



MERCHISTON SOLICITORS TERMS OF BUSINESS

1. Introduction

The following terms of business apply to all work carried out by Merchiston Solicitors for clients except as otherwise agreed.

Our intention is to provide you with the highest quality of service, handling your instructions with professional skill, care and attention. Each client is important to this firm and we will ensure that your work is properly dealt with at all times.

Certain sections of this document may not immediately be relevant. Our objective, however, is to build a long-term relationship with our clients and we take the view that it is appropriate to provide you at the outset with a description of the terms which apply to all our services.

2. Anti-Money Laundering requirements

a. Proof of Identity

The law now requires solicitors, as well as banks, building societies and others, to obtain satisfactory evidence of the identity of their clients. This is because solicitors who deal with money and property on behalf of their clients can be used by criminals wishing to launder money. In order to comply with the law on money laundering, if you have not already provided it, we need to obtain evidence of your identity as soon as practicable. We should be grateful, therefore, if you would provide us with documents to verify your identity and address.

b. Confidentiality

Solicitors are under a professional and legal obligation to keep the affairs of clients confidential. This obligation, however, is subject to a statutory exception: legislation on money laundering and terrorist financing places solicitors under a legal duty in certain circumstances to disclose information to the Authorities.

Where a solicitor knows or suspects that a transaction on behalf of a client involves money laundering, the solicitor may be required to make a money laundering disclosure. If, while we are acting for you, it becomes necessary to make a money laundering disclosure, we will not be able to inform you that a disclosure has been made or of the reasons for it.

c. Cash

Our policy is not to accept cash from clients. If clients circumvent this policy by depositing cash direct with our bank we reserve the right to charge for any additional checks we deem necessary regarding the source of the funds.

3. Assigned Solicitor

It is important that you are kept fully informed of progress in carrying out your instructions. In addition to any specific method of communication and reporting agreed with you, we will assign a Solicitor to you to ensure that you have a dedicated solicitor



assigned, who will maintain an overview of your affairs and have ultimate responsibility for ensuring that your requirements are met. During the course of the matter we will ensure that you are notified in writing of the name and status of the person dealing with the matter and the name of the person responsible for its overall supervision.

We are happy to establish a method of reporting which is specifically suited to your needs, e.g. quarterly or annual reports and/or face-to-face review meetings.

4. Instructions

We shall not be responsible for any failure to advise or comment on any matter, which falls outside the scope of your instructions.

Your instructions should clearly identify your objectives in relation to the work to be done. On the basis of your instructions we will advise you of the issues involved and the options available and the next steps to be taken. We will discuss with you whether the potential outcomes will justify the expense or risk involved including, if relevant, the risk of having to pay an opponent's costs.

At the outset and, as necessary, during the course of the matter we will explain our responsibilities and yours.

Advice rendered by us is provided for the purpose of the instructions to which it relates and for your benefit. It may not be used or relied on for any other purpose or by any person other than you without our prior written agreement.

5. Charges

We will provide the best information possible in writing about the likely overall cost of a matter both at the outset and, when appropriate, as the matter progresses. Specifically we will advise you of:

- **The basis and terms of our charges** - our charges will either be as already agreed or calculated by reference to the current hourly rates of the Solicitors concerned applicable at the time the work for you is done. However, if the matter is particularly complex or urgent or of high value an additional mark-up may be added. Our minimum charge out rate when working on a hourly rate is 6 minutes. We shall round up or down to the nearest 6 min unit when recording time spent on your file. Hourly rates vary according to the level of seniority of each solicitor and the expertise required; your instructions will be carried out at a level appropriate to providing an efficient and economic service. When requested, we shall notify you of the current rates applicable to your work;
- Increases in charging rates - our hourly charging rates are reviewed annually in August and may be changed automatically at that time. However, charging rates may be reviewed at other times;
- Payments to third parties - we will inform you of likely payments that may need to be made to third parties; and
- Potential liability for any other party's costs - we will advise you of any potential liability and whether the liability may be covered by existing insurance or whether specially purchased insurance may be obtained.



- Any estimate is given only as a guide to assist you in budgeting and should not be regarded as a firm quotation unless otherwise agreed in writing.

If you require, we can tell you when fees reach a certain level and place a limit on the level of charges that we may incur without further reference to you.

For a variety of reasons some instructions are not completed. In these circumstances, and unless there is a separate written agreement, we reserve the right to charge for the work done.

We undertake not to charge for annual service reviews and the provision of reasonable management information.

6. Conditional fee agreements

Where a conditional fee agreement applies, in addition to the above, we will explain the circumstances in which you may be liable for our costs. If we seek to recover these costs from you, you have the right to an assessment of those costs.

We will inform you, if we are obliged under a fee sharing agreement to pay to any party any fees, which we receive by way of costs from the client's opponent or other third party.

7. Publicly funded matters

We do not presently undertake publicly funded work (legal aid) and it may be that you will be able to gain publicly funded legal advice and representation from another firm.

If at any time in the future we do undertake publicly funded work for you, we will also advise you of:

- the circumstances in which you may be liable for costs;
- the effect of the statutory charge;
- your duty to pay any fixed or periodic contribution assessed and the consequences of failing to do so; and
- that even if you are successful, the other party may not be ordered to pay costs or may not be in a position to pay them.

8. Contingency fees

We can only enter into contingency fee arrangements where these are permitted by statute or the common law.

9. Other fees

In appointing us to act on your behalf, you are also authorising us, unless you instruct us to the contrary, to incur such expenses as we consider necessary which you will be required to reimburse to us. We will consult you before incurring any significant expenses.

We reserve the right to charge expenses of travel, accommodation and meals while travelling away from the office and also for postal, fax, telephone, special bank charges



and photocopying costs incurred on your behalf. These expenses may include a mark up to cover overheads.

10. Disbursements

In appointing us to act on your behalf, you are also authorising us, unless you instruct us to the contrary, to incur such expenses and disbursements as we consider necessary which you will be required to reimburse to us. We will consult you before incurring any significant expenses or disbursements.

Examples of expenses and disbursements, which we may have to pay on your behalf include court fees, fees of counsel and other experts, search and registration fees and stamp duty. We will not mark up such disbursements when we recharge them to you, although where statute requires, we will add VAT.

11. Money on Account

We reserve the right at any time to require you to pay us a reasonable sum on account of profit costs and/or disbursements to be incurred on your behalf.

12. Accounts

We reserve the right to submit invoices to you at regular intervals (usually monthly) or at appropriate stages in the conduct of the matter. The Solicitor assigned to you discuss with you the most appropriate accounting procedures for any particular matter.

If you have any concerns about an invoice that has been submitted to you, please address those concerns, as soon as possible, with your Solicitor. If that person is not able to deal with your concerns satisfactorily, or you do not wish to speak to that person, please contact us and ask to speak to the Complaints Person, who will invariably be a senior solicitor. Depending on the type of work undertaken, you may also have a right to object to the Legal Ombudsman and/or apply to the Court for an assessment of the invoice under Part III of the Solicitors Act 1974.

13. Payment

We will discuss with you how payment will be made and whether your costs are covered by insurance or paid by someone else, such as an employer or trade union, or whether you may be eligible and should apply for public funding.

Payment is due within 14 days from the date of presentation of the invoice unless we have told you in writing that a different payment date will apply. If an account is not paid on the due date, we shall be entitled to charge interest on the amount outstanding (including any expenses and VAT) at 5% above the Barclays Bank base rate per year. In the case of non-contentious business, we are entitled to charge interest on outstanding amounts of the bill in accordance with Article 5 of the Solicitors (Non-Contentious Business) Remuneration Order 2009.

If an account is overdue for payment, we reserve the right to suspend work and to retain documents and papers belonging to you and your associates, irrespective of the matters to which they relate, until all sums outstanding to us are paid.



When we receive instructions from, or on behalf of, more than one person or company to deal with any particular matter, each person or company for whom we are acting will be separately responsible for payments of the full amount of our fees and disbursements.

Where applicable, we reserve our rights under the Late Payment of Commercial Debts (Interest) Act 1998.

Please note that any bill sent to you will comply with the requirements of Section 69(2) of the Solicitors Act 1974 and unless the bill is marked as being an interim bill or on account of work done, you have the right to apply to the court for a taxation order or assessment under Section 70-72 of the Solicitors Act 1974. Furthermore, if a bill remains unpaid at the expiry of one month from delivery, or such lesser time period as the Court may approve, we will also be entitled to seek to enforce payment through the court.

14. Termination of Instructions

You may withdraw your instructions at any time by written notice to us. We may decline to act further by giving you written notice where we have reasonable grounds to do so (including failure by you or your associates to settle invoices in full by the due date or to make payments in advance when so requested). If you or we decide to terminate this agreement then we will issue invoices for charges remaining unbilled on all instructions within three months of termination. We would expect to continue to act on certain incomplete matters unless specifically told by you not to do so.

15. Consumer Contracts Regulations

If we have not met with you, the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 apply to this work. This means that you have the right to cancel your instructions to us within 14 working days of receiving these Terms of Business. You can cancel your instructions by contacting us by post or by fax. Once we have started work on your file, you may be charged if you then cancel your instructions.

16. Money Held by Us

Unless otherwise instructed money received from you, other than received in respect of our costs, will be placed in our General Client Account held with a major UK bank. The firm cannot be held liable for any default on the part of the bank. You will be entitled to interest on the monies held calculated in accordance with the SRA Accounts Rules, on which we will seek to provide a fair sum of interest to you, although it is unlikely to be as high as that obtainable by you had you deposited the funds yourself.

We will require written instructions from you should you require your money to be held in a separately designated account and we reserve the right to levy a charge for the management of such an account. If you require a particular banking product we will be happy to discuss your requirements with you.

Money held by us (and accrued interest) may be taken by us in payment or part payment of our invoices, whether overdue or not. This extends to money held for your associates.



Any client money will be returned to you (or other person on whose behalf the money is held) as soon as there is no longer any proper reason to retain those funds. Payments received after we have accounted to you, for example by way of a refund, will be paid to you promptly.

We will inform you (or other person on whose behalf the money is held) in writing of the amount of any client money retained at the end of a matter (or the substantial conclusion of a matter), and the reason for that retention. We will inform you (or other person) in writing at least once every twelve months thereafter of the amount of client money still held and the reason for the retention, for as long as we continue to hold that money.

17. Litigation

There are a number of specific points that you should be aware of when involved in litigation (including arbitration) whether as claimant or defendant and these relate to court proceedings in England and Wales:

- You are responsible for payment of our account whether or not the court orders another party to contribute towards your costs;
- The court has wide-ranging discretion to determine which party (ies) should bear the cost of the proceedings and in what proportion. This is usually exercised to order an unsuccessful litigant to pay all or a proportion of the successful litigant's costs, but the court can order the successful litigant to pay costs in some cases. The court can order you to make immediate payment of costs at any stage in the proceedings;
- If you have legal costs insurance we will liaise with your insurer who must appoint us and confirm responsibility for our fees; and
- In any action you will be required to disclose to the other parties all relevant documents in which information of any description is recorded, including correspondence, notes, memoranda, computer databases, videos and audio tapes, which are or have been in your control and which relate in any way to the issues in the case. This duty covers records, which may be prejudicial to your case but which, subject to certain 'privileged' exceptions, you are nevertheless obliged to reveal. The obligation of disclosure is ongoing until the action is over and therefore all such records must be kept in safekeeping. It is your responsibility to preserve and provide to us all evidence wherever available in its original form.

18. Funding Litigation

Your Solicitor will discuss with you at the outset how any litigation matter you have may be funded. There are a variety of funding methods available including post event insurance and conditional fees.

There are a number of points specifically relevant to post event insurance policies:

1. In every case primary liability for costs falls on you. In particular, note that there are issues surrounding the solvency of insurance companies – if they become insolvent, they may not be able to pay your liability;
2. An insurance policy is a contract, based on your duty of utmost good faith. It is your responsibility to give all relevant information to the insurer, whether or not they



request it. Further, you should carefully read the detailed terms of the policy and ensure compliance with the terms and conditions of the policy;

3. It is not until the claim is made under the policy at the conclusion of the case that insurers will determine whether or not they are liable. It is at that point that they decide whether to admit a claim in whole or in part or reject it. If an insurer is of the view that they have not been provided with all the facts of the case, or there has been dishonesty in the making of the claim, or there has been any other breach, they may seek to avoid liability. As you remain primarily liable for a costs order, you would likely need to pay any costs order first and then litigate against the insurance company.

19. Outsourcing

We may ask other companies or people to undertake administrative or secretarial work on our files. We will always ensure that there is a confidentiality agreement with these outsourced providers.

20. Confidentiality and Conflicts

All information regarding your business and affairs will be regarded as, and kept, confidential at all times unless you instruct us to disclose information or we are compelled to disclose it by law, for example, where money laundering is suspected or other fraud or crime is involved.

An actual or potential conflict between your interest and the interest of another client of the firm may arise during the course of a matter. If this situation arises during our dealings with you, we will discuss the position with you and determine the appropriate course of action. In order to protect your interests, our professional rules may require us to stop acting for you on that matter.

External organisations may conduct audit or quality checks on our practice. These external organisations are required to maintain confidentiality in relation to your files.

21. Data Protection

We use the information you provide primarily for the provision of legal services to you and for related purposes including:

- Updating and enhancing client records
- Analysis to help us manage our practice
- Statutory returns
- Legal and regulatory compliance

Our use of that information is subject to your instructions, Data Protection legislation and our duty of confidentiality. Please note that our work for you may require us to give information to third parties such as expert witnesses and other professional advisers. You have a right of access under data protection legislation to the personal data that we hold about you.

For full details of our GDPR compliant Privacy Policy, which came into force on 25th May 2018, please visit our website <http://www.merchistonsolicitors.co.uk/privacy-policy.html>.



22. File Storage

Files and other papers relating to your matters will be stored for 6 years electronically or otherwise in storage archives. After that time they will be destroyed and certification of destruction can be provided on request. Such files or papers may be preserved on microfilm or by other means of image processing. Title deeds, wills and similar items will never be destroyed.

If we retrieve papers or documents from storage in relation to continuing or new instructions to act in connection with your affairs, we will not normally charge for such retrieval. However, we may make a charge based on the time spent producing documents to you or another at your request. We may also charge for reading correspondence or other work necessary to comply with the instructions given by you or on your behalf.

23. Commissions

We will account to you for any commission, which we are entitled to receive for example on share transactions, investments and insurances effected by us on your behalf.

24. Complaints

Merchiston Solicitors are committed to high quality legal advice and client care. If you are unhappy about any aspect of the service you have received or about the bill, please contact your Solicitor, or if you prefer, our Complaints Person, whose details can be provided on request. We have a procedure in place, which details how we handle complaints, which is available on request.

We have eight weeks to consider your complaint. If we have not resolved it within this time, you may have the right to complain to the Legal Ombudsman.

If you are not satisfied with our handling of your complaint, you may have the right to complain to the Legal Ombudsman. *Please note that the Legal Ombudsman can only accept complaints from individuals, beneficiaries of an estate/trust, and small businesses and charities. The Legal Ombudsman cannot accept complaints from public bodies or corporate entities.*

If you would like to know whether you are eligible to complain to the Legal Ombudsman, then please contact it directly. It can be contacted on 0300 555 0333 or you can email your complaint to enquiries@legalombudsman.org.uk. Normally, you will need to bring a complaint to the Legal Ombudsman within six months of receiving a final written response from us about your complaint or within six years of the act or omission about which you are complaining occurring, or within three years from when you should have known about the complaint.

25. Non-discrimination

Merchiston Solicitors are committed to providing equal opportunities in employment and to providing a workplace free from discrimination and harassment. As such all job applicants, employees and partners and third parties who come into contact with us, will receive equal treatment, regardless of age, disability, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation. Given this



and in order to demonstrate our commitment in practice we require all clients to provide us with details of their own commitment in this area and to confirm that they place the same obligations on their staff, clients and third parties.

26. Regulation

We are authorised and regulated by the Solicitors Regulation Authority for the provision of legal services. The firm does not, and is not regulated to provide investment business advice.

27. Professional Indemnity Insurance

Subject to the limitation upon the amount of our liability as set out below, we shall have no liability to you for costs, expenses or losses arising from claims, demands, actions or proceedings to the extent that the same are not recoverable under the firm's Professional Indemnity policies.

Terms and conditions of the firm's Professional Indemnity policies are as set out in the policy documents and are not capable of being varied by any other condition contained within this agreement, nor by any subsequent written or verbal communication.

We maintain Professional Indemnity Insurance, which covers claims brought in relation to work carried out from an office in England and Wales.

The total aggregate liability of the firm, its Partners and employees, including damages, costs and interest, before or after judgment, whether in contract, tort (including negligence), breach of confidence, liability to account, breach of trust, or fiduciary duty or of the data protection legislation or otherwise to you (and where we are instructed jointly by more than one party, all of you collectively and in total and also including anyone claiming through you) arising from or in connection with the work which is the subject of these terms (including any addition or variation to the work) shall not exceed £3 million (the "Limit of Liability").

This provision shall have no application to any liability in respect of death or personal injury arising from our negligence, or to liability arising as a result of fraud on our part. The liability of the firm shall in no circumstances exceed the Limit of Liability specified even where the firm has contracts for professional indemnity insurance in excess of this sum.

28. Email Communications

If you have the necessary facilities we will sometimes use email for communications with you unless you tell us not to. There are some specific points of which you should be aware:

- Communications over the Internet are not completely secure. You will have to guide us as to what should not be sent over the Internet; and
- Viruses or other harmful devices may be spread over the Internet. We take reasonable precautions to prevent these problems by use of a firewall and virus checking software.
- If we are to communicate by email, it is on the basis that you will do likewise.



29. Associates

These terms shall apply to you and your associates who for the purpose of these same terms, include all companies, which you control or, if you are a company forming part of the group, all companies in that group.

30. Jurisdiction

The High Court of England and Wales shall have exclusive jurisdiction to settle any dispute, which may arise between us. To this end, you and we irrevocably agree to submit to the jurisdiction of the High Court of England and Wales and irrevocably waive any objection to any action or proceedings being brought in that court or any claim that any such action or proceeding has been brought in any inconvenient forum. Judgment in any suit, action or proceeding brought in the High Court of England and Wales shall be conclusive and binding and may be enforced in the courts of any other jurisdiction.

31. Acceptance

Your continuing instructions will amount to your acceptance of these terms. Unless otherwise agreed in writing, these terms of business will apply to any future instructions you give us.