

Handout 1

LITIGATION

3.1 S.150 Letter (Litigation)

CLIENT: []

CASE: []

Dear [name]

Introduction¹

I confirm that we would be pleased to act for [you/Client] in relation to this case. This letter, together with its schedules, sets out information on our proposed legal costs and information on how we will conduct our business with you as your solicitors.

Our data protection notice is also attached.

These documents are important. Please read them carefully and please let us know if you have any questions or concerns.

1. Scope of Work²

You have asked us to [here set out the work that the firm will be conducting for the client including specific objectives]. Please see attached at Schedule 1 an outline of the work to be done in each stage of your case and costs, likely costs and basis of costs involved, including whether we are likely to ask a barrister or other service provider to provide their services to assist your case.³

2. Legal Costs⁴

You are responsible for the payment of your legal costs.

- 2.1. We are required to certify certain information in relation to your legal costs and, for each stage of your case, provide an outline of work to be done and information on the legal costs. That information is set out in Schedule 1.

¹ For a 'becoming practicable Notice' (s.150(3) or New Factor Notice (s.150(5)), replace the introduction with the following: - "Introduction – This letter is for the purposes of giving you updated information in relation to the legal costs in this case. All other terms in our letter dated [] continue to apply. This letter includes important information. Please read it carefully and please let us know if you have any questions."

² Practitioner should consider dealing with the following additional points but they are not legal requirements under s.150 (see the 2020/2021PII Common Proposal Form question on Engagement Letters):-

- What your firm will not be doing for client.
- Important dates and implications if these are missed.
- What you expect your client to do and by when.
- How long the case is likely to take overall.
- Fee sharing or referral commissions and how accounted for.
- Current terms and conditions of business.

³ S.150(4)(e)(i).

⁴ Remember that the definition of Legal Costs is very wide. It captures fees, charges and disbursements and other costs incurred or charged in relation to contentious and non-contentious business. Disbursements means a fee or a cost payable including the fees of a barrister or expert witness. For the full definition see s.138 LSRA.

2.2. [Estimated Total]⁵

3. Basis of calculation of our fees

3.1. Features of your case taken into account in calculating our fees.

[Alternative A (the Schedule I LSRA criteria)]

[We use the time spent on your case as a guide in deciding the appropriate fee to be charged. However, it is only one of the elements that are taken into account.] Our fees are calculated on the following basis:

- (a) the complexity and novelty involved in the legal work;
- (b) the skill or specialised knowledge relevant to the matter which we have applied to the matter;
- (c) the time and labour we have reasonably expended on the matter;
- (d) the urgency attached to the matter by the client and whether this required us to give priority to that matter over other matters;
- (e) the place and circumstances in which the matter was transacted;
- (f) the number, importance and complexity of the documents that we were required to draft, prepare or examine.
- (g) where money, property or an interest in property is involved, the amount of the money or the value of the property or the interest in the property concerned;
- (h) taking into account the limitation of our liability set out in this letter;
- (i) whether or not we have necessarily undertaken research or investigative work and,
- (j) if so, the timescale in which such work was required to be completed; and
- (k) the use and costs of expert witnesses, or other expertise engaged by us and whether such costs were necessary and reasonable.

[Alternative B (time costing only)]

Our fees are calculated by the amount of working time spent on your case by the relevant partner, solicitor, legal executive or other member of our team at the rates set out below. Those rates reflect the skill or specialised knowledge of the relevant legal practitioner relevant to your case and take into account the limitation of our liability set out in this letter.

3.2. Hourly rates

Our rates per hour are as follows: -

Partner	€{•}
Senior Associate	€{•}
Associate	€{•}
Legal executive	€{•}
Trainee solicitor	€{•}

Hourly rates may change over the course of a case. An individual's hourly rate may change if they are promoted.

4. VAT

All fees and general charges payable by you are exclusive of value added tax ("VAT") which is, at present 23%. Any amount of VAT set out in this letter is calculated at that

⁵ This clause is not a s.150 requirement. Optional.

rate. However you are required to pay VAT at the rate that applies at the date of the issue of an invoice, which may be higher or lower.

5. [Monthly invoicing]

[Unless your case is of short duration, we will issue invoices to you on a monthly basis. Our invoices are payable within 15 days of receipt.] [We reserve the right to charge interest at the rate of ({•})% for any outstanding fees and charges.]⁶

6. [Payment on account of fees or charges]

We may ask you to make a payment on account of fees or charges. Any payment on account will be credited against our final invoice for the work concerned.]⁷

7. Our obligation to update you on your legal costs

We are required to send you an update as soon as may be after we become aware of an issue that means that the legal costs in your case will be significantly greater than what is in this letter.⁸

8. Barrister, expert witness and other services costs⁹

Where feasible, we will not ask a barrister, expert witness or other service provider to assist with your case without first:

- (a) finding out how much he or she is likely to charge or how he or she charges;
- (b) giving you this information on their charges; and
- (c) being satisfied as to your approval.¹⁰

9. If you withdraw from your case and your case is discontinued¹¹

If you withdraw from your case and your case is discontinued after it has started or if you decide not to continue to defend your case, you are likely to be responsible for both our costs and the reasonable legal costs incurred by the other parties involved in the case up to the time the case was withdrawn and discontinued.

The consequence of your withdrawal from litigation and its discontinuance are the following:

- where applicable, the remedy you are seeking may not continue to be available;
- legal limitations on making a claim may apply and you may be prohibited from pursuing your claim on the basis that too much time has elapsed;
- the other side may try to dismiss the case for failure to progress the case;
- your case may not be able to be continued or progressed where too much time has passed;
- the remedies sought from the other side may not be available;
- the other side may obtain judgment against you;
- the other side may secure an award of damages against you; and
- [other consequences, as appropriate.]¹²

⁶ This clause is not a s.150 requirement. Optional.

⁷ This clause is not a s.150 requirement. Optional.

⁸ s.150(4)(d) LSRA.

⁹ s.150(4)(e)(ii) LSRA.

¹⁰ Firms may choose to include a mechanism to obtain approval (approval may be express or implied).

¹¹ s.150(4)(e)(iii) LSRA.

¹² s.150(4)(e)(iii) LSRA.

10. Paying our legal costs and the legal costs of the other parties involved in your case¹³

10.1. Costs of other parties

If you lose your case, in whole in or part, a court is likely to order you to pay part or all of the legal costs relating to your case. This may include the costs of the other parties to the case. As part of a settlement, you may also agree to pay the legal costs of other parties involved in your case.

10.2. Your legal costs

You are responsible for all of the legal costs (including our fees) that we incur on your behalf regardless of the outcome of your case. If you win your case, we will ask the court for an order asking the other side to pay your legal costs. That order for costs may not be sufficient to discharge all of the costs that we incur on your behalf and there may be a shortfall payable by you. If you lose your case, in whole in or part, we may not be able to recover any of your legal costs from the other side.

11. Limitation of liability

Our liability to you arising out of this letter and our solicitor and client relationship will be limited to [the higher of (a) the minimum amount of the professional indemnity insurance cover required to be maintained by us under Irish law; or (b) €{●}.]¹⁴ Our liability will be limited to that extent for breach of contract, breach of statutory duty, negligence and otherwise. Nothing in this letter shall limit our liability to you where, by law, liability may not be limited, such as liability relating to fraud or fraudulent concealment. References to our liability include any liability of this firm and of its past, present and future partners and employees.

12. Time to consider

To give you time to consider this letter, we shall not provide any legal services in relation to your case for [{●}] [number up to 10][working] days unless—

- (a) you confirm that you wish us to proceed with your case,
- (b) [in our opinion, to not provide our legal services would breach a statutory requirement or the rules of court or prejudice your rights in a way that could not be later remedied,
- (c) we are required to provide legal services to you by court order, or
- (d) a notice of trial has been served or a date has been fixed for the hearing of your case.]¹⁵

When you provide us with any instructions or when you return a signed copy of this letter, you confirm (a) that you wish to proceed and (b) your agreement to the terms of this letter.¹⁶

¹³ s.150(4)(e)(iv) LSRA.

¹⁴ See practice note [https://www.lawsociety.ie/Solicitors/Practising/Practice-Notes/Limitation-of-a-Solicitors-](https://www.lawsociety.ie/Solicitors/Practising/Practice-Notes/Limitation-of-a-Solicitors-Liability1/?filters=q%20of%20liability&location=&category=&area=#.X8AG4s37SUK)

[Liability1/?filters=q%20of%20liability&location=&category=&area=#.X8AG4s37SUK](https://www.lawsociety.ie/Solicitors/Practising/Practice-Notes/Limitation-of-a-Solicitors-Liability1/?filters=q%20of%20liability&location=&category=&area=#.X8AG4s37SUK)

¹⁵ s.150(4)(f) LSRA.

¹⁶ Practitioners may wish to include the following:

- a clause requiring receipt of anti-money laundering compliance documentation prior to commencement of work on the case.
- a clause putting an expiry date on the letter offer to provide services.

13. [Use of e-signatures and email]¹⁷

- 13.1. You and we each consent to the use by the other of e-signatures on:-
- (a) this letter.
 - (b) any other agreement between us where the use of the e-signatures is permitted by law.
 - (c) on any bill of costs provided by us to you, and
 - (d) any notice or other communication requiring or intending to be signed.]
- 13.2. You and we each consent to the use by the other of email or any other form of electronic communication from time to time agreed between us for the delivery of any notice or communication between us.¹⁸

If you have any queries in relation to this letter, please contact [me][us][insert name of solicitor dealing with the transaction][the person responsible for the relevant work] and we will be happy to assist you. We thank you for your instructions.

I look forward to working with you.

Yours Sincerely

[Name]

[Title]

[Firm]

[This letter is transmitted by e-mail and is signed with an electronic signature.]

¹⁷ Electronic signatures may be accepted by firms for letters. A signed copy received by email suffices. Service providers such as Docusign, Hellosign and Adobe Sign will facilitate the signature process and can significantly reduce the time it takes to receive fully signed documentation. The Electronic Commerce Act 2000 requires that the counterparty consents to the use of an electronic signature. Some practitioners may want to include explicit reference to the signatory's consent to electronic signature in the letter however the Law Society's guidance is that this consent need not be in writing and implied consent may be inferred.

¹⁸ The use and risks associated with the use of email are commonly dealt with in terms of conditions. This is a clause that should be considered in light of any such terms and conditions.

I/We accept the terms set out in this letter and its attachments.¹⁹

Signed By: _____
Print name: _____
Date: _____
For and on behalf of : _____

SCHEDULE 1 – OUTLINE OF STAGES OF YOUR CASE AND DETAILS OF LEGAL COSTS²⁰

At any point in the proceedings, alternative dispute resolution might be pursued by the parties (for example mediation, arbitration, conciliation). In that event, some or all of the stages set out below may or may not be pursued.

Part 1: Outline of stages of your case:

Description of Stage	Outline of work	Likelihood that we will engage a practising barrister, expert witness or providers of other services
1. Pre-proceedings work.		
2. From commencement of proceedings to trial/settlement.		
3. During course of trial/settlement and up to determination.		
4. Post-trial		

Part 2: Legal costs details:

1. Pre-proceedings work
 - 1.1. Legal costs to date

¹⁹ Consider whether this acceptance block is to be retained. It is not necessary for the purposes of the LSRA that the client should sign an acceptance where the letter operates purely as a notice. An acceptance block is appropriate if it is desired that this letter should operate as a legal costs agreement ("LCA") for the purposes of s.150(1). A separate s.150 notice is not required if the LCA complies with s.150(2)(a), but the requirement (if relevant) to give a 'Becoming Practicable' notice ((s.150(3)) or a 'New Factor' notice (s.150(5)) also applies when an LCA is in place. For such additional notices, again, a signature block is not required. Of course, practitioners may, as a matter of risk management, prefer to get such notices accepted by the client. Where the acceptance by the client is not required, the acceptance block can be omitted.

²⁰ It is a s.150 requirement to provide the information contained within this schedule.

We certify that the following costs apply on this stage to date. [Our invoice is attached.]

Our fees	€{•}
Postage, phone and photocopying charges	€{•}
Travel expenses	€{•}
VAT	€{•}
Fees of people or businesses we obtain services from on your behalf [insert details]	€{•}
VAT	€{•}
[Outlay not liable to VAT Taxes and charges payable to: - [Government agencies (e.g., stamp duty)] - [Others]]	€{•}
Total	€{•}

1.2. Costs certain to apply

(a) Fixed Costs

We certify that the following fixed costs will apply to this stage:-

Our fees	€{•}
Postage, phone and photocopying charges	€{•}
Travel expenses	€{•}
VAT	€{•}
Fees of people or businesses we obtain services from on your behalf [insert details]	€{•}
VAT	€{•}
[Outlay not liable to VAT Taxes and charges payable to: - [Government agencies (e.g., stamp duty)] - [Others]]	€{•}

Total	€{•}
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(b) Costs where the amount to be charged is not fixed

The following costs will apply but are not fixed. We can tell you now the basis upon which they will be calculated.

[insert details of the costs to be incurred and the basis of calculation e.g. fees basis set out in paragraph 3 of this letter, stamp duty as x% of consideration agreed.]

1.3. Costs likely to apply²¹

[Alternative A (Some specified – not feasible to certify the balance)]²²

We certify that the following legal costs are likely to apply in dealing with this stage.

Our fees	€{•}
Postage, phone and photocopying charges	€{•}
Travel expenses	€{•}
VAT	€{•}
Fees of people or businesses we obtain services from on your behalf [insert details]	€{•}
VAT	€{•}
[Outlay not liable to VAT Taxes and charges payable to: - [Government agencies (e.g., stamp duty)] - [Others]]	€{•}
Total	€{•}

In cases of this kind, it is not feasible to let you know the other costs that are likely to apply to this stage at this time. Those other costs will be calculated on the basis set out in paragraph 3 of this letter.

[Alternative B (Where it is practicable to certify costs likely to be incurred)]

We certify that the following legal costs are likely to apply in dealing with this stage:

Our fees	€{•}
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²¹ Where we use 'apply', the legislation uses the term 'to be incurred'.

²² This paragraph presents three alternatives:

- Alternative A is appropriate where it is possible to specify some but not all of the legal costs.
- Alternative B is appropriate where it is possible to specify the costs likely to be incurred. If you have agreed to fix your costs and all of them are captured in paragraph 1.2, paragraph 1.3 should be deleted.
- Alternative C is applicable where the practitioner is not in a position to specify any of the likely costs.

Postage, phone and photocopying charges	€{●}
Travel expenses	€{●}
VAT	€{●}
Fees of people or businesses we obtain services from on your behalf [insert details]	€{●}
VAT	€{●}
[Outlay not liable to VAT Taxes and charges payable to: - [Government agencies (e.g., stamp duty)] - [Others]]	€{●}
Total	€{●}

[Alternative C (Not feasible to certify any of the costs)]

In cases of this kind, it is not feasible²³ to let you know now about the costs that will apply in this stage. However, we certify that our costs will be calculated on the basis set out in paragraph 3 of this letter.

2. From commencement of proceedings to trial/settlement

[Repeat 1.1-1.3 of Schedule 1 and apply to this stage of the proceedings to meet the requirements of s.150(4)(a) as well as s.150(4)(e)].

3. During course of trial/settlement and up to determination

[Repeat 1.1-1.3 of Schedule 1 and apply to this stage of the proceedings to meet the requirements of s.150(4)(a) as well as s.150(4)(e)].

4. Post trial

[Repeat 1.1-1.3 of Schedule 1 and apply to this stage of the proceedings to meet the requirements of s.150(4)(a) as well as s.150(4)(e)].

²³ Where we use 'feasible', the legislation uses the term 'reasonably practicable'.

SCHEDULE 2 – FURTHER INFORMATION ON COSTS²⁴

1. Time recording

Where our fees are based on our time working on your case, this refers to all time spent by us on the case on your behalf, for example at meetings or considering and drafting documents.

We record time in units of six minutes. We will charge for correspondence and calls and all other time spent in six-minute units, rounded up to the next unit.

2. Fixed Costs or Certificate of Likely Costs

(a) Where we have certified fixed costs or certified likely costs, we have done so on the following basis:

- i) we will receive full cooperation from you and all relevant personnel and other professional advisers;
- ii) the services are inside the scope of the work outlined in this letter; and
- iii) the information available to us is accurate and complete.

(b) If these assumptions are not met, then our legal costs may change.

(c) An estimate or statement of likely costs is not a commitment to carry out the engagement for a fixed amount. It is only an approximate amount and the costs incurred in this case will depend on the cases referred to in paragraph 3 (Basis of Calculation of our fees) of the attached letter.

(d) We give no assurance that our engagement will be completed within a fixed time frame.

3. Fees of people or businesses we obtain services from on your behalf

If a barrister, expert witness or other service provider is engaged on your behalf, we do so as your agent. Their fees and expenses shall be paid by you in addition to our own fees. We accept no responsibility for their work [in contract or tort].

Where we appoint businesses or services on your behalf, we may request payment in advance.

4. Negative interest rates and bank charges

Any money, which we hold for you, for whatever reason, will be held in a bank account separate from the firm's own money in accordance with obligations imposed on us by law and the Solicitors Accounts Regulations.

If we hold money for you and our bank imposes a charge (including interest) on that money, you agree that you will pay us the amount of that charge, when we ask you to do so, or that we may deduct it from money we hold for you. [Interest will be calculated on a daily basis for the period that we hold the money at the rate imposed by the bank.]

²⁴ This schedule contains optional provisions which practitioners may choose to insert.

[SCHEDULE 3 – TERMS AND CONDITIONS OF BUSINESS²⁵

[these should deal with issues such as payment terms, payments on account of legal costs, dispute resolution, client money held by the firm]]

[Attached: DATA PROTECTION NOTICE

[insert Data Protection Notice]]

²⁵ Delete if not included. These items are not s.150 requirements.