

# MERCERS

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## SOLICITORS

### **OUR SERVICE, FEES AND TERMS OF BUSINESS**

The information contained in this note sets out the service we aim to provide, our terms of business and the basis upon which we calculate fees together with other information. Please read this note carefully, and if you have any questions raise them with us as soon as possible. All instructions which we accept incorporate these terms and conditions and our services are provided on the same basis. Your continuing instructions shall amount to acceptance of these terms. We reserve the right to amend these terms and conditions in the future.

#### **I. OUR SERVICE**

##### **1. GENERAL**

Mercers is divided into specialist departments: Commercial Property, Litigation and Dispute Resolution, Injury, Residential Conveyancing and Wills, Probate, Tax Planning and Trusts. Upon instructing Mercers your legal work will be carried out promptly and efficiently and the expertise of the entire firm will be available to you. Your work will be carried out by a Partner or other member of staff, or, in more complex cases, by more than one person, depending on considerations of cost and specialisation. However, to ensure that your work is carried out to a high standard there will always be a Partner who will have overall responsibility for the carrying out of your instructions and the advice given to you by the firm. Always feel free to discuss any aspects of your work with this Partner. We are committed to providing all our clients with a high quality service and full details are contained in our Client Service Charter which can be found on our web site or supplied on request. If the nature of your case is such that an exceptional level of service is required then this should be raised with the person handling your case, at the outset. If you have a disability which means you require the firm to provide its service in a particular way then please advise us of this at the outset so that we can take relevant steps to ensure the service is provided in a way that accommodates your needs.

##### **2. REGULATION**

The Partners of Mercers are solicitors of England and Wales and Mercers is regulated under the name "Mercers" by the Solicitors Regulation Authority (SRA). The registration number is 00053077. Details of the SRA Rules and Regulations which state how we are to deliver our services is available on-line at [www.sra.org.uk](http://www.sra.org.uk). We are not authorised by the Financial Conduct Authority. However, we are included on the register maintained by the Financial Conduct Authority so that we can carry on insurance distribution 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 SRA. The register can be accessed via the Financial Conduct Authority website at [www.fca.org.uk/firms/financial-services-register](http://www.fca.org.uk/firms/financial-services-register)

### **II. OUR FEES**

#### **1. HOW WE CALCULATE FEES**

Solicitors' fees are governed by the Solicitors Act 1974 and subsequent rules made under the Act. Our fees are calculated on the basis of a fair charge for the work carried out and the expertise employed. The time spent carrying out your work will, to a large extent, form the basis of that charge unless otherwise advised. Different hourly rates may be charged for work carried out by Partners and other members of staff. Rates may vary for different types of work. All time spent carrying out work for you is recorded by means of a time recording system including for instance:

- Advising you in meetings and on the telephone, and keeping you informed
- Negotiating with others on your behalf, in meetings, by letter and by telephone
- Considering, drafting and completing documents, deeds etc.
- Preparing for court or tribunal hearings, including travelling and waiting time
- Instructing third parties on your behalf
- Legal and factual research

Other factors which will affect our fees in relation to your work are exceptional urgency, its value, complexity or the need to work unsocial hours. Charges may also be made for such items as postages, telephones, faxes and photocopying.

The person responsible for the day to day handling of your work will be able to give you an indication of the amount of fees incurred at any given time, and discuss any other factors which may affect the final fee.

Please tell us if you have legal expenses insurance before we start work.

#### **2. ESTIMATES**

As a result of these factors it is not always possible to give a realistic estimate of our fees, but for each particular job or each stage of it we will, if we can, give you an estimate of our fees, where it is possible to do so, based on the information available to us at the time. In any event, we will advise you of the basis upon which we will charge and will give you the best information we can about your likely overall fees.

If you subsequently ask us to undertake additional work, or change your mind and alter earlier instructions this will almost certainly increase our fees.

As the work progresses, we will let you know if it becomes apparent that an estimate will be exceeded, or if the basis of our charges will be affected for any reason, or if we review our charge rates. We review our hourly rates periodically and will let you know of any changes to the hourly rates. If at any stage you are concerned about your fees, please consult us. An upper limit can be set, at your request or ours, on the amount of fees which may be incurred without further reference to you.

### **3. PAYMENTS MADE ON YOUR BEHALF (DISBURSEMENTS)**

In addition to our fees, you may also have to pay disbursements paid by us to third parties, eg Court fees, search fees, barrister's fees etc. Where we are required to remit funds electronically, a fixed fee will be charged by the firm for this service. The fee will include administrative and other charges. Where black and white or colour photocopying requirements are in excess of 40 pages we may make a charge at the rate allowed by the local County Court per copy or at such reasonable rate as otherwise agreed with you. We may request payment in advance for expected disbursements so that we can pay them promptly. Please respond quickly as delay in providing funds may result in delay in dealing with your work for you. Where disbursements are relatively small, we may exercise a discretion and make payments without your specific instructions.

### **4. VALUE ADDED TAX**

Estimates of fees do not include VAT which will be charged on all professional fees and on some disbursements.

### **5. LITIGATION COSTS**

In litigation matters where possible you will be advised in advance as to the merits of your case and whether in our view you are likely to achieve a Court Order for the other party to contribute towards your legal costs.

It is important to be aware that this firm is employed by you and that you are personally responsible for the payment of our fees regardless of any order for costs made against opponents. In addition, if your case is unsuccessful, you will probably have to pay your opponent's costs as well as your own costs. There are circumstances in which you may still have to pay some or all of our fees and disbursements even when you have been successful, for example:

- Where the other party does not pay promptly, or at all
- Where the Court orders the other party to pay you less than our full fees and disbursements, leaving a balance which you will need to pay to settle our account
- Where, following negotiation with the other party, we recommend that you accept less than the costs you have incurred to avoid an assessment of costs by the Court
- Where the other person's contribution cannot be recovered, for instance where they are incapable of paying or they are receiving funding from the Legal Aid Fund

We do not undertake work where funding is provided by the Legal Aid Agency.

### **6. YOUR OBLIGATIONS/KEEPING THE FEES UNDER CONTROL**

There are certain steps which will assist us with progressing your case and will also help to limit the time we need to spend on your work and, therefore, the charges. These are: -

- Providing to us in time for the first interview any relevant e-mails, letters, documents etc (in hard copy or electronically)
- Telling us if you have any important time limits or dates of which we should be aware, eg holidays
- Dealing promptly with our questions, telephone messages and letters, and providing full and accurate information and documentation
- Making an appointment if you want to see someone. If you call in to see someone urgently, we will make sure that you are seen as soon as possible, but without an appointment you may be unable to see the person whom you would like

to see

- Arriving promptly for appointments and letting us know in advance if you are unable to keep an appointment
- Telephoning us with urgent questions or information. If the person to whom you wish to speak is unavailable please talk to another member of the team who will be able to help or ensure that your call is dealt with as soon as possible
- Asking if you are not sure about anything

## **III. OUR TERMS OF BUSINESS**

### **1. PAYMENT OF INVOICES**

All invoices must be settled within 14 days of date of invoice. We reserve the right to charge interest on accounts unpaid (in full or part) after this period. The amount of interest will be that prevailing in the Courts on unpaid judgements. In the case of Commercial Clients, we reserve the right to claim interest and recovery of costs pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

Where we are holding money due to you, eg on completion of the sale of a property or where we have recovered monies from a third party on your behalf, fees and disbursements due to us will be deducted and the balance paid to you.

In the event that payment under any invoice submitted by us to you has become due then we shall have the right (and you irrevocably agree and authorise us) to apply and appropriate any money of yours, which we may hold from time to time in the current matter or in any other matter on which we are instructed, in part or in full towards payment of any such invoice.

Where we are instructed by more than one person or legal entity to represent their joint interests, those instructions will be considered to be joint and several unless we have otherwise agreed in writing. This means that we can look to any one of those instructing us for payment of all and any monies due to us, leaving the payer to collect the appropriate contributions from the other or others.

If we are instructed by a private limited company then, unless otherwise agreed with you in advance, it is a condition of our accepting these instructions that the Directors are personally, jointly and severally liable along with the company for payment of our fees and disbursements and any interest thereon.

The common law entitles us to retain any money, papers or other property belonging to you which properly come into our possession pending payment of our costs, whether or not the property is acquired in connection with the matter for which the costs were incurred. This is known as a "general lien". We are not entitled to sell property held under a lien, but we are entitled to hold property, other than money, even if the value of it greatly exceeds the amount due to us in respect of costs. If we are conducting litigation for you, we have additional rights in any property recovered or preserved for you, whether it is in our possession or not, and in respect of all costs incurred whether billed or unbilled. We also have a right to ask the Court to make a Charging Order in our favour for any assessed costs.

If you are unhappy with an invoice we have sent you please let us know and please refer to the paragraph in Section IV below entitled "Complaints Procedure". Alternatively, you may

apply to the Court for an assessment of the invoice under Part III of the Solicitors Act 1974 (but if you do you will be precluded from referring a complaint to the Legal Ombudsman).

## **2. PAYMENT**

We often ask clients for an advance payment on account of fees and disbursements. We reserve the right to make the receipt of such payment a condition of our accepting instructions.

When we are holding an advance payment to cover anticipated disbursements, we will let you have a receipted account after the disbursements are paid out, if requested. Payments on account of fees will be credited to you in your interim or final invoice.

## **3. INTERIM INVOICES**

If work is completed within a short period of time, it will be invoiced in full on completion. Otherwise, interim invoices will be raised at regular intervals as work progresses. There are two types of interim bill we may issue. Either (1) An Interim on Account Bill – This is where we ask for further funds generally on account so that we can continue work on your case or (2) An Interim Statute Bill - This will consist of fees for the specific work/period set out in the bill. In the case of the second type of interim bill, the Interim Statute Bill, your continued instructions shall be deemed acceptance by you that fees outstanding for a month or more (where no application for assessment pursuant to s.70(1) of the Solicitors Act 1974 has been made) are agreed and immediately payable in full and where the Firm continues to act in those circumstances, it is conditional on this being the case.

## **4. CLEARANCE OF FUNDS AND BANK TRANSFERS**

Some types of work, eg property purchases and settlement of large claims, may involve us in making substantial payments to third parties from the money which we hold in our client bank account. Our client account is operated in accordance with professional rules which govern payments against uncleared funds. Where money is to be paid to a third party, at least twelve working days must be allowed for clearance of any cheques deposited with us by you or anyone on your behalf, before we can make such payments. In many cases, it will be both cheaper and more convenient for you to arrange for funds to be sent to us electronically and we will advise you when this is appropriate and how to make them. It is your responsibility to check with the institution concerned how quickly cleared funds will be received by us.

In the normal course of conveyancing transactions it is common practice to rely on undertakings given by other firms of solicitors in respect of transmission of funds and documents. In the event of those solicitors defaulting, ultimately you would have a right to claim on the Solicitors Compensation Fund. We cannot be responsible for another solicitors default or any loss flowing from such default and any liability which we would otherwise have is specifically excluded pursuant to these Terms and Conditions.

We will not be responsible for any loss or fee incurred by you as a result of a bank error or delay, nor for any loss sustained in any subsequent transaction which was dependant on funds being transferred successfully or promptly via the banking system.

Bank Transfers by the Firm will be made in pounds sterling

only. For Private Client Department matters, in exceptional circumstances, transfers may be made in foreign currency but this must be agreed in advance and a fee may be charged,

Mercers will not be liable to repay any money that we hold for you in our client account at Lloyds Bank plc which is lost as a result of banking failure. Compensation for banking failure may be available from the FSCS but you should be aware of the maximum of £85,000 check per individual per bank institution. Additionally, this will be relevant if you bank separately with Lloyds (or a bank in the same group as Lloyds) as the £85,000 is a cumulative maximum figure allowed per individual, notwithstanding monies are held by us on your behalf or by you in separate accounts.

## **5. ABORTIVE OR TERMINATED WORK**

If work which we have undertaken for you does not proceed to a conclusion, we will charge only for work done up to the point where the matter proves abortive and for any disbursements paid on your behalf.

Where you terminate your instructions to us before a matter is concluded or if we cease to act for you, we will charge you only for work done up to the point of termination or cessation.

## **6. MONEY LAUNDERING & PROCEEDS OF CRIME LEGISLATION**

For the protection of all our clients and in compliance with Money Laundering Legislation, we operate a money laundering reporting procedure. This means:

- In certain circumstances without notice to you, information will be disclosed by us to appropriate authorities, in relation to any suspicion of terrorist financing or money laundering including tax evasion and benefit fraud. By making such disclosure, we will not be in breach of our duty of confidentiality. If we make a disclosure we may not be able to tell you and may need to stop working for you on your matter for a period.
- Our policy is that we cannot accept cash payments with the exception that we can accept up to £300 from a client in settlement of disbursements or an invoice issued by the firm. If anyone circumvents 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.
- We are required to obtain evidence of identification in relation to all our clients at the commencement of a new matter and before any financial transaction can take place. We may arrange to carry out an electronic verification of your identity and may need to charge in respect of this work, in which case you will be informed. In the event that insufficient ID is supplied, we shall have to cease to act. Any personal data we obtain concerning you for the purposes of our money laundering checks will be processed only for the purposes of preventing money laundering and terrorist financing, or as otherwise permitted by law or with your consent. You consent to us retaining such data for longer than the five year statutory period, unless you tell us otherwise.

## **7. COMMISSION RECEIVED**

We may receive commissions, for example from brokers, insurance companies, banks or building societies and auctioneers, as a result of acting for you. Unless we come to a separate arrangement with you we will account to you for all commissions, by applying the same towards any outstanding

fees or fees not yet invoiced, and paying to you any balance in excess thereof. All commissions for which we account to you will be paid into the firm's client account. In the event of any commission received by us, and accounted for by us to you, being repayable by us (for example as a result of the non-renewal or termination of an insurance policy) then we must reserve the right to require you to repay such commission to us.

## **8. BANK INTEREST**

The SRA Accounts Rules govern the conditions under which we pay interest on money which we are holding for you. Our Policy is that we will pay interest when it is fair and reasonable to do so. A full copy of our Interest Policy is available at your request. If we send you a cheque please present it promptly for payment. If you do not do so, interest may continue to be due to you, but it may be administratively impossible to pay it to you.

## **9. INVESTMENT SERVICES**

Sometimes conveyancing, family or probate work involves investments. We are not authorised by the Financial Conduct Authority and so may refer you to someone who is authorised to provide any necessary advice. However we can provide certain limited services in relation to investments, provided they are closely linked with the legal services we are providing for you, as we are regulated by the SRA.

## **10. USE OF DOCUMENTS**

Documents drafted for clients by Mercers are drafted for the specific purpose on which instructions have been taken only. The firm accepts no responsibility if such documents are reproduced, altered or added to for any purpose or re-used for other transactions, without the prior consent of a Partner. In no circumstances must the firm's name be used or placed on any document not prepared by Mercers.

## **11. LITIGATION - COURT OR TRIBUNAL PROCEEDINGS**

1. Documents:-Where proceedings have been instigated, or it is anticipated that proceedings may be instigated in the future, we will ask you, in due course, to produce documentation relating to the matter including any electronic documents created or stored on a computer. We therefore ask you to keep all relevant documentation stored safely and securely, that backups of electronic documents (including e-mails) are made and stored safely and that you instruct all third parties that may be holding relevant documentation (such as your advisers, employees and agents etc) to keep all documentation in a safe and secure environment with backups where applicable. Any documents created after instructions have been issued (including internal e-mails) will also be subject to disclosure and we therefore recommend that you take care to ensure the accuracy and wording of statements in any such e-mails or other documents.

2. Advocates' Policy:- Please note we have an Advocates' Policy, which contains details of our duties to you and the Court when performing advocacy work on your behalf. A copy of the Policy will be provided if it is relevant to your case.

## **12. LIMITATION OF LIABILITY**

Our liability to you in respect of any loss or damage howsoever caused whether through negligence, delay, non performance, breach of contract or otherwise is, unless liability is excluded totally elsewhere in these terms of business (see in particular III.4) limited to £3,000,000. We will not be liable for any consequential, special, indirect or exemplary damages, costs or losses, or any damages, costs or losses attributable to lost

profits or opportunities. We will not be liable whether in tort contract or otherwise for any direct or indirect or consequential loss as a result of a failure or delay in the performance of your instructions if it is due to any event beyond our control, in particular, but not limited to, events linked to COVID-19. We can only limit our liability to the extent the law allows. In particular, we cannot limit our liability for death or personal injury caused by our negligence. Please ask if you would like us to explain this further.

## **13. COMMUNICATION AND CORRESPONDENCE**

As a general rule we will communicate with you and third parties by letter or telephone, however we do have e-mail and fax facilities, details of which can be found on our notepaper. We will assume, unless you advise to the contrary in writing, that you have no objection to the use of faxes or e-mails in connection with your work (possibly including sensitive personal information) and that you accept the risk that these communications could be intercepted by an unauthorised person. Communications by fax or e-mail will not be followed up by the sending of a hard copy by post unless you so request or we in our discretion decide to do so. Please note that we offer encryption facilities for e-mailing sensitive documents and information. Details will be provided where relevant or on request. Please keep us advised of any changes in your e-mail address or fax number. Please address all e-mails to the firm's central e-mail address (mail@mercerslaw.co.uk), unless a personal e-mail address is shown on our correspondence. Attachments to e-mails we send will sometimes be provided in a non-revisable format. If they are provided in a revisable format, the conditions set out in paragraph 10 above apply in full.

## **14. TERMINATION OF YOUR INSTRUCTIONS**

You may terminate your instructions to us in writing at any time. Please refer to separate information we will provide (if applicable) concerning rights to cancel under the Consumer Contracts Regulations 2013. We may decide to stop working for you (on giving reasonable notice to you) on all or any one or more of your cases.

- For example:-
- if you do not pay an interim invoice promptly;
- do not comply with our request for a payment on account;
- do not give clear or adequate instructions;
- do not accept the advice given by us such that in our absolute discretion we consider it impossible to continue acting for you, or if you act unreasonably or if we otherwise consider there has been a breakdown in confidence between us;
- or if we are prevented by law or by professional rules from doing so (when we need not give reasons).

If you or we decide we will no longer work for you, fees and disbursements will be payable for work carried out up to the date of termination or cessation, even if the original agreement or understanding had been that we would only bill you on completion of the matter. We do not accept liability for any loss suffered as a result of early termination or cessation of instructions for any reason.

## **IV. OTHER INFORMATION**

### **1.Complaints Procedure**

Like many professional firms, a high proportion of our work comes from recommendations from our clients. It is important

for us to know that the legal services we provide are prompt and of a high standard, so that we can be sure we give a high quality service and advice to all our clients. If you have any difficulty communicating with any member of the firm or have a query about your work or our fees, which you cannot resolve directly with that person or his or her Head of Department or supervisor please contact Peter Hopkins, the firm's Client Relations Partner, at the address below or at [phopkins@mercercslaw.co.uk](mailto:phopkins@mercercslaw.co.uk). We have a procedure in place which sets out how we handle complaints, and you can request a copy of this. If you are not satisfied with our handling of your complaint you may be able to ask the Legal Ombudsman (PO Box 6806, Wolverhampton WV1 9WJ, website [www.legalombudsman.org.uk](http://www.legalombudsman.org.uk), telephone 0300 5550333) to consider the complaint, provided the Ombudsman has jurisdiction. Generally, individuals, small businesses and small Trusts, Estates, Charities and Clubs have this right. If in doubt, ask us, or the Ombudsman can clarify the position. 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. Alternatively, you should lodge a complaint with the Legal Ombudsman no later than 6 years from the act or omission about which you are complaining, or if outside of this period, 3 years from when you should reasonably have been aware of the complaint. If you are unhappy with the behavior or professional conduct of a member of the Firm, you have the right to complain to the SRA. Details of how to complain are available on-line at [www.sra.org.uk](http://www.sra.org.uk).

## 2. Data Protection (GDPR) Privacy Notice

We take our responsibilities regarding protection of data very seriously and have processes in place to provide security and confidentiality of data. We use the information you provide primarily for the provision of legal services to you and for related purposes including statutory returns, legal and regulatory compliance, updating and enhancing client records and audit/analysis to help us manage our practice. Our use of that information is subject to your instructions, data protection law and our duty of confidentiality.

Please note that our work for you may require us to pass on such information to third parties such as expert witnesses and other professional advisers, including sometimes advisers appointed by another party to your matter. The lawful basis on which we process the information is our performance of the contract to supply you with legal services, so that we may advise you and act effectively in your matter.

We may also give such information to others who perform services for us, to ensure our service is prompt and efficient, such as overflow typing, photocopying or call-answering. If you do not want work to be outsourced in this way, please tell us as soon as possible, so we can consider this with you. In addition, our practice may be audited or checked by our accountants, regulator, and by other organisations for ISO quality purposes. We also use the services of storage companies for storage of archived files. The Lawful basis of such processing is legal obligation and legitimate interests. All third parties to whom we supply data are required to maintain confidentiality in relation to that data.

You have various rights under data protection law regarding your personal data including a right of access to the personal data that we hold about you. We seek to keep that personal data correct and up to date. Please let us know if you believe the

information we hold about you needs to be corrected or updated. If you have any questions regarding Data Protection please refer to Peter Hopkins who is the Partner responsible for Data Protection matters at Mercers. Full details of your rights are set out in the ICO website, [www.ICO.gov.uk](http://www.ICO.gov.uk) and complaints about data protection matters can be referred to the ICO.

Retention of files and data - We retain information regarding client matters for periods relevant to their subject matter as required by professional rules and legislation. The time periods vary depending on the area of law and facts of the specific case so decisions regarding retention or destruction of files and data will be made on a case by case basis. After expiry of the relevant retention periods, client files and data may be destroyed without further reference to you. If you do not wish your matter file to be destroyed in accordance with our standard procedure, you must inform us in writing within two months of conclusion of the matter that you would like the file retained (if there is any doubt as to the date of conclusion it shall be taken to be the date the final bill is issued by the firm).

Your data protection obligations - If you send us personal data about anyone other than yourself you will ensure you have any appropriate consents and notices in place to enable you to transfer that personal data to us, and so that we may use it for the purposes for which you provide it to us.

Keeping you informed – we may from time to time send you information which we think might be of interest to you (for example about legal developments or our other services). The lawful basis for this is legitimate interests. If you do not wish to receive that information please notify us, preferably in writing.

## 3. General

Details of our Professional Indemnity Insurers are available on our website.

We hope that having studied this information you will understand how we operate, and that you will be satisfied with all aspects of our service.

Our advice is for your benefit only. Save as expressly set out, our agreement with you is not intended to confer rights on any third parties whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise.

If any provision of these terms and conditions is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

These Terms of Business are governed by English law and the Courts of England and Wales shall have exclusive jurisdiction over any dispute or claim concerning our services. This is an important document. Please keep it in a safe place.

MERCERS, SOLICITORS [www.mercercslaw.co.uk](http://www.mercercslaw.co.uk)

50 New Street, Henley-on-Thames RG9 2BX

Telephone 01491 572138 Fax 01491 572223

E-mail: [mail@mercercslaw.co.uk](mailto:mail@mercercslaw.co.uk)

VAT registration number: 292 5862 24

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