

# edwards clegg

## **TERMS OF BUSINESS**

(Version 26/11/2019)

### **1. Introduction**

The following terms of engagement apply to all work carried out by Edwards Clegg for clients except as otherwise agreed. The expression "we", "us" and "our" refer to Edwards Clegg and "you" and "your" refer to our client.

Our intention is to provide you with the highest quality of service, handling your instructions with professional skill, care and attention.

We will:

- \* keep you regularly informed of progress;
- \* communicate in plain language;
- \* explain the legal work that may be required;
- \* advise you regularly of the costs/risk benefit of pursuing a matter; and
- \* advise you of the likely timescale involved.
- \* review your matter regularly and advise of any changes in the law, circumstances or risk which could affect the outcome;
- \* notify you of your responsibilities, such as giving clear and prompt instructions.

Our hours of business are 9.00am – 5.00pm Monday to Friday excluding Bank Holidays. We do not operate an out-of-hours/emergency service.

Certain of the following sections 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 on which we provide all our services.

### **2. People Responsible for your work.**

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:

- \* the person responsible for dealing with your work is detailed in the covering letter as is the assistant/secretary who may be able to deal with your enquiries and who will be pleased to take any message for you. We will try to avoid changing the people who handle your work but if this cannot be avoided, we will tell you promptly of any change and why it may be necessary.
- \* the Principal of this firm with final responsibility for work done by the firm is Philippa Edwards.

We are happy to establish a method of reporting which is specifically suited to your needs (e.g. monthly or quarterly reports, face-to-face reviews).

### **3. Instructions**

We will not accept instructions by text sent to a mobile phone unless the instructions are confirmed in a printable format.

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

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 yourself without our prior agreement.

When accepting instructions to act on behalf of a limited company, we may require a Director and/or controlling shareholder to sign a form of personal guarantee in respect of the charges and expenses of this firm. If such a request is refused, we will be entitled to stop acting and to require payment of our charges on an hourly basis and expense as set out earlier.

There are certain transactions or aspects of transactions which may have taxation implications. Please note that we are not qualified to give tax advice (other than in respect of Stamp Duty Land Tax). In these circumstances or if you require any specific need for tax advice with us we may be able to refer you to an appropriate advisor.

#### **4. Charges**

Our fees are based on the various criteria laid down by statute which states that our charges are to be fair and reasonable having regard to all the circumstances. As our time and expertise are the core elements of our service, our charges are normally calculated by reference to the current hourly rates of the Lawyers 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. Hourly rates vary according to the level of seniority of each Lawyer and expertise required; your instructions will be carried out at a level appropriate to providing an efficient and economic service. Hourly charging rates are reviewed periodically (usually at the end of March each year) and may be increased automatically at that time. We shall notify you of the current rates applicable to your work in the letter enclosing these Terms. You will also be notified of any changes in these rates.

We try, however, to be flexible in our charging approach and are prepared to consider alterations to an hourly rate including, for example, fixed fees, blended rates, percentage fees based on specific criteria, or retainers.

We reserve the right in a fixed fee transaction that becomes abortive to charge a proportionate sum for work carried out up to that point. That charge will not exceed the sum quoted to you. We also reserve the right to increase a fixed fee if the transaction becomes unexpectedly complex but we will not introduce an increase without discussion with you. We will also make a charge for responding to all lawful notices and orders from law enforcement agencies relating to our retainer with you (irrespective of our ability to discuss compliance with the notice or order with you).

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

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.

#### **5. Expenses and 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 fees of counsel and other experts, search and registration fees, stamp duty and court and commissioners fees. We will not mark up such disbursements when we recharge them to you.

We reserve the right to charge expenses of travel, accommodation and meals while travelling away from the office and also for abnormal postal, fax, telephone and photocopying costs incurred on your behalf.

Please note that unless you or a third party (e.g. a lender) to your transaction instruct us to the contrary, we will use a reputable personal search agency to carry out some types of searches required in property transactions. We do that because such searches are invariably carried out more quickly and more cost effectively. All such search agents that we use are fully backed by an appropriate level of professional Indemnity Insurance.

#### **6. Value Added Tax**

Any estimates or quotations given by us are net of VAT, which will be charged as applicable on our fees and on those expenses and disbursements that are liable for VAT.

#### **7. 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 person responsible for your work is willing to discuss with you the most appropriate accounting procedures for any particular matter.

We reserve the right to request payments in advance on account of fees and disbursements.

#### **8. Payment**

Payment is due upon presentation of the invoice unless we have told you in writing that a different payment date will apply. If any 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 a rate equivalent to two and a half per cent above the base rate from time to time of Allied Irish Bank (GB).

With property transactions we will normally send you our bill following exchange of contracts. Payment is required on a purchase prior to completion, and upon completion for a sale. If sufficient funds are available on completion, and we have sent you a bill, we will deduct our charges and expenses from the funds.

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 matter to which they relate, until all sums outstanding to us are paid. We also have the right to charge interest on the outstanding amount.

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 payment of the full amount of our fees and disbursements.

In some cases and transactions a client may be entitled to payment of costs by some other person. It is important that you understand that in such circumstances, the other person may not be required to pay all of the charges and expenses which you incur with us. You have to pay our charges and expenses in the first place and any amounts which can be recovered will be a contribution towards them.

In circumstances where we deem it necessary to bring proceedings to recover outstanding costs then

- i) Sections 70, 71 and 72 of the Solicitors Act 1974 set out your rights relating to having the bill assessed by the court; and
- ii) We are entitled to charge interest on the outstanding amount of the bill in accordance with article 5 of the Solicitors' (Non-Contentious Business) Remuneration Order 2009.

## **9. 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 on the due date or to make payments in advance when so requested). We will give reasons where we can.

We will be entitled to retain your papers and documents while there is money owing to us for our costs and expenses.

## **10. Money held by us**

Money held by us for you, whether on account of fees or disbursements or otherwise, will be placed in our Client Account and you will be entitled to interest which would have been earned had it been held in a separate designated account at Allied Irish Bank (GB) unless the amount of such interest is less than £20.

\* 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 Solicitors' Accounts Rules 1998, interest will be calculated and paid to you at the rate from time to time payment on Allied Irish Bank (GB) Designated Client Instant Access Accounts. The period for which interest will be paid will normally run from the date(s) on which funds are received by us until the date(s) of issue of any payment(s) from our Client Account.

\* Where a client obtains borrowing from a lender in a property transaction, we will ask the lender to send the monies to us by telegraphic transfer the date before completion. This will enable us to ensure that the necessary funds are available in time for completion. Such clients need to be aware that the lender may charge interest from the date of transferring the payment.

When we cease acting for you monies due to you will be paid by cheque or by electronic transfer but not by cash and will not be made payable to a third party.

## **11. 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. Reference to 'Court' below includes tribunals and public enquiries etc.

\* You are responsible for paying our account even if the court eventually orders another party to contribute towards your legal costs. You should be aware that there are sometimes difficulties and/or delays in assessing and recovering these 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 litigation to pay a proportion of the successful litigant's costs. The court can order you to make immediate payment of costs at any stage in the proceedings.

\* Only in exceptional cases will the court make an award which gives the successful litigant a right to the full reimbursement of the costs of the proceedings. You should therefore assume that even if your action is successful there will be additional costs payable to us over and above anything recovered from the other side. In cases where another party is legally aided it is more unlikely that you will be able to recover costs. Costs will include our fees and disbursements in preparing a bill for submission to the other side.

\* If you lose an action, you will be liable to pay our fees and disbursements. In addition, the court is also likely to exercise its discretion to order you to pay a proportion of your opponent's costs.

\* If you have legal fees insurance, you should also be aware that insurers rarely pay bills before completion of the case, and you will remain liable to pay our bills when rendered during and at the end of the case even if you have not yet been indemnified by your insurers.

- \* If you withdraw an action, the other party is entitled to have an order made by the court for you to pay costs.
- \* In cases before tribunals, cost orders are very rarely made against unsuccessful parties and you should not expect to recover any of our fees and disbursements even if you are successful.
- \* In any action you will be required to disclose to the other parties anything in which information of any description is recorded, including documents, correspondence, notes, memoranda, computer databases, videos and audio tapes, which are or have been in your control and which relate in any 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 safe-keeping. This obligation is onerous and you may be liable for severe penalties including fines and/or any doubt as to whether to preserve records you should err on the side of preservation.
- \* In all cases involving a dispute which may lead to court proceedings the need to comply with court rules places responsibilities which you will need to comply with. Failure to comply with your obligations may lead to the imposition of sanctions for which we cannot accept responsibility.

## **12. 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, or where we are required to produce all or part of a file to assessors or similar as part of an audit or quality check.

An actual or potential conflict between your interests 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.

## **13. File and Document Storage**

Files and other papers relating to your matters will be stored for such time as we judge reasonable or for such time as we are required by law to do so, after which we may destroy them. Such files or papers may be preserved electronically or by other means of image processing. This applies to all files and papers retained by us other than title deeds, wills and similar items.

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 time spent for 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 your instructions.

We make no charge for the storage of deeds and wills.

## **14. Commissions**

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

## **15. Complaints**

If you have any problem with the service we have provided for you then please let us know. We will try to resolve any problem quickly and we operate an internal complaints handling system (a copy of which is available on request) to help us to resolve the problem between ourselves. If for any reason we are unable to resolve the problem between us, then we are regulated by the Solicitors Regulation Authority and complaints and redress mechanisms are provided through the Solicitors Regulation Authority and the Legal Ombudsman ([www.legalombudsman.org.uk](http://www.legalombudsman.org.uk)). Normally you will need to bring a complaint to the Legal Ombudsman within six weeks 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 if outside this period, within three years of when you should reasonably have been aware of it).

Clients are no longer able to request a remuneration certificate in respect of bills. Instead, if you are unhappy about our bill then that will be dealt with like any other complaint about our service. There is a right to object to a bill by making a complaint to the Legal Complaints Service, and/or by applying to the Court for an assessment under Part III of the Solicitors Act 1974.

## **16. Money Laundering**

In common with all other firms of lawyers, and many other types of business besides, we are obliged by the Proceeds of Crime Act 2002 and the Money Laundering Regulations 2007 to disclose to the authorities any activity which we suspect may involve money laundering, and, indeed, we are subject to very severe penalties should we fail to do so. We therefore reserve the right to make any such disclosure as we in our absolute discretion think fit and without reference to you or any other person (and whether before or after any such disclosure is made) and without incurring any liability for any loss or damage occasioned by such disclosure and whether by you or some other person or party.

Please note that we are unable to accept more than the sum of £200 in cash.

#### **17. Financial Services**

We are not authorised under the Financial Services and Markets Act 2000, but we are able, in certain circumstances, to offer a limited range of investment services to you because we are regulated by the Solicitors Regulation Authority. We can provide these investment services if they are an incidental part of the professional services we have been engaged to provide.

The Law Society is a designated professional body for the purposes of the Financial Services and Markets Act 2000, but responsibility for regulation and complaints handling has been separated from the Law Society's representative functions. The Solicitors Regulation Authority is the independent regulatory body of the Law Society and the Legal Complaints Service is the independent complaints handling body of the Law Society.

#### **18. Insurance Mediation**

We are not authorised by the Financial Services Authority. However, we are included on the register maintained by the Financial Services Authority so that we can carry on insurance mediation activity, which is broadly the advising on, selling and administration of insurance contracts. This part of our business, including arrangements for complaints or redress if something goes wrong, is regulated by the Solicitors Regulation Authority. The register can be accessed via the Financial Services Authority website [www.fsa.gov.uk/register](http://www.fsa.gov.uk/register).

On occasions we may recommend that you take a specific insurance product (for example to replace searches or to cover lost title deeds) with a specific insurer. In these cases we will provide you with a statement of demands and needs.

The Law Society is a designated professional body for the purposes of the Financial Services and Markets Act 2000, but responsibility for regulation and complaints handling has been separated from the Law Society's representative functions. The Solicitors Regulation Authority is the independent regulatory body of the Law Society and the Legal Complaints Service is the independent complaints handling body of the Law Society.

#### **19. E-mail communication**

If you have the necessary facilities we will sometimes use E-mail for communication 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.
- \* Viruses or other harmful devices may be spread over the Internet. We take reasonable precautions to prevent these problems by use of a fire wall and virus checking software. If we are to communicate by E-mail, it is on the basis that you do likewise.

#### **20. Associates**

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

#### **21. 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. Judgement in any suit, action or proceedings 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.

#### **22. Equality and Diversity**

This firm is committed to promoting equality and diversity in all of its dealings with clients, third parties and employees, and is required to produce a written equality and diversity policy. Please contact us if you would like us to send you a copy of that equality and diversity policy.

#### **23. Data Protection**

All information relating to you will be dealt with in accordance with our legal obligations under the General Data Protection Regulations and your particulars will be held on our database and dealt with in accordance with the obligations imposed on us by those Regulations. 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 to manage our practice, statutory returns and legal and regulatory compliance. Our use of that information is subject to your instructions, the General Data Protection Regulations and our duty of confidentiality. Please note that our work for you may require us to give information to third parties such as HMRC and other professional advisors. Please let us know if you do not want us to do this. You have a right of access under the Data Protection Legislation to the personal data that we hold about you.

**24. Professional Indemnity Insurance**

We maintain professional indemnity insurance which is received annually. Details of our current provider and the territorial coverage of that insurance are available at our office and can be supplied on request.