

# HAYWARDS SOLICITORS

## TERMS AND CONDITIONS OF BUSINESS

### 1. Introduction:

As with any other provider of services, it is important that we explain to you the way in which we will act for you as your solicitor. These terms set out the basis of us acting for you and override any other terms or conditions previously agreed between us. We pursue a plain English policy in this firm but if there is anything set out here which you do not fully understand, then please let us know and we shall clarify it for you.

### 2. Contract:

These terms and conditions together with the letter from the relevant lawyer accompanying these terms and conditions ("the covering letter") form the basis of the contract between this firm and yourself. We need you to sign the covering letter confirming that you have read, understood and accepted its contents and these terms and conditions before we start working for you. We are unable to work for you until this has been done. Once you sign the covering letter, the terms and conditions will be binding on each of us. No variation or alterations to the terms and conditions are acceptable unless previously agreed in writing between yourself and us.

We act for you in this transaction alone and third parties may not rely upon our advice to you. However, on occasions we shall also be acting for and will have a duty of care towards other third parties, such as building societies advancing loans to you for the purchase of property.

We are required by law to verify your identity and therefore need proof of identity in the form of passport, driving licence or similar document and also evidence of residence in the form of a recent utility bill.

### 3. Services:

We provide a wide range of legal services which we intend to be independent, objective, delivered efficiently and good value. We provide advice which may be relied upon by yourself, unless we qualify that advice in writing or state the uncertainty of the law concerning a particular matter. In such circumstances we would try to give you some indication of the relative merits of your case, but without guaranteeing results.

Our liability to you arising out of or in connection with any instructions will be limited to any award made by any relevant court, tribunal or board in the absence of agreement and will take into account any contribution due from any other party.

We maintain professional negligence indemnity insurance cover of £3 million for each separate or related claim. We do not accept liability on behalf of this firm or its partners or members of staff for any loss incurred by any client which exceeds this sum.

Therefore, you must satisfy yourself before instructing us that your particular matter does not bear a potential risk exceeding this sum of cover.

Our normal hours of business are 9:00 am to 5:30 pm Monday to Thursday and 8:30am to 5:00 pm on Friday. Messages can be left on the answerphone outside those hours and appointments can be arranged at other times when this is essential.

Upon taking your instructions we will advise you where appropriate of the questions of law and fact which are involved, the options available for handling the matter, the first steps and, if possible, some idea of the time scale involved. We will monitor and report on progress, point out the important issues and advise you in the case of any delay and the effect of such delay.

Our services to you will be given by a "lawyer" that is someone who has the right skills in the area of law appropriate for your needs who may be a solicitor, a legal executive, a law clerk or a paralegal. We shall confirm the status and qualifications of the relevant lawyer at the outset.

The covering letter sets out details of the extent and limitations of our undertaking of your instructions in this matter. We do not offer any services beyond that brief and will not be responsible for other professional needs you may have unless these are expressly agreed between us in writing.

We will not be responsible for any failure or delay in providing services due to causes beyond our control.

Upon conclusion of the matter, we may seek your views on our standard of performance so that we may continually strive to maintain and improve our level of service.

#### 4. **Communications:**

We take the view that good relationships are based upon ease of contact and good communications. The person confirming your instructions in the accompanying letter will usually be the person who will be handling your business on a day-to-day basis. However, that person is part of a departmental team and a nominated partner will be available to listen to any problems or concerns you have and to deal with them effectively. Should you still remain unhappy and need to contact the partner handling our client care procedure, please do so either in person by prior appointment with the Complaints Partner, by letter or email and you will receive a reply within 7 working days.

We may have to transfer work between lawyers within this firm, especially when court proceedings are issued. If this becomes necessary, we shall of course advise you immediately. We would not transfer work to a more senior lawyer with a higher charging rate without your knowledge and consent.

We will usually communicate with you by any of the following methods; personal meeting, post, telephone, email, text message or fax. We will ask you for your preferred method of contact and we shall be entitled to assume that the option chosen by you is secure. This does not always mean that we will use the method you prefer as there will be occasions when it may not be practical. When you contact us, we may ask you for personal information, such as your date of birth, to confirm your identity.

#### 5. **Costs:**

We believe in openness about our charging policy. The work we carry out is very varied. Often it depends on events and people outside our control.

Unless a fixed fee or other basis of remuneration has been agreed between us at the outset, our charges will be calculated by reference to the time spent and the seniority of the lawyer undertaking the business. Our covering letter gives the relevant lawyer's hourly charging rate whose time spent will be based upon hours logged on our computer time recording system. We will not change that hourly rate without confirmation of such change in writing to you. Chargeable time includes (without limitation) meetings, reading and working on papers, correspondence (including emails) preparation, travelling, telephone conversations and advocacy.

In some areas of work, such as administration of estates, we may, in addition to the hourly charging rate, charge additional fees for the care and conduct element of the transaction, which reflects the complexity value and risk of the matter. Should this care and conduct uplift apply we would of course so inform you at the outset and give further details.

In exceptional cases, where a lawyer is expected to deal with urgent matters outside the usual office hours, or carry an exceptional responsibility, we reserve the right to increase our hourly charging rate. We will advise you of any such changes as they occur.

We are often able to provide estimates of our costs which are simply educated guesses as to the amount of work which we think will be necessary to reach a certain stage or to complete the matter. An estimate is usually based on the assumption that the work involved is straightforward. If the matter is more complicated or time consuming than originally anticipated, then we would inform you of this in writing and revise the estimate accordingly.

If you wish to put a limit on the costs you are prepared to invest in any matter, you will need to confirm this in writing before we start the file on your behalf. This ceiling can either be the most you are willing to spend on the case or the most that you are willing to spend without further discussion. Unless we have agreed a fixed fee, we cannot guarantee to complete the case, below your limit, but only to stop work when our fees have reached that level.

All fees are net of VAT and disbursements which are payable in addition. "Disbursements" are extra sums spent on your behalf for items necessary for your case, such as court fees or search fees. We will indicate, where possible, the larger disbursements required at the outset of a transaction.

We do not charge for routine postage or photocopying as these costs are built into our hourly rates. But we will charge at cost price for exceptional expenses of this nature such as photocopies of bulky documents or excessive postage costs.

Occasionally we appoint other professionals on your behalf and their fees are treated as disbursements. Examples are barrister's fees or other solicitor's charges when they act as our agents.

We normally make a charge for travelling expenses in addition to charges for time spent travelling. When this is by train we will simply charge the cost of the ticket. When travelling by car, we charge our standard mileage.

Please respond quickly to any request for payment in advance of expected disbursements as any delay may prevent us progressing the matter. We must have cleared funds to use and if paying by cheque, please allow **5 working days** from the date of receipt by us for clearance. We recommend payments by telegraphic transfer which gives cleared funds instantly but for which we do make a charge on outgoing funds.

VAT is charged upon our costs and some other disbursements.

We generally ask clients to deposit an advance payment on account of costs and make the receipt of such payment a condition of our accepting instructions.

**Please note** that we are unable to give undertakings on your behalf to third parties for payment of any kind without having received an equivalent sum from you in cleared funds.

Our covering letter gives details of any advance payment required. We will, issue bills on a monthly basis for work done to that point. We do not always charge the full amount to which we are entitled at this stage and in that event we shall be entitled to recover the full balance in our final bill.

If we are holding money on account of fees which you have paid in advance, it will be kept in our client account until we have raised a receipted bill to cover work carried out. It will then be transferred to our office account. Money for disbursements is held on our client account until we spend it.

We are of course bound by the requirements of all money laundering regulations and it may be that a third party, such as a secured lender, will require evidence of the balance of your funding for an acquisition.

## **6. Payment:**

All invoices, whether interim or final, are due on delivery and must be paid in full within 14 days of our sending out the invoice without any deduction by way of set off, counterclaim or other charge. We reserve the right to take legal action to recover sums due after 7 days of such sums becoming due, or in the event of our having reasonable grounds to do so, without notice. We will not continue working on a matter when an invoice is overdue.

Our invoices will be addressed to you, even if agreed to be paid by someone else, since you are the person to whom we supply legal services and the person who is ultimately responsible for paying our fees.

We reserve the right to deduct any invoiced sums (whether overdue or not) from monies received by us on your behalf before forwarding the balance to you. We also reserve the right to off set any invoiced sum (whether overdue or not) from monies held by us on any other account in your name.

We usually require all fees and disbursements to be paid to us in cleared funds the day before completion of a transaction involving the purchase of property. This is partly because in such circumstances we have to comply with the instructions of secured lenders which require the stamp duty and other sums to be paid before completion to enable their interest to be protected.

Sale proceeds and other monies due to you will normally be sent to your nominated account by telegraphic transfer and our standard charge for telegraphic transfers will be deducted at source. This is currently £25.00 plus VAT. If you wish monies to be sent to you by cheque then please request this in good time. Cheques will be posted to you at your risk.

## **7. Interest:**

Any money received on your behalf will be held in our client account subject to certain minimum amounts and periods of time set out in the SRA Accounts Rules (AR) 2011. Interest will be calculated and paid to you at the rate from time to time payable on Barclays Bank interest bearing instant access business saver account. The period for which interest will be paid will normally run from the date on which funds are received by us until the date of issue of any cheque or telegraphic transfer from our client account. We are entitled to and shall retain the first £40.00 of each amount of interest as and when calculated to help us cover the administration expenses of arranging these calculations and payment to you.

We will charge on a daily basis interest on outstanding sums owing to us at a rate of 4% above the base lending rate of Barclays Bank from time to time from the date that they become due to the date of settlement in full (subject to any statutory limitation) whether before or after any judgement.

## **8. Contentious Work:**

We are committed to achieving a worthwhile, practical and cost effective outcome for you and if we do this without going to court by negotiation, mediation, collaboration or another form of dispute resolution, we shall do so.

On matters which may go to court we will give you our views in advance as to your likely prospects of success and the likelihood of a court ordering the other side to contribute to your legal costs. We shall also discuss with you the question of whether the likely outcome of a matter will justify the expense or risk involved. If your case is unsuccessful, you may have to bear all or some of your opponent's legal costs as well as your own within 14 days. Even if your case is successful, you are unlikely to recover all your costs from the other side, especially if they are legally aided, when you might not recover any costs at all. Please remember that this firm is engaged by you and that you remain personally responsible for the payment of our fees and disbursements regardless of any order for costs made against others or indemnities given by others.

## **9. Legal Aid and Other Funding:**

In certain cases you may be eligible for legal aid and we will discuss this possibility with you where appropriate. Few aspects of legal work are now covered by the scheme other than matrimonial, children cases and care proceedings. If you recover or preserve assets whilst in receipt of legal aid the Legal Aid Agency has a first charge against those assets

for the sums paid for your legal fees (less any contribution you may have made) and will be repaid those sums from the assets recovered or preserved. This liability to repay all legal aid monies advanced from the settlement is non-negotiable and in instructing us on any legally aided matter you are expressly accepting that ongoing liability. We shall consider with you whether you are eligible for and should apply for legal aid including advice and assistance (Legal Help). However, you must inform us in advance if you believe that a third party (i.e. parent or relative) may meet all or some of your costs so that we may obtain authority from that third party to proceed.

**10. Complaints Handling:**

- (i) in the event of a problem, you are entitled to complain;
- (ii) you should set out in writing your complaint and send it to the Senior Partner, Fiona Bailey who will investigate; you can also make your complaint via email to [fiona.bailey@haywards-solicitors.co.uk](mailto:fiona.bailey@haywards-solicitors.co.uk) or in person via prior appointment.
- (iii) you can complain about the firm's bill subject to the firm's Terms and Conditions of Business.
- (iv) the firm has a complaints procedure, a copy of which is available on request;
- (v) you have a right to complain to the Legal Ombudsman Service at the conclusion of your complaint process, the timeframe for doing so and full details of how to contact the Legal Ombudsman Service can be found on <http://www.legalombudsman.org.uk> or telephone 0300 555 0333 or by post: PO Box 6806, Wolverhampton WV1 9WJ
- (vi) you may also have a right to object to the bill by applying to the court for an assessment of the bill under Part III of the Solicitors Act 1974;
- (vii) if all or part of a bill remains unpaid the firm may be entitled to charge interest; see paragraph 7 above.

**11. Termination:**

You may terminate your instructions with us in writing at any time and you will only be liable to pay for work already done (or which on your authority we are irrevocably committed to do) and for expenses which we have already incurred (or are committed to incurring). If we have agreed a fee other than on an hourly rate we will charge you a fair proportion of the sum estimated or agreed for the completed matter based on the time actually spent compared with the time which the transaction should have taken.

Under the Consumer Protection (Distance Selling) Regulations 2000, for some non-business instructions, you may have the right to withdraw, without charge, within 7 working days of the date on which you asked us to act for you. However, if we start work with your consent within that period, you lose that right to withdraw. Your acceptance of these terms and conditions of business will amount to such a consent. If you seek to withdraw instructions, you should give notice by telephone, email or letter to the person named in these terms of business as being responsible for your work. The Regulations require us to inform you that the work involved is likely to take more than 30 days.

If we decide to stop acting for you, for example, if you do not pay an interim bill or comply with the request for a payment on account, we will tell you the reason and give you notice in writing.

Please bear in mind that in matters involving court proceedings we may require the permission of the court to cease acting and you will be charged for any court application in this regard.

**12. Performance:**

Whilst we will do everything we can to complete your matter within the time scales estimated, we are usually dependent on others to move at the same speed and so cannot guarantee those targets will always be met. We also cannot be liable for any delay or loss arising from circumstances outside our control.

**13. Joint Instructions:**

If there are more than one of you, we can only represent you if you are all agreed on what should be done and that no conflicts of interest exist or are likely. We will assume, unless you tell us otherwise in writing, that one of you is authorised to speak for all of you in giving us instructions. Each of you will be responsible for meeting the full amount of our charges. Should it become apparent that there are substantive, differences of views or interest amongst you, we may have to cease acting for one or all of you.

**14. Financial Services:**

We are not qualified to advise on financial services and you should seek the services of a qualified independent financial services advisor should this be appropriate. We may be able to refer you to an appropriate advisor but without guaranteeing the quality of that advice. We would not share commission with any such advisor without your knowledge and consent.

However, we are included on the register maintained by the Financial Conduct Authority so that we can carry on insurance mediation activity, which is broadly the advising on, selling and administration of insurance contracts.

**15. Provision of Service Regulations 2009:**

We comply with the above regulation by displaying the required details of our Professional Indemnity Insurance in our office reception.

**16. Critical Dates:**

We do not operate a reminder system for important dates such as rent reviews and lease renewals to be drawn to your attention in advance. The responsibility for these time critical dates will be yours.

**17. Papers:**

On conclusion of your matter, we normally retain your file for a period of 10 years. Paper files are retained in secure storage at our cost. After this period the file will be destroyed confidentially unless you request otherwise in writing and pay for our administration charges for either storing them for an agreed further period or despatching them to you. If you require access to any file after it has been closed otherwise than in connection with continuing or new instructions, we shall make an administration charge for retrieval and despatch of papers to you of £40.00 plus VAT.

You have a right to make a subject access request to see a copy of the personal information that we hold about you. Please visit the Information Commissioner's Office website for more information: <https://ico.org.uk> or telephone their helpline on 0303 123 1113.

Any deeds or other documents may be despatched to you following completion unless they need to be sent to a secured lender. We are happy to hold your deeds in our storage rooms for security purposes, for which we do not charge (unlike other institutions such as banks). However, we do charge an administration fee for retrieval and despatch, unless this is undertaken in connection with your instructions to us on a new matter. The fee is £40.00 plus VAT.

Copyright in all correspondence, papers and documents created by us will vest in us unless expressly otherwise agreed in writing.

We reserve the right to retain your deeds and papers until we are paid our fees in full on any matter we have conducted on your behalf.

**18. Confidentiality and Money Laundering Regulations:**

We shall of course observe the usual professional duty of confidentiality on your matter. We are fully compliant with data protection legislation and we will only use your personal information to administer the transaction you have instructed us to undertake. Our files are open to audit by regulatory bodies, but this is of course on a fully confidential basis. We are committed to protecting your privacy and further information can be found on our website.

We are not permitted to act for you if you fail to supply appropriate proof of identity and/or authority for yourself or for any principal who you may represent.

We do charge a fee per person of £7.50 plus VAT for carrying out an Anti-Money Laundering search against all our clients and where appropriate other third parties involved in a transaction.

We are not allowed to disclose information about your affairs without your authority unless required to do so by law. The Money Laundering Regulations and Proceeds of Crime Act as amended by the Criminal Finances Act, in particular, but without limitation, require us to report any actual or suspected irregularities to the appropriate authority in confidence and without reference to the client in question. By signing and returning these terms and conditions, you authorise us to disclose to other relevant parties in the transaction all information which we have in relation to your involvement in the transaction. You may withdraw this authority at any time, but if you do so you should appreciate that we will have to inform other parties that this authority has been withdrawn.

All advice, information and reports we provide are confidential and are supplied to you solely in respect of instructions you have given us. They must not be disclosed to any other party without our prior written consent and we are not to be responsible for the consequences of anyone relying upon our advice other than you.

**19. Applicable Law:**

The construction, validity and performance of this contract shall be governed in all respects by the Law of England.

**20. Co-operation:**

You can help to limit the time we need to spend on your case (and therefore our charges) by: signing and returning this form and covering letter by way of instructing us; promptly paying monies requested on account; giving us clear and concise instructions about your expectations regarding the scope of the services you require; providing us with any relevant papers in chronological order with a resume of the background; producing proof of identification and (where

appropriate) your authority to instruct us; telling us of important time limits or other relevant dates such as your holidays informing us of any person meeting your legal costs and on what basis; dealing promptly with our queries, telephone messages and letters and giving clear instructions in writing; attending appointments promptly and giving adequate notice of any cancellations; telephoning or emailing urgent queries or information to the relevant fee earner or secretary; paying all charges promptly; and asking if you are not sure about anything.

**21. Acceptance:**

If you agree these terms, please return one copy of the covering letter with your signature(s). If there are more than one of you, each of you **must** sign.

**22. Details:**

You may find a client data form attached to these terms. It would be most helpful if you would completed this insofar as you are able and return it to us with the signed terms so that we may record or update your details.

**23. Status:**

Unless you inform us in writing prior to us commencing our services for you, we are doing so upon your assurance to us (in the case of an individual or individuals) that you are not bankrupt or in receivership or subject to any insolvency proceedings or arrangement with creditors and that you will let us know in writing immediately if you hear of any application in that respect or (if a company) that the company is not in liquidation or receivership or any insolvency proceedings or arrangements with creditors and you will let us know in writing immediately if you hear of any application in that respect.

If you are subject to any court proceedings, we need to have full details. We are entitled to assume that you do not have any court judgements or enforcements against you unless you inform us about this in writing.

If there is more than one of you we may accept instructions from and report to all or any of you unless you specifically instruct us in writing or otherwise.

**24. Third Parties:**

Unless prior written consent to such has been given by us in writing, no individual who is not a party to the subject matter of these terms and conditions will have the right to enforce them.

**25. Warning:**

On signing the covering letter you will be committed to these terms and conditions of business. If you have any doubts about the meaning or effect of these terms and conditions you should not sign unless and until you have received independent legal advice or have otherwise satisfied yourself in this regard.