

# Terms of business

# Newsome Vaughan LLP Solicitors

## Terms Of Business

Revised and issued October 2011

## Definitions

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"Members" are references to members of Newsome Vaughan LLP. "we" "us" "our(s)" "the Firm" are references to Newsome Vaughan LLP whose Registered Office is at Greyfriars House, Greyfriars Lane, Coventry, West Midlands, CV1 2GW, England. "the Client(s)" "you" are references to all Clients of ours.

## Preliminary

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1.1 This and the following pages set out the terms on which we will accept instructions to perform legal services on behalf of you as Clients of the Firm and any charges that we make for those legal services. These terms should be read in conjunction with the information which we will, in accordance with the SRA's professional rules, provide to you at the outset dealing specifically with the work to be undertaken, the individual within the Firm who will have day to day responsibility for that work and, his or her status and the Member of the Firm responsible for the supervision and control of the work in question. We will also provide an estimate of our charges and/or the basis on which they will be calculated. This information is contained in what we call the Engagement Letter. If there is any conflict between these terms and the Engagement Letter then the Engagement Letter will take precedence.

1.2 In accordance with the Consumer Protection (Distance Selling) Regulations 2000, you have the right to cancel your contract for legal services with the Firm if your instructions have not been given in a face-to-face meeting, without any cost to you. To do this, you should write and tell us you wish to cancel. This must arrive within 7 working days of receipt of these Terms of Business.

1.3 In accordance with the cancellation of Contracts Made in a Consumer's Home or Place of Work ETC Regulations 2008 ('The Regulations') you have a right to cancel your contract for legal services with the Firm if the contract or offer of one is made during a visit to your home; your place of work; another's home or during an excursion organised by the Firm. You may exercise this right to cancel by writing to us within 7 calendar days starting with the day of receipt of our engagement letter.

1.4 If you wish to cancel the contract for legal services with the Firm under either Clause 1.2 or 1.3 above, you must do so IN WRITING and deliver it personally or send it to the person having conduct of your matter by electronic mail, post, or facsimile. You may use the form attached to the engagement letter.

Please Note: You may be required to pay for the legal services provided by the Firm if you have expressly asked in writing for the legal services to be provided or to be started before the end of the 7 working/calendar day cancellation period, as appropriate.

1.5 You are required to sign and return the engagement letter to us. In the event that we do not receive a signed copy and we continue to act on your instructions, you will be deemed to have accepted our Terms of Business.

## Identity, disclosure and confidentiality requirements

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2.1 We are entitled to refuse to act for you if you fail to supply appropriate proof of identity for yourself or for any principal whom you may represent. The Money Laundering Regulations 2007 require us to obtain and verify the identity of our Clients and, sometimes, people related to them. We also need to monitor the transaction and keep identity information up to date. We may carry out an electronic verification of your identity. An administration fee in respect of any such search will be charged to you. If the amount is in excess of £10 including VAT, we will seek your prior agreement. You agree that we may use personal information provided by you in order to conduct appropriate anti-fraud checks. Personal Information that you provide may be disclosed to a credit reference or fraud prevention Agency, which may keep a record of that information.

2.2 Solicitors are under a professional and legal obligation to keep the affairs of the Client confidential. This obligation, however, is subject to a statutory exception: legalisation on money laundering and terrorist financing has placed solicitors under a legal duty in certain circumstances to disclose information to the Serious and Organised Crime Agency. Where a Solicitor knows or suspects that a transaction on behalf of a Client involves money laundering, the Solicitor may be required to make such a disclosure. If, while we are acting for you it becomes necessary to make such a disclosure, we may not be able to inform you that it has been made, or of the reasons for it, because the law prohibits 'tipping off'. Where the law permits us, we will tell you about any potential money laundering problem and explain what action we may need to take.

2.3 Our Firm may be subject to audit or quality checks by external Firms or organisations. These external Firms or organisations are required to maintain confidentiality in relation to your files. We may also outsource work. This might be for example typing or photocopying or costings, or research and preparation to assist with your matter. Information from your file may therefore be made available in such circumstances. We will always aim to obtain a confidentiality agreement with the third party. If you do not want your work outsourced, please tell us as soon as possible. The Client is deemed to have given informal consent to the inspection.

2.4 In order to comply with Court and Tribunal rules, all documentation relevant to any issues in litigation, however potentially damaging to your case, have to be preserved and may be required to be made available to the other side. This aspect of proceedings is known as 'disclosure'. Subject to this, we will not

reveal confidential information about your case except as provided by these Terms of Business and where, for example, your opponent is ordered to pay your costs, we have to meet obligations to reveal details of the case to them and to the court.

- 2.5 Except as we state in paragraph 2.3 all information and documents entrusted to us by our Clients will be treated as confidential and except as may be necessary for the proper conduct of the Client's business or unless required by law will not be divulged by the Firm to any other person without our Client's prior consent whether express or implied.
- 2.6 We use e-mail as much as possible. However you must recognise that emails are not always encrypted and therefore you accept the risk that in those circumstances they are not entirely secure and if you do not want us to use them, please let us know.

### **Conflict of Interest**

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- 3.1 We must not act if there is a conflict of interest (except in limited circumstances).
- 3.2 There is a conflict of interest if:
- 3.2.1 we owe, or our Firm owes, separate duties to act in the best interests of two or more Clients in relation to the same or related matters, and those duties conflict, or there is a significant risk that those duties may conflict; or
- 3.2.2 our duty to act in the best interests of any Client in relation to a matter conflicts, or there is a significant risk that it may conflict, with a Client's own interests in relation to that or a related matter.
- 3.3 For this purpose, a related matter will always include any other matter which involves the same asset or liability.
- 3.4 If the Firm acts for more than one Client in a matter and during the course of the conduct of that matter, a conflict arises between the interests of two or more of those Clients, the Firm may only continue to act for one of the Clients (or a group of Clients between whom there is no conflict) provided that the duty of confidentiality to the other Client(s) is not put at risk.
- 3.5 We will consider each set of circumstances on an individual basis and will aim to ensure that we are, at all times, acting in the best interests of our Clients.

### **Insurance and our Liability**

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- 4.1 We maintain professional indemnity insurance covering the Firm in respect of liability for professional negligence risk for amounts which are considered adequate by the Members for the normal business of the Firm.
- 4.2 If we breach our duties to you and we are then found to be liable to compensate you, you agree that our liability is limited to the fullest extent permitted by law.
- 4.3 It is the Firm that is liable, not an individual Member or member of Staff; you agree to make no claim against an individual except for fraud;

- 4.4 Our maximum liability for any single mistake (except for fraud) is £3million pounds (unless a different amount is agreed with you in writing);
- 4.5 This overall limit applies whether the mistake affects just one piece of work we do for you or several, so long as it is the same or a similar mistake;
- 4.6 For the purpose of the overall limit, more than one mistake on a matter or transaction is considered as one mistake;
- 4.7 We have no liability for any special, indirect or exemplary damages, costs or consequential loss or damages, costs or loss of anticipated profit or other benefit;
- 4.8 We are not liable to the extent that our mistake results from something you do or fail to do (such as giving us the wrong information, or not giving us information at the time we ask for it);
- 4.9 If others are also responsible for your loss, our liability is limited to our fair share, whether or not you are able to recover the rest from the others.
- 4.10 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.

### **Fees and Disbursements**

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- 5.1 We are entitled to charge for the time we spend on your matter which will include meeting with you and others, any time spent travelling, considering, preparing and working on papers, correspondence, emails and making and receiving telephone calls, costing and preparing bills. Time charged in an invoice may include anticipated time. Where we have quoted for a fixed fee for a transaction and you withdraw from the transaction, the time incurred up to that date will be billed at the applicable hourly rate.
- The Firm reserves the right to charge an administration fee in respect of tracing searches carried out.
- 5.2 If you are not satisfied with any charges submitted by the Firm, you are entitled to complain about your bill. There may also be a right to object to the bill by making a complaint to the Legal Ombudsman and/or by applying to the Court for an assessment of the bill under Part III of the Solicitors Act 1974.
- 5.3 Disbursements are expenses payable to a third party in connection with your instructions. Fees and disbursements are payable whether or not the matter is successfully concluded or a transaction completed. If the transaction becomes abortive a charge will be made for the work done on the basis of the amount of time spent on the matter. VAT is payable in addition except where supplies are exempt or zero rated.
- 5.4 Fees and disbursements for conveyancing work are normally paid prior to or upon completion of the sale or purchase. Where there are sufficient funds payable to a Client following completion of a sale we shall be entitled to deduct fees, disbursements and VAT in accordance with the Firm's invoice for the amount

- originally quoted or otherwise as agreed with the Client when accounting for those funds. Where the funds held are insufficient to meet the total of the fees, disbursements and VAT, arrangements will normally be made with the Client to pay the balance prior to completion.
- 5.5 In transactions which are likely to continue for some time we will invoice you for all work undertaken on a monthly basis unless otherwise agreed in writing taking into account all work previously invoiced and paid.
- 5.6 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 the Firm. If such request is refused we will be able to stop acting and require immediate payment of our charges on an hourly basis and expenses as set out earlier.
- 5.7 In certain types of transactions we may request from you a payment on account of our fees and disbursements on the basis that no work will be undertaken until the payment on account has been received and cleared.
- 5.8 Unless otherwise agreed, fees for all types of work are payable within 14 days of the date of invoice. Disbursements incurred or to be incurred may be separately billed during the course of the work and are payable on presentation of invoice.
- 5.9 We will not be obliged to undertake any further work for a Client if an invoice has not been paid within 30 days of the date of invoice.
- 5.10 We reserve the right and may be entitled to charge interest on outstanding invoices if all or any part of the bill remains unpaid after 30 days at the higher of the rate payable from time to time in respect of judgment debts (both before and during judgment) or the rate payable pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 until payment is made in full.
- 5.11 Estimates of fees and disbursements are given exclusive of VAT which will be payable in addition where appropriate.
- 5.12 Where fees are calculated by reference to hourly rates:-
- 5.12.1 routine letters and emails written are charged at the rate of 6 minutes per page;
- 5.12.2 routine letters received are charged at the rate of 3 minutes per page;
- 5.12.3 routine telephone calls made or received are charged in units of 6 minutes.
- 5.13 Hourly rates are reviewed annually in April. We reserve the right to increase these at that time and will notify you in writing of any increase in the rate which is to apply following the review.
- 5.14 Interest on costs which is recovered from a third party shall belong to:-
- 5.14.1 The Client in respect of costs which have been billed and paid; or
- 5.14.2 The Legal Services Commission (where appropriate); or
- 5.14.3 The Firm in respect of costs which have not been billed or paid.

#### **Commission**

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6. Commission in excess of £20.00 received by the Firm during the conduct of a Client's matter will be accounted for to the Client as required by the relevant professional rule unless the Client has entered into a written agreement entitling us to retain either all or part of the commission the amount of which (or the basis of calculation of which) will have been fully disclosed to the Client.

#### **Financial Services and Insurance Mediation Activities**

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- 7.1 If during this transaction you need advice on investments, we may have to refer you to someone who is authorised by the Financial Services Authority, as we are not. However, as we are members of the Law Society of England and Wales, which is a designated professional body for the purposes of the Financial Services and Markets Act 2000, we may be able to provide certain limited investment advice services where these are closely linked to the legal work we are doing for you.
- 7.2 We may, during your instructions, have dealings with general contracts of insurance which are defined as insurance mediation activities. We are not authorised by the Financial Services Authority (FSA). However, we are included on the Register maintained by the FSA 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 SRA. The Register can be accessed via the FSA Website at [www.fsa.gov.uk/register](http://www.fsa.gov.uk/register).
- 7.3 If you are involved in a conveyancing transaction and it is necessary during the course of your conveyancing transaction for any defective title insurance to be put in place, we must inform you that we only arrange such insurance through a limited number of insurers but we are not contractually obliged to conduct business in this way and we receive no commission for doing so.
- 7.4 The Solicitors Regulation Authority is the independent regulatory arm of the Law Society and the Legal Ombudsman is an independent complaints handling organisation. If you are unhappy with any investment advice you receive from us, you should raise your concerns with either of those bodies.

## **Client's Money**

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8. We will pay all your money due to you as soon as possible.

## **Interest**

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9. When it is necessary for us to hold your money in the Firm's Client account, interest (either gross or net as appropriate) will be paid by us on money so held in accordance with the Firm's Policy on the payment of interest.

## **File Storage**

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- 10.1 The Firm's process is to scan and destroy all original correspondence. Original documents and electronic copies will be retained as follows:
- 10.2 During or on conclusion of the matter or transaction all original documents (but not copies made by the Firm nor Title Deeds and documents to be stored by the Firm or held by mortgagees of the Client) and other items of property belonging to the Client which have been provided by the Client will normally be returned to the Client after all outstanding fees, disbursements and VAT have been paid.
- 10.3 We have a strong room with limited facilities for storage of the following original documents:-
  - 10.3.1 Title Deeds to freehold and leasehold property;
  - 10.3.2 Share Certificates and other securities;
  - 10.3.3 original Insurance policies and related documents;
  - 10.3.4 Grants of Probate and Letters of Administration;
  - 10.3.5 original Wills;
  - 10.3.6 original settlements and documents relevant to a Will Trust.
- 10.4 We will store these documents for the Clients. We may make a charge for the service.
- 10.5 In certain circumstances we can if requested store other original documents belonging to the Client e.g. documents relating to the administration of an Estate. But if so we will agree with the Client for how long these documents are to be retained before being returned to the Client or destroyed. We shall be entitled to make a reasonable charge plus VAT for providing this service.
- 10.6 The entire contents of your file (except the original documents referred to in paragraph 10.2) will be scanned from where copies can be retrieved. The Firm intends to retain such information on a permanent basis which will be kept in a strong room or a fire proof safe.
- 10.7 Unless the Client has notified us in writing to the contrary at the outset of the matter or transaction, we will arrange at our expense for the file which has been scanned to be destroyed on a confidential basis in accordance with the Firm's usual procedures.

- 10.8 Viewing of the scanned images of the file can be arranged on reasonable notice. If requested, copies of the file can be produced although we shall be entitled to make a reasonable charge plus VAT for providing this service.

## **Lien**

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- 11 Clients should note that the Firm has the right to retain Client's property in their possession until fees, disbursements and VAT have been paid. This right extends to all deeds, papers and other property of the Client which come into the Firm's possession with the Client's consent.

## **Cheque Clearance and Banking Charges**

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- 12 A period of seven days from the day that they are paid into the Firm's Client account must be allowed for clearance of all personal cheques received by the Firm. Where we have to transfer money on your behalf we cannot do so until the money has cleared the banking system. If the money has not been cleared we will not make the payment for you. We may charge you the CHAPS, TT, BACS or other banking charges incurred as well as an additional reasonable amount to cover our costs of administration.

## **Termination**

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- 13.1 The Client may terminate his instructions to us in writing at any time but we will be entitled to keep all papers and documents while there is money owing to us for our fees, VAT and disbursements.
- 13.2 We are only entitled to stop acting for a Client with good reason (for example if the circumstances of paragraph 5.9 apply) and we must give the Client reasonable notice that we are no longer acting for the Client.
- 13.3 If we decide that we will no longer act for a Client then the Client will pay our fees on an hourly basis plus VAT and any disbursements that have been paid by the Firm.

## **Complaints Policy**

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- 14.1 If you have any problem with the service we have provided for you or about your bill, then please let us know. We will try to resolve any problem quickly and operate an internal complaints handling system to help us resolve the problem between ourselves.
- 14.2 What to do if you are dissatisfied. We aim to please, but if we fail: Tell us if you feel you have not received the service you expected or if you have a complaint concerning your bill. We will investigate promptly and thoroughly and try to put matters right. Mention it first to the person looking after your matter or their Supervisor, as detailed in your Client Care

documentation. If you are still unhappy then please speak to the Firm's Chief Executive and ask for a copy of our Complaints Procedure. We will discuss the problem with you and will confirm what we are or will be doing about it. This will be at no extra cost to you. The Firm has an eight week period in which to resolve a complaint.

## Copyright

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- 20 We own the copyright in any work we create and this copyright will not be transferred to you although you have our licence to use our work for the purposes for which it was created. We have the right to be identified as the author of the work and to object to any misuse of it.
- 21 You agree that we may store any opinion or other document created in the course of our work for you in our records system.

## Change of Address

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- 15 Any change of address or telephone number should be notified to us as soon as possible so that our records can be kept up to date.

## Equality and Diversity

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- 16 The Firm operates an Equality and Diversity Policy and is committed to eliminating and avoiding discrimination from all aspects of its work and is committed to promoting diversity in its professional activities and dealings with Clients, Third Parties and employees. Please contact us if you would like a copy of our Equality and Diversity Policy.

## Contracts (Rights of Third Parties) Act 1999

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- 17 No term of this agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party.

## Data Protection and Client Privacy

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- 18 We use the information you provide primarily for the provision of legal services to you and related purposes. Our use of that information is subject to your instructions, the Data Protection Act 1998 and our duty of confidentiality. You have a right of access under data protection legislation to the personal data that we hold about you. Client details will be kept on our database for administration and accounting purposes and to allow us to send you relevant information on our services and on events which may be of interest to you. If you do not wish to receive that information, please notify our office in writing. Client details will be processed and kept securely in accordance with the Data Protection Act 1998. The data will not be disclosed to third parties except for the purposes mentioned.
- 18.1 We outsource our IT Services. The company concerned have entered into a confidentiality agreement to ensure that any information they have access to remains confidential.

## Applicable Law

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- 19 The Client and the Firm both irrevocably agree to submit to the exclusive jurisdiction of the courts of England and Wales over any claim or matter arising under or in connection with the legal relationships established.

# NewsomeVaughan LLP

SOLICITORS

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