

Terms and Conditions of Engagement (2011)

1. INTRODUCTION

These Terms and Conditions of Engagement ("Terms"), together with our engagement letter, set out the basis on which we will provide our services, and they should be read together. In the event of any inconsistency between the letter and these Terms, the former shall prevail. With effect from 1 November 2011 these Terms will apply to all services rendered by us to you from time to time unless we have entered into a specific written agreement which expressly excludes or modifies them in whole or in part.

2. GENERAL BASIS FOR ACCEPTANCE OF INSTRUCTIONS

- a. Instructions will be accepted or declined in accordance with the Solicitors' Practice Regulation 1987 (as amended), and the Solicitors (Client Communication) Practice Regulations 2008¹.
- b. Details of the partner with overall responsibility for your affairs and, if different, the person(s) with day-to-day conduct are set out in our engagement letter.
- c. We will be free to use such members of our staff or agents in connection with your business as we consider be appropriate and in your best interests.
- d. You will notify us in writing if communications are to be sent to you other than at the address or fax or email you have provided, and whether particular advice is to remain undisclosed to other persons associated with you. Unless you tell us not to do so we may communicate to you by email and do not accept responsibility for any breach of confidentiality which may occur, whether because of a fault or omission on your part or by any of your agents or the result of any action of a third party.
- e. You will provide us with a full description of the services you require and a statement of your objectives.
- f. You will provide us, on request, with sufficient information to enable us to carry out our work. This will include relevant documents, notes, agreements, emails, correspondence and personal statements.
- g. Where our services are supplied to two or more persons then your liability for our costs is joint and several; you will each be liable for any amounts due to us. If a third party or other source is to be responsible, this must be agreed with us before work is undertaken.
- h. It is our practice to check for conflicts of interest in appropriate cases. However, an actual or potential conflict between your interests and the interests of another advised party may arise during the course of a matter. If this situation arises during our dealings with you we will discuss it with you and determine the appropriate course of action. In order to protect your interests we may not be permitted to continue to act for you.

3. COSTS AND DISBURSEMENTS

- a. Subject as below, and except where we agree a fixed or scale fee, our charges are based on the time we spend dealing with your instructions. Chargeable time will

¹ See <http://www.lawsoc-ni.org/role-of-the-law-society/regulation/> for further information.

include meetings with you and others; any time spent travelling; considering, preparing and working on papers; correspondence including faxes and emails; and making and receiving telephone calls to and from you. All letters and telephone calls will be charged on a time basis. We record time in minimum units of six minutes. In addition, VAT will, if applicable, be added to our charge at the rate applicable at the time when the work is done. Expenses such as Counsel's fees and/or Expert's fees which are incurred will also attract VAT which will be payable by you.

- b. Our costs will also be assessed by reference to other factors including:
 - i. the complexity of the matter;
 - ii. the skill, labour, specialised knowledge and responsibility involved;
 - iii. the number and importance of documents prepared or considered;
 - iv. the amount or value of any money or property involved; and
 - v. the importance of the matter to you.
- c. Wherever possible we will, upon accepting instructions, give you an estimate of the likely costs involved and will revise that estimate from time to time if it becomes necessary. Likewise we will give you an estimate of disbursements that are likely to be incurred. If we have provided you with a written estimate, it is given only as a guide to assist you in budgeting and should not be regarded as a fixed quotation.
- d. Our costs take into account our incidental disbursements such as normal postage and telephone charges. We will charge you for any other expenses we incur in connection with your business including printing, photocopying, exceptional typing requirements, couriers, taxi fares, search and service fees and any exceptional overseas telephone and/or fax costs.
- e. Our hourly charging rates for the fee-earners assigned to your matters are as set out in our engagement letter. Other staff may become involved, or charging rates may change. Our charging rates apply to partners, associate solicitors, assistant solicitors, trainee solicitors and administration support staff.
- f. Unless otherwise agreed, our charges will be payable whether or not any particular matter proceeds to completion.
- g. Our VAT registration number is 255 8223 53

4. PAYMENT

- a. Any account rendered by us is due for payment on delivery and interest will be charged at the rate for the time being prescribed for judgment debts on any balance (including outlay) outstanding after 30 days.
- b. We may from time to time deduct sums due to us from monies in hand on your account in any matter.
- c. We may from time to time invoice you on account of the final bill for costs and disbursements. Such invoices may be sent periodically in accordance with our engagement letter or at any natural break in the instructions.
- d. If you have any query about your invoice, including the basis on which it has been calculated, you should contact the partner with day-to-day responsibility for your

work as soon as possible and in any event within 30 days, after which we will treat the amount shown in the invoice as recoverable by any means.

- e. You are entitled to require us within one month of the delivery of any invoice to obtain a certificate from the Law Society of Northern Ireland stating that in their opinion the costs charged are fair and reasonable or, as the case may be, what lesser sum would be fair and reasonable. You are also entitled to have a bill checked by an officer of the High Court by a procedure known as taxation of costs in accordance with the provisions of the Solicitors (NI) Order 1976.

5. TERMINATION

We will on giving reasonable notice be free to refuse to act or continue to act in particular if:-

- a. we are or may be in breach of the law or the principles of professional conduct by accepting or continuing to accept instructions;
- b. we consider there is or may be a conflict or risk of conflict between your interests and those of any other client of ours;
- c. any account rendered by us in respect of fees or disbursements has not been paid within 30 days of its date; or
- d. any request for money on account of costs or disbursements incurred or to be incurred has not been complied with within two weeks of it being made.

We may also discontinue acting on other reasonable grounds.

You may terminate our retainer in writing at any time. In some circumstances, you may consider we ought to stop acting for you, if, for example, you cannot give clear or proper instructions on how we are to proceed, or if it is clear that you have lost confidence in how we are carrying out your work. If you or we decide that we can no longer act for you, you are liable for our charges down to the date of termination.

6. CONSEQUENCES OF TERMINATION

If our instructions are terminated for any reason then we may in addition to any other remedy available to us: -

- a. retain any deeds, securities or other documents under our control;
- b. retain any monies for the time being standing to any account you may have with us;

until payment has been made of all outstanding costs and disbursements together with VAT and costs and disbursements incurred in connection with the termination.

7. CONTINUING OBLIGATIONS

- a. Unless specifically otherwise agreed we shall not be under any continuing obligation to advise you of changes in the law which may affect advice previously given.
- b. All communications generated between us during the currency of our retainer shall remain confidential and shall not be disclosed to any third party without consent.

- c. As part of our commitment to provide a quality service to you we may, from time to time, invite suitably qualified external assessors periodically to review our files on a sample basis for compliance. Files are not made available to assessors if the subject matter is of a sensitive nature or where you specifically request that they should not be made available.

8. COMPLAINTS

- a. If you have a concern about any aspect of our service it should be raised immediately with the partner dealing with your matter or, if substantial, in writing to the Quality Partner.
- b. Any complaint will be remedied promptly, if possible, and investigated further if necessary. You have the right to take independent advice from another solicitor in any case where you have, or may have, a complaint against the firm. If it is determined that a complaint will not be upheld we reserve the right to recover from you the costs on a time basis of investigating the matter.
- c. You should note that complaints raised more than 30 days after submission of an invoice will not ordinarily be entertained.
- d. You may also wish to refer to the Law Society of Northern Ireland for further information on the conduct of solicitors.²

9. STORAGE OF PAPERS AND DOCUMENTS

After completing the work, we are entitled to keep all your papers and documents while there is money owing to us for our charges and expenses. Except for any of your papers which you ask to be returned to you, we keep the file on the understanding that we have the authority to destroy it after the date of the final bill we send to you. This is in accordance with our destruction policy which is exhibited at Schedule 1 of these Terms. We shall not destroy documents you ask us to deposit in safe custody. If we retrieve papers or documents from storage in relation to continuing or new instructions to act in connection with your affairs, we shall not normally charge for such retrieval. However, we may make a charge based on time spent producing stored papers or documents to you or another at your request. We may also charge for reading, correspondence or other work necessary to comply with new instructions given by you or on your behalf.

10. DATA PROTECTION ACT 1998

Edwards and Company, as a data controller, is bound by the requirements of the Data Protection Act 1998. You agree that we may obtain, use, process and disclose personal data to enable us to discharge the services agreed under this engagement, and for other related purposes including updating and enhancing client records, analysis for management purposes and statutory returns, crime prevention and legal and regulatory compliance.

11. MONEY LAUNDERING REGULATIONS 2007

In order to enable us to satisfy our obligations under the Regulations and related and amending legislation, it will almost be necessary for you to supply appropriate proof of identity before we are able to act or continue to act for you or for any principal whom you may represent. We will also not be able to receive any funds from, or pay any funds to, you or on your behalf unless all

² <http://www.lawsoc-ni.org/>

necessary identification and other procedures have been satisfied for the purposes of the Regulations.

For individuals and partnerships, proof of identity will usually be a current valid passport, driving licence, recognised identity card or equivalent showing your name, date of birth and photograph, together with a current utility bill or equivalent confirming your address. For companies, we will usually require a copy certificate of incorporation or copy audited statutory accounts together with personal identification as above in respect of some or all of the company's directors. In the case of a company incorporated overseas, we may also require a certificate from lawyers qualified in the relevant jurisdiction to the effect that the company is properly incorporated, together with evidence of the company's directors and of the authority and identity of the persons instructing us.

In the light of the Regulations and for insurance reasons we do not normally accept cash payments from or on behalf of clients and then only in special circumstances and for limited amounts.

12. PROCEEDS OF CRIME ACT 2002

We are prohibited by this Act from acting for or advising a client in relation to the acquisition, retention, use or control of the proceeds of any crime or any attempt to conceal, disguise, convert or transfer any criminal property or to remove it from the jurisdiction, or from being involved in arraignments relating to such activities. The proceeds of crime and criminal property are widely defined for these purposes to include any activity (including tax evasion) carried on anywhere which would be illegal if carried on in the UK.

We have a legal obligation to report to the Serious Organised Crime Agency any person, including a client, suspected of involvement in activity covered by this Act. As a result we reserve the right to make all disclosures to relevant authorities as required by law, without notice to you, and if appropriate to cease acting for you without giving any specific reason. These obligations override our normal duty of confidentiality to you. We will not accept any liability for any loss or damage that you or any third party may suffer or incur on any account for any action taken, or not taken, by us in good faith with a view to complying with this Act or any related legislation.

We may also require confirmation from you of the source of any funds, in particular any remitted from overseas, and whether all necessary tax has been paid and all necessary returns made in relation to any overseas funds. We reserve the right to require further information and supporting documentation as appropriate.

13. LIMITATION OF LIABILITY

This paragraph shall apply to any claim:

- a. by you.
- b. and, if any duties are held to be owed to them, to a claim by any individual or company, related or associated to you, and any officer, servant or, employee of any of these entities;

against this firm (which for the purpose of this clause includes any successor practice), any past, present or future partners of the firm, and/or any past, present or future employees of the firm.

All claims, whether made by one or more of the parties referred to in subparagraphs (a) and (b), arising from the same act or omission, or from a series of related acts or omissions, shall be regarded as one claim. Any such claim shall be limited to such amount as is referred to in our

engagement letter. Where no specific amount is referred to in our engagement letter the limit for each and every claim, including claimants' costs and expenses, shall be £3,000,000.

In no event shall our liability in respect of a claim, as defined above, exceed the level of our professional indemnity insurance from time to time (which at the date of these Terms is £5,000,000).

We have compulsory Professional Indemnity Insurance cover under the Law Society of Northern Ireland's Master Policy, which is underwritten by a "Slip" of Insurers in any one insurance year. A copy of our Professional Indemnity Insurance Schedule and related Evidence of Insurance issued to us by our brokers together with copies of each solicitor's individual Professional Indemnity Insurance Certificate is available for inspection and copies of these documents will be provided to you on request.

The Territorial limits of the Master Policy are world wide but there is a restriction of the Jurisdiction Limits in respect of USA and Canada for which are excluded.

'(A) damages or other monetary awards, judgements or negotiated settlements claimant's costs and expenses and defence costs connected with or arising out of any claim made or suit brought against the Insured before any arbitrator tribunal or court in the United States of America, its territories and possessions, or Canada.

B) the enforcement upholding or registration against the insured by any arbitrator tribunal or court outside the United States of America, its territories and possessions, or Canada, of any damages or other monetary awards, judgements or negotiated settlements claimant's costs and expenses and defence costs connected with or arising out of any claim made or suit brought against the Insured before any arbitrator tribunal or court of the United States of America, its territories and possessions, or Canada.'

14. GENERAL

- a. These Terms shall not affect any provision of the general law or professional standards applicable to the relationship between us and you as solicitor and client.
- b. We will not be liable to you or any third party if we are unable to perform our services as a result of any cause beyond our reasonable control. If any such event should arise, we will notify you as soon as reasonably practicable.
- c. Edwards and Company is regulated by The Law Society of Northern Ireland from whom further information can be obtained on the professional standards and conduct required of solicitors in Northern Ireland.³ The firm is not separately regulated by the Financial Services Authority but it is able to offer a limited range of investment services to clients where they are an incidental part of the professional legal services we have been engaged to provide.
- d. Any notice to be given to us may be sent to Edwards and Company, 28 Hill Street, Belfast, BT1 2LA and, any notice to be given by us, may be given to you at your last address known to us.

³ <http://www.lawsoc-ni.org/>

- e. Notwithstanding any other provisions, these Terms will not confer on any third party the right to enforce any of them, or our letter of engagement, for the purposes of the Contract (Rights of Third Parties) Act 1999.

15. LAW & JURISDICTION

These Terms and the agreement between us, are subject to and to be construed in accordance with the law of Northern Ireland. Any dispute or difference arising between us and you shall be referred to the High Court of Justice of Northern Ireland to whose non-exclusive jurisdiction you irrevocably submit by continuing to instruct us, having had notice of these Terms and/or by your express acceptance of these Terms.

November 2011

LAW SOCIETY'S GUIDELINES ON THE DESTRUCTION OF FILES¹

DESTRUCTION OF FILES

In strict law, a solicitor is never completely safe in destroying a client's file (the overwhelming part of the contents of which will be the clients' property), without the express permission of the client, although obviously the degree of risk involved in so doing will vary according to the circumstances of the case.

In addition to being an important matter of principle, this has become a major practical problem for solicitors faced with growing pressures on office storage space.

SIMPLE DEBT COLLECTION

Normally the file can be destroyed on completion of the matter, after the time for approval has elapsed.

DIVORCE

Five years after final completion, ie after orders as to custody and access etc., if any, have ceased to have effect

CIVIL COURT CASES

At least five years after completion.

CRIMINAL LEGAL AID CASES

Unless there are special circumstances, files may be destroyed after the Legal Aid Fund has settled the solicitor's account. Account must be taken, however, of the manner in which the case has been disposed of – eg if there is a probation or community service order, the file should be retained while that order is in force.

OTHER CRIMINAL CASES

Destroy twelve months after completion, remembering the conditions outlined above. In the case of road traffic prosecutions, the possibility of a consequent civil action should be borne in mind.

¹ Updated from the Writ, April 1990

PROBATE AND ADMINISTRATION

Ten years after completion

CONVEYANCING TRANSACTIONS

Ten years after completion

CONTINUING TRUSTS

Ten years after completion

COMPANY WORK

Ten years after completion

OTHER CORRESPONDENCE FILES

Two to three years after completion of the business.

In interpreting the above guidelines, the following points must be borne in mind:-

1. These guidelines apply to correspondence files only. Important papers such as judgments, decrees etc. should normally be retained indefinitely, and should be kept separate from the correspondence. So far as financial records are concerned, regard should be had to the provisions of Regulations 11(7) of the Solicitors' Accounts Regulations 1998.
2. The files should only be destroyed on the direct instructions of a principle in the firm.
3. Wherever practicable, the consent, express or implied, of the client concerned should be obtained before files are destroyed.
4. It must be borne in mind that these are guidelines only. The onus must always rest with the solicitor as to whether it is safe or prudent to dispose of a file in any particular case.