able to recover any of your own legal charges and expenses.

- If you are unsuccessful with your case, then in addition to having to bear all of your own legal costs and expenses the probability is that you will be ordered to pay most of the legal costs and expenses incurred by your opponent on the same standard or indemnity basis mentioned above plus, if applicable, interest on those costs in a similar manner to what has already been set out above, as well as having to be responsible to us for our costs and expenses. This will not be the case if you are bringing a claim involving a personal injury element. In that case, a

system of "One-way Qualified Costs Shifting" applies which means that while if you win your opponent will pay your costs, if you lose you will not have to pay your opponent's legal costs.

- "Ordinary" litigation does not include Tribunals, mediations, arbitration or claims of less than £10,000 where generally there may be no orders as to costs but there are many exceptions.

Detailed Costs Assessment Procedure

As stated above, Multi-Track claims are, as of 1st April 2013, subject to the court's costs management powers. These powers have been introduced to try and reduce the costs of detailed assessment. However it has introduced complex and expensive interim costs procedures which involve assessing the costs at certain stages of a case, with the consequence that in the event of underestimates, costs may not be recoverable. We are happy to discuss this with you in further detail. If however you still have to go through the detailed assessment procedure, then it usually means you having to instruct someone known as a Costs Draftsman to prepare a bill of costs to be sent to your opponent.

- You would have to pay a separate amount for the Costs Draftsman's fee for preparing that bill which is usually in the region of 7% plus VAT of the profit costs claimed by you in the bill drawn up by the Costs Draftsman. You should be entitled to claim back this fee from your opponent. We would generally send a copy of the bill to your opponent's solicitor to see if the bill could be agreed or if a negotiated settlement of it can be reached prior to the bill being sent to the court.

- If no agreement of settlement could be reached, then we would submit the bill to the court for a Hearing to take place for the court to determine/assess whether you are entitled to all the money that is claimed in the bill and if not, then how much of the bill should be allowed. In order to do this, we would have to pay a separate assessment fee to the court ranging between generally £325 to £5,455 depending on the amount of costs being claimed. Subject to certain exceptions, you would usually be entitled to claim back this fee from your opponent as well.

- You will also be responsible for paying the charges and expenses of seeking to recover any costs, charges and expenses that the court orders the other party to pay to you (in particular, the costs, charges and expenses that you may be awarded at the conclusion of this matter, be that at the Trial or final Hearing or following a settlement reached before any Trial takes place).

- If you are successful and the costs are paid by the other party, you will be able to claim interest on those costs from the date when the Costs Order become payable. If this interest is paid by the other party, then we will retain it in relation to any of our costs and expenses which have been asked for and not paid on account by you. However, we will account to you for such interest to the extent that you have paid our charges or expenses on account. The interest allowed is currently 8% per annum.

Withdrawing or discontinuing your claim after the issue and service of Court proceedings

If you are the Claimant in court proceedings (and sometimes in Arbitration proceedings and mediation) (including in relation to a Counterclaim) and withdraw or discontinue your Claim (or Counterclaim, as the case may be) after issue and service of your court proceedings and before any Trial has taken place, then you will normally only be able to do so if you pay the costs of your opponent up to the date of withdrawal or discontinuance such costs to be assessed by the court if they cannot first be agreed with your opponent. You may make an application to the court that your opponent should pay part of the costs if you withdraw, however unless there has been misconduct or deception on your opponent's behalf it is unlikely the application would be successful.

Use of barristers and other third parties

We may recommend to you that some of the work on your case be handled by 'counsel' (a barrister). If so, we will seek your agreement. We will need a payment on account towards or for counsel's fees from you before counsel is instructed to do any work.

We may also need to have work done by other third parties on your case. These might include expert witnesses to prepare reports and Costs Draftsmen to prepare costs estimates and the detailed forms of bill required by the court as described above. Normally, we would expect to obtain your agreement to instruct such people but an urgent situation might prevent it. We have to reserve the right to require that you retain the expert(s) directly and assume responsibility for their fees, and to require a payment from you on account of the fees of any third parties. Where we instruct a third party (including an expert) on your behalf it is our usual practice to make sure that you pay to us sufficient monies to cover their fee, before we do so. We reserve the right to refuse to instruct such third parties on your behalf in the event that we have insufficient monies on account to pay for them.

Legal Expenses Insurance/Legal Aid (also known as Public Funding)

What is set out above assumes that you have neither any form of legal expenses insurance nor qualify for Public Funding (formerly Legal Aid). This is also dealt with in Part 7 on page 5 of this Firm's Terms and Conditions of Business document to which you are referred to separately.

With regard to legal expenses insurance, if you do have such cover, whether as a standalone policy, or as an "add-on" to any professional indemnity policy, or directors and officers insurance policy or to any building, contents or motor insurance policy or the like that you may have, then you must let us know in writing. In that case, what we have set out above would still be the same, except that:

(i) we may not require any costs on account from you depending on the circumstances as these maybe covered by your insurers in full. You should bear in mind that (a) there may be any excess you have to pay under the terms of the policy and (b) there may be a limit to the amount of costs cover that insurers provide to you under the policy.

(ii) if you lose the case, then it may depend on the terms of the insurance policy as to whether your insurers would cover any costs of your opponent that you were ordered to pay and again, any such cover may be subject to a monetary limit by your insurers.

If you do not have relevant legal expenses insurance, it may be possible to apply for what is known as after the event legal insurance whereby you can take out an insurance policy in relation to a particular court or arbitration action or a dispute anticipated or which has begun and/or is about to begin, to cover for your opponent's costs (and if you wish, your own costs) in the event that you lose the case.

The premiums can be quite high as they tend to be based on a percentage of what the anticipated costs (of the other side and/or our own costs) are likely to be all the way to trial. It should be borne in mind that as of 1st April 2013 the premium is no longer recoverable from the losing party even in the event that you win your claim.

You will still be responsible for paying our charges and expenses to us as if you had no insurance. If you are interested in taking out this type of policy, then it is your duty to inform us in writing so that we can make enquiries. Verbal enquiries will not be accepted.

Public Funding (legal aid) in civil cases became more limited from 1st April 2013, when there were substantive cuts to the scope of cases for which a public funding could be obtained. There are also strict eligibility criteria to be met, including means testing. As a result, it is unlikely that you would obtain public funding, but I am happy to discuss this with you further. However, this Firm does not hold a legal aid franchise and as such carries out no publically funded work.

It may be possible, if you are a member of a trade union, to obtain legal costs funding from your union. Trade unions typically provide legal advice and support to their members, often for no charge, depending on the nature of the dispute. However, trade union funding may be restricted to certain types or classes of dispute and there may be costs attached to the provision of funding.

Conditional Fee Agreements and Damages Based Agreements ("no win no fee")

You may have heard of lawyers acting under "no win no fee" agreements. There are two main types of such agreements.

A conditional fee agreement (CFA) for a client's fees and expenses, or any part of them, to be payable only in specified circumstances. Generally, if the client loses the case, it will not be liable to pay for the fees and any expenses that are subject to the CFA (the conditional fees). If the client wins the case, it will be liable to pay all fees and expenses, including the conditional fees, and a "success fee". Prior to 1st April 2013, the success fee was recoverable from the losing side but it must now be paid by the client.

A damages based agreement (DBA) is a type of contingency fee agreement between where the client will make a payment to the lawyer determined as a percentage of any compensation received. If the case is unsuccessful, the lawyer is generally not entitled to be paid. Since 1st April 2013, DBAs can be used in almost all contentious business except for matrimonial matters.

Law firms have no obligation to enter into CFAs or DBAs and it is not the policy of this Firm to enter into such agreements.

Information and documentation

We will have to ask you for information to help us run your case. Time limits in litigation mean that it is important that you do not delay in supplying that information to us. The civil litigation reforms in April 2013 (Jackson Reforms) introduced a new culture to the courts which has seen much less tolerance of delays and breaches of court orders and time limits. This has resulted in more sanctions being imposed for breaches of the CPR and failure to comply with orders. Therefore any delay in meeting a court deadline, for example supplying documentation, is likely to result in costs sanctions. Case law following the Jackson Reforms, in particular *Mitchell v News Group Limited Newspapers* [2013], stress that relief from costs sanctions will only be allowed for trivial breaches where the application for relief is made promptly or where there are good reasons for the default outside of the control of the party. It can therefore not be stressed enough that you must comply promptly with all court orders and deadlines. In addition, it is vital that you tell us if you think that the information is not complete or is inaccurate in any way.

The court rules which lawyers and their clients have to comply with are strict about anything which might be evidence in the case. All paperwork, records and notes, however damaging to your own case or commercially sensitive to your business, must be kept safely by you or us and made available to the other side: the only exception involves the legal advice you receive from us. The rule of "disclosure", as it is called, requires you to satisfy the court and sign a certificate that you have conducted a reasonable and proportionate search to locate all documents which could be relevant. This includes electronic documents. There are penalties and sanctions for failure to do so.

Confidentiality

The partners and staff of this Firm must not reveal confidential information about you or your case to other people. There are certain statutory exceptions to this general rule.

For instance, if someone is helping to fund your case, such as an insurer or your file is being inspected Lexel or other regulatory bodies we may be obliged to reveal details of your case to them. They may have the right to call for and inspect your file, perhaps to check our quality standards. It may also be necessary to allow files to be inspected by accountants or others for audit purposes or to comply with regulatory requirements. We have to explain these possibilities to you but if it did occur, we will ensure compliance with our obligation to maintain the confidentiality of your affairs to the maximum possible extent.

More particularly, if you have committed an offence in breach of the Proceeds of Crime Act 2002 ("the Act") we may in certain circumstances be bound to report this to the NCA (National Crime Agency) or other relevant authority. Such matters would include the obtaining of money by criminal means, or even failing to make the appropriate tax returns in respect of your income or capital to the Inland Revenue.

The provisions of the Act in reality apply to all matters upon which a solicitor is instructed. These, however, have been mitigated in most litigation matters. That being said, the Act's provisions have had a great impact in matrimonial cases.

In matrimonial cases, the client has an enhanced obligation to give full and frank disclosure of the financial and personal circumstances. The Act creates a number of offences relating to the proceeds of crime, which may include making it a criminal offence for you to enter into a financial settlement with your husband/wife/partner if you know that any income, capital or property of whatever nature which you and/or your husband/wife/partner receives or retains as part of the settlement represents the proceeds of crime. The proceeds of crime are any money/property/asset which has arisen as a result of any crime. The proceeds of crime include, for example, monies (however low in value) saved as a result of tax evasion or benefit fraud whether that money has been saved or spent.

If your solicitor becomes aware of or suspects the existence of the proceeds of crime in your case (whether from you or any other person) in certain circumstances, in order to enable the solicitor (or any other solicitor) to continue with your matter without you and your solicitor committing an offence under the Act, your solicitor must report the irregularity to NCA. NCA will then give or withhold permission for your solicitor to continue with the case. Even if NCA gives permission for the case to continue, it can pass the information received to any relevant body such as the Inland Revenue and an investigation may take place at any time in the future.

It follows from the above that if you have any concerns about irregularities in your financial position or if applicable that of your husband/wife/partner, you may wish to seek specialist advice from us with a view to correcting those irregularities before the financial issues arising from the breakdown of your marriage/relationship begin to be resolved. You are warned that accountants and other professionals are also required to comply with the provisions of the Proceeds of Crime Act but unlike solicitors, in some cases, do not have the benefit of legal professional privilege.

If your own financial irregularities or those of your husband/wife/partner are not corrected before you consult a solicitor and/or you do not tell your solicitor the correct position about your financial affairs or those of your husband/wife/partner, if your solicitor becomes aware of such irregularities during the course of the matter, in certain circumstances your solicitor and you are required by the Act to disclose those irregularities to NCA. Further, in certain circumstances your solicitor may have to make a report to NCA without telling you that he has done so. Accordingly, one consequence of not telling your solicitor about irregularities in your family's financial circumstances would be to find that your solicitor is required to inform NCA of the correct position without discussing the matter with you. In rare circumstances, one consequence of this could be that you resolve your financial relationship with your husband/wife/partner only to find that you then become subject to an Inland Revenue investigation and/or criminal proceedings.

The obligations which your solicitor has under the Act can in certain circumstances override the duty of solicitor/client confidentiality.

If any fee earners engaged in your case spend time in addressing issues arising for you from the Act, that time will be charged in the same manner as any other work undertaken in relation to your case.

The Dispute Resolution process

court proceedings are governed by what are known as the Civil Procedure Rules. They are sometimes referred as "Woolf reforms". The Civil Procedure Rules took effect in April 1999 which were intended to change the whole culture and conduct of litigation. We continue to support their aims and will be asking you to help us to work towards them. The process includes the following:

- The issue of court proceedings is to be seen as the "last resort". Attitudes such as "we will see you in court" or "issue the writ first and talk later" will not be tolerated by the courts. Deliberate delaying tactics should be spotted and stopped.

- The court will be taking an early view of the strength of your case and the proportionality of the legal costs compared to the benefit of the potential outcome.

- Pre-action "protocols" require a 'cards on the table' approach with information and evidence being exchanged at an early stage. The use of joint instructions to a single expert will be expected whenever possible. Parties will be expected to explore every reasonable approach to negotiation or mediation of the dispute. A failure to do so can be punished by the court when it comes to orders for payment of legal costs. Settlement offers (known as "Part 36 offers") require careful discussion between lawyer and client and can have considerable financial significance. As of 1st April 2013 there can be significant financial sanctions for unreasonable refusal of a Part 36 offer.

- All of these steps can help to avoid a long, drawn out court case but they do mean that investigation of the facts and evidence and analysis of the law has to be done more fully and earlier than previously and this does "front-load" the legal charges for which you are responsible.

- If court proceedings have to be issued, the relevant judge effectively takes control of how the case is to be conducted. Some have more involvement in this 'case management' process than others. They have wide-ranging powers and their decisions are bound to be unpredictable. What is clear is that they will enforce time limits rigidly and penalise conduct of either side if it is felt to be unreasonable or out of proportion to what is at stake.

- As mentioned earlier, where interim applications are made to the court, the judge will at the end of the application normally assess the costs of that hearing, and order that the losing party to the application pay the winner of the application within 14 days. However desirable it may seem to you to make interim applications to the court, we will carefully consider them with you so that you can decide whether you are prepared to accept the possible risk in making such applications of such a costs order being made against you if you lose (and which will be in addition to the costs and expenses that you will have incurred with us in making the application).

- This approach of caution and co-operation may conflict with the wishes of some to 'bluff and bully'. In advising you, we will have to warn you of the results of incurring the court's displeasure - and perhaps being prevented from continuing with your case as you would wish.

- Business clients need to appreciate that there will be more involvement by them at an earlier stage, for example, in searching for documentation and verifying the truth of documents and of witness statements. You, with us, will have to meet strict timetables or risk your case being struck-out by the court. You may have more pressing commercial problems to which you feel you should give priority over our need for help from you on litigation involving a dispute from the past. The courts will not allow us to buy you time. If you get started on the Dispute Resolution process - as claimant or defendant - you must commit yourself to it.

Do not view all this as 'doom and gloom'. The Dispute Resolution process offers the prospect of speedier resolution of disputes with tighter control of the legal costs involved. We welcome that as much as you will but it does place obligations on both lawyer and client to comply with the rules, even if some of them seem unwelcome at times.

We hope that this note is helpful and we will be happy to explain any aspect more fully to you. In the meantime, we look forward to working with you and towards a satisfactory outcome.

NW & Co Ltd

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