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Our professional rules may be accessed at www.sra.org.uk. The contact details for the Solicitors Regulation Authority are The Cube, 199 Wharfside Street, Birmingham, B1 1RN (postal address); contactcentre@sra.org.uk (email); 0870 606 2555 (telephone).

Dispute Resolution Additional Terms

Funding our fees and disbursements

Where a retainer relates to dispute resolution, you should consider carefully whether you might be entitled to funding from a third-party to pay the fees and disbursements that you incur with the firm. If you believe that you may be entitled to such funding, for example, because you have appropriate legal expense insurance cover, (possibly as part of a household, motor or other insurance policy) the onus is on you to check the position at the outset of the retainer and/or bring this to our attention.

Insurance

It may be possible, in appropriate cases, to mitigate the financial risk of litigation by taking out an “after the event” (ATE) insurance policy to protect you from the effects of an adverse costs order requiring you to pay your opponent’s costs. In very limited circumstances it may be possible to extend cover to include your own costs and disbursements. However, if you succeed in the litigation, you will not be able to recover the insurance premiums from the other party and you will be liable to pay them in full.

Definitions

In Part A the term “**tribunal**” includes the High Court, County Court, Technology & Construction Court, and an arbitration under the Arbitration Act 1996; however it does not include the Employment Tribunal and Employment Appeals Tribunal (which are covered in Part B), an adjudication governed by the Housing Grants, Construction and Regeneration Act 1996 (which is covered in

Part C), or the Upper Tribunal (Land Chamber) when it determines an application under section 84 of the Law of Property Act 1925 (which is covered in Part D).

PART A

Tribunal Control Over Costs

Once a dispute resolution procedure is started in a tribunal, the tribunal takes control of the dispute and has wide discretion to decide whether any party to the dispute should pay all or any part of the costs that another party to the dispute has incurred. The tribunal can assess the amount of costs which one party must pay the other, decide when the paying party must pay the receiving party and order the paying party to pay an amount on account pending assessment of the receiving party’s costs. The tribunal can order that a party pay any other party’s costs from or until a certain date only, costs incurred before the start of the dispute resolution procedure, costs relating to particular steps taken in the dispute resolution procedure, costs relating only to a distinct part of the dispute and interest on any such costs from or until a certain date, including a date before judgment is given by the tribunal.

The General Rule

The starting point is that costs usually "follow the event". This means that the party who is successful overall in the dispute is entitled to an order that the other party pay its costs of the dispute. However, the tribunal, in the exercise of its wide discretion, can and does make different orders, for instance where a party has:

- conducted itself unreasonably either before or after the start of the dispute resolution process;
- unreasonably pursued a particular aspect of the dispute;
- exaggerated its loss or damage; and
- failed to make any serious attempt either before or after start of the dispute resolution process to try and resolve the dispute.

Order for Costs

Where a party obtains an order for "costs", this does not mean that the paying party will have to pay all the money that the receiving party has expended in relation to the costs covered by the order. When the tribunal comes to assess a party's "recoverable" costs, it usually only orders the paying party to pay a proportion (typically between 65%-75%) of the money that the receiving party has actually expended on the part of the proceedings to which the costs order relates.

Summary Assessment

At the conclusion of an interim application (or a trial or hearing lasting not more than one day) the tribunal usually carries out a summary assessment of the receiving party's costs and orders the paying party to pay the assessed amount within a specified period, normally 14 days. If the paying party fails to make the payment within the specified time, the tribunal may prevent the paying party from prosecuting or, as the case may be, defending the dispute until the payment is made; alternatively, the tribunal may order that judgment be entered against the paying party.

Detailed Assessment

At the conclusion of a trial lasting more than two days, the tribunal will generally order that there be a detailed assessment of the receiving party's costs. The tribunal may, pending the detailed assessment, order the paying party to pay the receiving party a sum

on account of its "recoverable" costs. We will advise you of the procedure applicable to a detailed assessment of costs should the need arise.

Payment of bills where there is a costs order

Where you are the receiving party, we will do what we can to ensure that you recover as much of your outlay on costs as possible. However, as our client you are always responsible for paying any bill that we render by the due date in full and without deduction or set off. Even though you may have the benefit of a costs order entitling you to be reimbursed all or part of the fees and disbursements covered by our bill, you must still pay our bill.

Notes on Payment

You must appreciate before you start a dispute resolution process that:

- even if you are successful in the dispute and obtain a costs order, your opponent (as the paying party) may not have the financial means to pay your recoverable costs;
- where your opponent is legally-aided, it is most unlikely that you will recover any of your costs, even if you are successful; and
- if you are unsuccessful in the dispute and are ordered to pay your opponent's costs, you will be obliged to pay your opponent's recoverable costs in addition to the fees and disbursements that you incur with the firm.

Offers (Basic Rule)

If the Defendant makes an offer to resolve the dispute (either before or after the start of a resolution process) which the Claimant accepts, the Claimant will usually be entitled to its costs upon acceptance. Where, however, a Defendant's offer to resolve the dispute is rejected and, at trial, the Claimant obtains a judgment that is no better than the offer, the tribunal will usually make a "split" costs order. The Claimant will usually be entitled to its recoverable costs up to and including a period ending 21 days after the date of the offer; and the Defendant will usually be entitled to its recoverable costs from that date onwards. The Claimant can also make an offer to the Defendant to resolve the dispute. If, during the course of a dispute resolution process, you receive an offer from your opponent, we will give you further detailed advice at that time.

Interest on costs

A receiving party is entitled to interest on its recoverable costs from the date that the costs became payable (usually the date upon which the tribunal hands down judgment following a trial, or, in the case of an interim application, 14 days thereafter) until the date of payment at the judgment rate (currently 8%).

PART B

This paragraph relates to disputes that fall to be determined by the Employment Tribunal and Employment Appeals Tribunal.

The General Rule

Each party bears its own costs. This means that, whatever the outcome of the dispute at trial, no party is entitled to a contribution towards its costs from its opponent. There is, however, one exception to the general rule. Where, in the opinion of the Employment Tribunal or Employment Appeals Tribunal, one of the parties has acted vexatiously, abusively or unreasonably in starting or conducting the dispute resolution procedure, it will consider whether the offending party should make a contribution towards its opponent's costs of up to £10,000.

PART C

This paragraph relates to disputes referred to adjudication pursuant to the Housing Grants, Construction and Regeneration Act 1996.

The General Rule

Each party bears its own costs. This means that, whatever the outcome of the adjudication, no party is entitled to a contribution towards its costs from its opponent. There is, however, one exception to the general rule. This is where the parties have given the adjudicator power to order one of the parties to pay all or part of its opponent's costs. Further, although the general rule is that both parties are jointly and severally liable to pay the adjudicator's fees and expenses, the adjudicator has power to decide (as between the parties) what proportion of his costs and expenses each party should bear.

PART D

This paragraph relates to an application in the Upper Tribunal (Lands Chamber) under section 84 of the Law of Property Act 1925.

The General Rule

On an application under section 84 of the Law of Property Act 1925 to discharge or modify a restrictive covenant affecting land, the Upper Tribunal will apply the following principles when deciding whether any party to the application should pay all or any part of the costs that another party to the application has incurred.

Where, as a preliminary issue, an applicant successfully challenges an objector's entitlement to object to its application, the objector is normally ordered to pay the applicant's costs of the preliminary issue. Where an applicant unsuccessfully challenges an objector's entitlement to object to its application, the applicant is normally ordered to pay the objector's costs of the preliminary issue.

As regards the costs of the substantive application, because the applicant is seeking to remove or diminish particular property rights that the objector has, unless they have acted unreasonably, an unsuccessful objector to an application will not normally be ordered to pay any of the applicant's costs. An unsuccessful applicant will normally be ordered to pay the costs incurred by an objector unless the objector has acted unreasonably.

Agreement of Terms

If these terms are acceptable, we ask that you sign and return one copy of them. Our appointment shall continue in accordance with these terms until they are revised by mutual agreement or we cease to act on your behalf. These terms shall also apply to any future engagement unless we agree different terms. If they have not been signed, by continuing to give instructions to us after receipt of these terms you will be deemed to have accepted that IBB's Terms of Business and these terms will apply to the retainer.

Signed

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for The Client

Dated.....