

FRANCHISING DISPUTE RESOLUTION ADDITIONAL TERMS

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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).

These terms are subject to change from time to time and are correct as at 1 October 2023.

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.

ALTERNATIVE FUNDING

If you already have the benefit of a legal expense insurance policy, please let us know.

If not, enquiries can be made as to the availability of suitable cover, which can be sought at any stage, although premiums typically rise as a case proceeds.

On the information available to me I do not think this is a case which would attract such insurance because the financial resources of the proposed opponent and the size of the claim and the likely merits would mean insurers are unlikely to be interested.

Furthermore, we are very unlikely to consider entering into a Conditional Fee Agreement for our own costs.

In a suitable case, it may be possible to have the costs and disbursements funded by a third party in exchange for a share of the damages. In our experience these funding arrangements tend to be only available in multi-million-pound claims.

DEFINITIONS

The term "tribunal" includes the High Court, County Court, IPEC and UK IPO Registry, and an arbitration under the Arbitration Act 1996.

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. In certain cases, e.g. intellectual property disputes and cases with up to £100,000 recoverable costs are fixed.

Fixed recoverable costs (FRC) are set amounts that the successful/receiving party is entitled to recover from the unsuccessful/paying party. From 1 October 2023 FRC applies to the vast majority of claims (issued on or after 1 October 2023) in the fast track (for claims seeking recovery of damages between £10,000.01 and £25,000) or the new 'intermediate track' (for 'simpler' cases seeking recovery of damages up to £100,000). The amount of costs recoverable will vary depending on at what stage your claim is settled, unless determined by the Court at a Trial and the complexity of the matter. Further details can be found here:

https://www.justice.gov.uk/data/assets/pdf_file/0011/177644/frc-public-notice-updated.pdf.

The extension of FRC from 1 October 2023 means that regardless of the costs actually incurred by you, you may only be able to recover fixed costs from your opponent in most fast track and intermediate track cases. However, you will remain liable for the costs incurred by us on your behalf, irrespective of any shortfall following an award under the FRC regime. Your solicitor will provide you with costs estimates at relevant stages of your matter, but please contact them if you would like to discuss this further.

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.

Dated

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%).

AGREEMENT OF TERMS

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.

Where we have accepted instructions on behalf of you and your company you are jointly and severally liable for our costs and disbursements and you agree these terms on your personal behalf and for your company.

Signed
for The Client