

HOWARD KENNEDY

# Our terms of business



# HOWARD KENNEDY

## INTRODUCTION

Like most organisations, we have specific terms of business. As solicitors there are also a number of special regulations affecting us which have to be covered in these terms, and they may seem complex. Our contract with you is contained in these Terms of Business (“Terms”), and our Engagement Letter to you. Please consider these carefully, and if you have any queries ask us about them as soon as possible. The Engagement Letter contains specific information about the work we are handling for you.

We are a limited liability partnership (LLP) registered under the Limited Liability Partnerships Act 2000 (Registered Number OC 361417). In these Terms or in our letters, documents or literature or orally any reference to this “firm” or “practice” is to the LLP, and we use the word “partner” to refer to a member of the LLP, or an employee or consultant who is a lawyer with equivalent standing and qualifications. These words do not indicate that we practice in an unlimited partnership.

The General Notes attached do not form part of our contract with you, but we hope that they will provide you with useful explanations and information.

## 1. CALCULATION AND SCOPE OF OUR FEES

We are entitled to be paid reasonable remuneration for the work that we do for you. Time spent is usually the most important single element in calculating our fees, but they will take account of the complexity, difficulty and novelty of the matter, the skill, specialised knowledge and responsibility required, the number of documents involved, the place where the work has to be done, the value of the transaction and the importance of the matter to you.

We are entitled to charge for all the time we reasonably spend on your affairs, including (but not limited to) initial interviews, meetings, correspondence, emails and faxes with you and others, telephone calls, file reviews, research, travel, waiting time, and compliance with money laundering legislation in relation to you.

We are entitled to charge for any expenses incurred by us which are specific to the work we do for you, including (but not limited to) printing, photocopying and telephone call charges, library research charges, translation fees, bank transfer fees, travel and subsistence expenses, couriers and special delivery charges (all of which are referred to as "specific expenses").

We are entitled to be reimbursed by you for all expenses we pay out to third parties on your behalf, and which are expressly or impliedly authorised by you, including (but not limited to) stamp duty land tax, stamp duty, Land Registry fees, search fees; court fees; fees of barristers, experts and costs draftsmen; doctors' fees for medical reports; experts' fees; and agents' fees for searches, service of documents and enquiries (all of which are referred to as "disbursements").

Specific expenses and disbursements all vary according to the nature of the work done, and we will identify these items in our bills to you.

When we refer in these Terms to "our costs" we mean to include our fees, specific expenses and disbursements.

When applicable, VAT will be charged on our fees and specific expenses, and on most of the disbursements, at the rate prevailing at the time. If our services are subject to VAT, and you supply us with incorrect information about your VAT status, you will reimburse us on demand for any interest, penalties or legal costs which we incur as a result.

## 2. CHARGING RATES

Our current hourly charge-out rates are set out in the Engagement Letter which accompanies these Terms. They apply to work carried out in the ordinary course of the matter during normal office hours. Where the work is extremely urgent or requires us to work outside normal office hours, we reserve the right to charge a premium on these rates. Our fees will be based on the rates in force when we carry out the work. Our rates are reviewed half yearly on 1st May and 1st

November in each year and we will notify you in writing of any change in the rates, but not necessarily before the change in rates comes into effect. As allowed by court costs assessors, all time is charged on a "time spent" basis in units of one tenth of one hour. This includes letters and telephone calls; very short or routine letters or calls will be charged at one tenth of one hour.

## 3. EXPENSES AND DISBURSEMENTS

If specific expenses or disbursements are of a routine nature, or inherent in the nature of the work we are doing for you, for example printing and photocopying charges, delivery of items by special delivery or courier (whether or not essential) we need not seek your advance approval before incurring them, but will do so if the item is both substantial and one which you might choose not to incur.

If it becomes necessary to incur significant specific expenses or disbursements (for example travel expenses or barrister's fees) we reserve the right to ask you to make a payment to us on account of those specific expenses or disbursements before we incur them.

## 4. ESTIMATES OF COSTS

In these Terms and in our correspondence with you an "estimate" means a provisional estimate intended only as a guide to the likely level of our costs. In contrast, a "quotation" means a firm indication of what our costs will be for our work for you. We will if possible give you an estimate of the likely level of our costs but this is not a quotation, nor an upper limit on our costs, and must not be regarded as a commitment about the likely final cost of our work for you. Any estimates which we give are not intended to be legally binding. We will tell you when estimates need to be revised.

Unless expressly agreed with you in writing we do not work on a fixed fee basis. If we provide a fixed quotation, this will apply only to the work we agree in writing at the time. If you then ask us to do extra work we will make an additional charge for that extra work.

We aim to give you the best possible information, both at the outset and when appropriate as your matter progresses, about the likely overall cost of the work we are doing for you. But in some matters it may not be possible to give an estimate as to the likely overall amount of our costs, for example:

- in litigation matters;
- if documentation needs to be prepared or negotiated;
- if complicated legal points are involved; or
- if there are disputes about the facts of a case

In such matters we may simply be able to tell you our hourly rates, or propose a budget for a preliminary investigation. Such a budget does not imply that we will be able to complete the matter within the budget figure.

Any of those or similar factors will have a bearing on the amount of time which we need to spend, or upon any disbursements or other costs which need to be incurred. In such cases we will inform you and will be entitled to increase any estimate or quotation which we have given.

If we cannot agree with you an increase in any estimate or quotation arising from the factors mentioned in the previous paragraph, we reserve the right to cease acting for you, and paragraph 16 will then apply.

You need to bear in mind the risk that in litigation matters there may be an appeal against the decision of a lower court. In giving you any estimate of litigation costs, we do not allow for the further costs of any appeal by you or your opponent to a higher court.

Please note that VAT, specific expenses and disbursements must be added to any estimate, quotation or fixed fee proposal.

## **5. DELIVERY OF BILLS**

Bills will be rendered from time to time during the course of our work, and the timing of bills will depend on the work we have done and the nature of that work. For example, bills may be rendered even if the matter is not completed, when a significant amount of work has been carried out, or if significant disbursements have been incurred. Bills will usually be rendered on a monthly basis or more often in litigation and in some other matters, where a significant amount of work has been carried out.

Unless otherwise stated, each bill issued to you is a final bill covering the total charge for the work carried out within the stated period. Further, unless otherwise stated, each bill has the status of a statute bill which means that in the event of non-payment we are entitled to issue proceedings for recovery through the courts after the expiration of one month from the date of delivery of the bill. A statute bill also gives you certain rights to have the bill assessed by the court under the Solicitors Act 1974 if you consider that you have been incorrectly charged. The rights to have a bill assessed are however subject to time limits and lost if action is not taken by you promptly. You should note that your right to have a bill assessed is separate from your right to complain as set out in Section 31 of these terms of business. If the 'value' or 'importance' element is achieved only as a result of the completion or final settlement of the case, and has not been taken into account in earlier bills, we reserve the right to take it into account in our concluding bill. We may also include in a later bill any specific expenses or disbursements incurred in an earlier period but not previously billed.

Our bills are payable in sterling, and if you send payment in other currencies you will be responsible for any conversion expenses and exchange losses. Payment should be made either by cheque drawn on a London bank or directly into our bank account.

You agree that our bills may be delivered to you electronically.

It is usual practice for us to send to you regular statements showing bills that we have raised and that have yet to be paid. This may include recently raised bills. We will usually send a statement to you around the 6th day of the month but this may vary.

## **6. PAYMENT OF OUR BILLS - INTEREST PAYABLE BY YOU – PAPERS**

Payment of bills is due on delivery. If a bill is not paid within one month, we may charge interest from the date of delivery of the bill, at the rate from time to time applicable to judgment debts. While there is money owing to us for bills we have delivered, we are entitled to retain your papers and documents by exercising a lien until we receive payment. Our lien is not waived even if we receive funds on account or other security from you or a third party. We will be entitled to pay our bills and any specific expenses and disbursements out of any client money that we hold or receive on your behalf, after we have advised you of the bills in question. If you are selling any land or other property, we will generally pay our bills from the sale proceeds, again after we have advised you of the bills in question.

If we are acting for you in a number of matters we are entitled to aggregate the balances of client money on the different matters, or transfer balances of client money from one matter to another, for example to pay our bills on one matter out of client money we hold for you on a different matter.

We will never email you to amend our banking details and should you receive an email purporting to be from us confirming a change in bank details, you are advised to telephone the lawyer with conduct of your matter to confirm that the email purportedly from us is genuine.

We accept no liability for any losses caused by fraudulent persons purporting to be this firm or any of its Partners or members of staff.

If a bill is referred to our debt recovery team prior to the issue of proceedings due to non or late payment we reserve the right to charge you for the administrative time spent recovering the debt prior to the issue of proceedings at our applicable hourly rates.

## **7. INTEREST PAYABLE TO YOU**

It is our policy to account to clients for a fair and reasonable sum of interest on client money calculated over the whole period for which the money is held.

In particular:

- Client money will normally be held in our general client bank accounts, in which amounts for different matters and clients are pooled. These accounts are "instant access" to facilitate the matters we are handling for you and other clients, and this is reflected in the rate of interest received on these accounts. The rate of interest we will pay on client money will be equal to the tiered rate which you would have received if you had placed the funds, on a matter by matter basis, in an "instant access" account with our lead bankers.
- Interest will be calculated on a per day basis on the cleared balance held for each individual matter, and applied monthly.
- No interest will be paid if the total amount of interest on the balance held, calculated over the course of a transaction, is £50 or less. This is in order to save you and us the administrative costs inherent in handling small amounts of money.

If we are going to hold your funds for a significant period you may ask us (or we may decide) to place them in a separate designated deposit account or on a term deposit. In such a case the rate of interest will be in accordance with the bank's published banking rates. We will account to you for all interest actually earned on the account, which will be payable after deduction of tax in the case of a designated deposit account. We reserve the right to charge for the cost of setting up and administering designated deposit accounts or term deposits.

## **8. PAYMENTS ON ACCOUNT**

We may at any time require you to pay us a reasonable sum on account to cover the likely cost of work to be done and specific expenses and disbursements which we expect to be incurred, plus VAT on those costs and other items. We will, where time permits, allow 14 days for payments on account to be made, but sometimes this may not be possible. Please send such monies to our client account detailed at paragraph 6.

We are obliged to use such a sum which we are holding to settle any bills we may render to you, and the balance will be held on account of our future bills.

## **9. OUR PERSONNEL**

Our aim is to use our lawyers so as to achieve your agreed objectives efficiently and cost-effectively. We will assign an

appropriate number of people to work on a matter, so as to deliver the right service at the right level. We add lawyers to a team only because in our view the work demands it, whether to increase efficiency, add expertise or reduce costs. If it is appropriate to involve additional lawyers from our firm (other than for one-off type assistance) this will be discussed with you as soon as reasonably possible, but that may not happen until they have already become involved.

## **10. SERVICE TO CLIENTS**

We are committed to providing a consistent quality service to all our clients. We will advise you on the issues which arise in each matter, subject to what we have said about the scope of our engagement. We will report to you at intervals on the progress of your case and any significant developments, and advise you of the implications (including costs implications) of any unexpected changes.

## **11. OUTSOURCING**

We may, from time to time, outsource some of our operational legal activities to third parties, for example to a typing service. This is usually done so as to provide you with a quicker service and you shall not be charged any fees for the outsourcing of such activities unless otherwise stated and agreed by you. Confidentiality is of utmost importance to us and where we outsource any such activities we ensure that the third party has signed an agreement not to disclose any information we give to them or to any other party. You have the ability to inform us that you do not wish to have any activities outsourced.

## **12. AUDIT ENQUIRIES**

If we receive requests for information of an auditing nature from you, your accountants or auditors, we may address our response to them without reference to you, and we may charge you for the time spent in addressing these enquiries at our normal hourly rates.

## **13. COMMUNICATIONS**

We will usually send you an Engagement Letter at the outset of a matter, but we may not do this where you ask for 'one-off' advice, or require urgent work to be done, or when you have instructed us previously and are familiar with the basis of our contract with you.

We may communicate with you and others by letter, email, telephone, text message and fax. You should tell us if any of these methods is insecure or inappropriate in your situation. If there is any address, postal or electronic, where we might ordinarily think you may be contactable, but at which you do not want us to contact you, you must tell us of this in writing and provide us with the addresses you do wish us to use.

The electronic transmission of information via the internet (including email) has inherent risks and you accept that such transmissions may be lost, undelivered, delayed, intercepted, corrupted, altered or accessed by unauthorised parties. You

understand that our electronic communications are not ordinarily encrypted or digitally signed.

Despite such risks you authorise us to communicate with you and third parties electronically in all matters relating to our work for you, unless you specifically ask us not to do so.

We will have no liability to you on any basis in respect of any loss whatsoever arising from communication with you or a third party electronically, where the principal basis of claim is that it was sent electronically.

Our IT systems are for business use. In order to protect their integrity and security, we may prohibit the receipt and opening of certain types of electronic files by members of our practice, and our internal IT procedures may also delay our ability to open and deal with certain types of electronic files. For the purposes of the Telecommunications (Lawful Business Practice) (Interceptions of Communications) Regulations 2000 we are informing you that we may record and monitor telephone, fax and email communications that are made to or from our members of our practice. We do this in order to ensure compliance with our internal rules, to ensure compliance with the law and to investigate problems or situations brought to our attention. You consent to our monitoring and recording electronic communications between you and others using our systems.

#### 14. YOUR RESPONSIBILITIES

As part of these Terms you are agreeing to:

- supply us with personal identification information so that we can comply with legal requirements about client identification;
- ensure that we know the full background and all the circumstances of the matter before we start our work, and while it is continuing;
- tell us if any of the assumptions on which our Engagement Letter is based appears to be inaccurate or unrealistic;
- tell us if your objectives change;
- tell us whether you have any insurance that might cover the fees, and whether the fees may be paid by someone else such as a trade union or your employer;
- give us full and accurate instructions and information during the course of our work;
- respond promptly to our requests for information and instructions, particularly as some of our work is time-critical;

- tell us promptly about any approach by, or discussions with, any other party involved with the matter;
- tell us if you negotiate, or aim to negotiate, any changes in the terms you have agreed with any other party;
- tell us promptly of any change of circumstances or progress in any aspect of the matter that you have to deal with; and
- tell us promptly if there is anything that you do not understand or that troubles you.

When we are instructed to act in a matter for more than one person, we may assume that (unless you tell us otherwise in writing):

- each of those people is authorised to represent all of you; and
- they will each pass to everyone else any advice that we give them and will update everyone on the communications which we may have with them.

If you are not a private individual, we will accept instructions from anyone within your organisation who asks us to do any work for you. If you only wish us to deal with specific individuals, you should tell us this in writing.

#### 15. LIMITATION OF OUR LIABILITY

Our liability to you for loss will be limited to £10 million for any one individual transaction or claim, or any one series of related transactions or claims. We will not be liable for any loss, to the extent that the total loss exceeds £10 million. These limitations will not apply in case of liability for death or personal injury resulting from our negligence.

In these Terms: "member of our practice", means a partner, employee or consultant, and "loss" means any loss, damage, costs or interest whatsoever which you suffer arising from our breach of the terms of our engagement and/or professional negligence. It includes (but is not limited to): all recoverable amounts, special, indirect or exemplary damages, legal costs and interest, and damages attributable to lost profits or opportunities.

No member of our practice contracts with you personally or assumes legal responsibility to you personally in respect of work performed by or on behalf of Howard Kennedy LLP. All correspondence and communications sent to you in the course of our work, even if signed personally by a member of our practice will for all purposes be treated as having been sent on behalf of Howard Kennedy LLP. You agree with us and with each member of our practice that you will not bring any claim for loss against any member of our practice (except in

the case of their individual fraud) but will bring any claim against Howard Kennedy LLP as a whole. Members of our practice will be entitled to rely on this provision if any claim is made against them personally. This does not limit or exclude the liability of Howard Kennedy LLP for the acts or omissions of members of our practice.

If any member of our practice is appointed as executor or trustee the documents we prepare will exclude personal liability for any act or omission by them in that capacity (except in the case of their individual fraud) or for the wrongful acts or omissions of third parties. If we or a member of our practice are paid for their services we will also be liable for negligence, subject to our limit on liability.

If you have a claim against us in respect of any loss (arising in contract or tort) for which someone else (including you or any other advisor of yours) could also be liable, our liability to you will be limited to a just and equitable proportion of the total loss, after liability for it has been apportioned between everyone responsible. For the purpose of this sub-paragraph:

- the inability of any co-liable party to meet any claim for any reason (such as death, insolvency or limitation on their insurance cover) will not increase the amount of our liability;
- the amount of our liability will not be increased as a result of any exclusion or limitation on the liability of any other party who might otherwise be liable.
- We shall not be liable to you for any failure in the provision of our services caused by factors beyond our reasonable control.

## 16. SUSPENSION AND TERMINATION

We can terminate our engagement and stop our work for you on all or any matters if any of the following events occur:

- if a bill is not paid when due, or a payment on account is not made within the time requested;
- if we reasonably conclude that you are not able or willing to pay our costs, or any part of our costs, whether billed or to be incurred in the future;
- if we cannot agree with you an increased estimate or quotation arising from the factors mentioned in paragraph 4;
- if it becomes impossible for us to act without being in breach of various principles and rules of conduct by which the legal profession is regulated;
- if a conflict of interests arises between you and any of our other clients, or between you and us, or there is a

significant risk that this might happen;

- if we are unable to obtain clear instructions from you;
- if we feel that there has been a serious breakdown in confidence between you and us; or
- if we have any other reasonable reason for terminating.

Instead of terminating, we may suspend our work for you. We will notify you in writing if we are suspending or terminating our work. You should also refer to paragraph 24 below for further provisions about suspension and termination in litigation matters.

We will give you reasonable notice that we will stop acting for you.

You have the right to terminate our engagement at any time, but we ask you to give us reasonable notice where possible. Where we have an off-premises contract with you we will write to you separately in accordance with the Consumer Contracts Regulations 2013.

If our engagement is suspended or terminated in any of the circumstances envisaged by this paragraph 16:

- you will still be obliged to pay our outstanding bills;
- we will be entitled to deliver a bill to you for unbilled work which has been done up to the date of suspension or termination, and all the specific expenses and disbursements we have incurred or for which we may have become liable; and
- if it is not possible to calculate our costs by reference to an estimate or quotation we have given, they will be based on our hourly rates.

If we have agreed a reduced hourly rate or a fixed fee for an earlier part of the work, on the basis that we will also be instructed to carry out a later part of the work, and our engagement is suspended or terminated before we can carry out the later part, we reserve the right to recalculate our fees on our normal charging basis for the work already carried out.

If at the end of your matter we hold £10 or less of your monies on our client account, we will donate the monies to the firm's chosen charity without recourse to you. This is in order to save you and us administrative costs inherent in handling small amounts of money.

## **17. STORAGE – FILES AND DOCUMENTS AND OTHER ITEMS**

In these Terms “your file” means any collection of papers or other material relating to your matter, documents, correspondence, opinions and reports (whether prepared by us or any other person) and all drafts and copies whether held physically or electronically. “Document” means a part of your file consisting of an original executed contract, deed, document of title, Will, trust, or other writing creating, recording or giving effect to rights, other than a letter.

We do not make any charge for storage of your file, unless we have agreed this with you in advance on account of its bulk or value or importance.

If we store your physical file we will do so for a minimum of seven years after the date of the final bill we sent you in that particular matter, and are not obliged to store it for longer. You authorise us to destroy your physical file and electronic file after that period, except for any part of it which we have agreed to keep in safe custody for you. We will be entitled to assume that you have kept copies of all important parts of your file sent or given to us, and that nothing in your file is of unique importance or of special value, including (but not limited to) legal, literary, artistic or historical importance or intrinsic value.

If we hold a document specifically in safe custody for you we will take reasonable care to look after it, but you authorise us to destroy it six years after it appears to us to have become obsolete.

Our custody of your file is subject to any risks beyond our reasonable control. You authorise us to store it on or off our premises or in the custody of whatever storage company we may use from time to time or electronically. We are not liable for any negligence or misfeasance of a storage company.

We will not normally charge for retrieving any part of your file from storage in order to do further work for you. But we may make a charge for time and specific expenses of producing, sorting, copying or sending any part of your file for you or for your other advisors or another party, whether we supply it in paper or electronic form. We may also charge for sorting or reading correspondence or documents or doing any other work reasonably required to comply with inquiries made or instructions given by you or on your behalf, relating to past matters or to your file. All such charges will be at our current fee rates at the time.

If you ask us to send any part of your file to you or anyone else, we will send it to anyone, or allow it to be collected by anyone, provided we have received written authority from you. We will not be responsible for it after it leaves our physical possession or liable for any loss if it is lost or damaged. We may send it by any normal means which seem to be appropriate.

We are not obliged to make copies of any part of your file which we are asked to send to you or to anyone else, but will do so if you specifically ask us to do so and pay our copying charges. We may make and retain copies if we think it is reasonable to do so for record or security or other reasonable purposes.

We do not have facilities for secure custody of clients’ valuables, nor are we insured for their loss and damage. Clients’ valuables should therefore be kept covered on your own policy, and if possible at your bank or other secure facility, and are held by us at your risk.

## **18. REPORTS**

Drafts of our advice (oral or written) may vary significantly from any final advice and you therefore agree to place no reliance on such drafts.

## **19. RESPONSIBILITY FOR ACTS OR OMISSIONS OF THIRD PARTIES**

We do not accept responsibility for the acts or omissions of any other professionals instructed by you, or by us on your behalf, to assist with the work we do for you. This covers (but is not limited to) advice, opinions and reports prepared by barristers, accountants, financial advisers, valuers, experts and other professionals. This is the case, even if their advice or opinions are incorporated in documents prepared by us. If we recommend the services of anyone to you, such as accountants, financial advisers, surveyors, trade mark and patent agents or foreign lawyers, our sole responsibility is to do so in what we believe to be in your best interests and this will be the full extent of our liability for the services they provide to you.

## **20. CONFIDENTIALITY**

All the work we carry out is on a confidential basis, and may be subject to legal privilege. We have strict procedures to ensure confidentiality. But you agree to waive your rights to confidentiality and privilege, so that we may disclose material, which would otherwise be confidential or privileged, to any relevant third parties in the following situations:-

- When dealing with your other advisers including (but not limited to) accountants, agents, financial advisers, barristers and experts in relation to work we do for you, we will be free to disclose any material relating to your affairs unless you have specifically told us not to do so.
- If you have jointly instructed us with any other party, we will be free to disclose to any of the other parties any information which you have provided to us, or advice we have given you, unless you have specifically told us not to do so.
- We are subject to regulatory requirements which



include auditing by our accountants. As part of their work they will normally need to have access to our files and therefore to confidential information. Similarly, files may be subject to external auditing for accreditation and quality assessment programmes, or other disclosure for regulatory purposes. We may disclose in any of these circumstances.

- We may disclose your name and a brief summary of the work we have done for you to legal directories such as Chambers so that they may rank our firm and lawyers. If we do disclose this information it is on the basis that it will not be published without your permission and is held in strict confidence by the legal directory. Where information about the work we do for you is in the public domain we may publish that information on our own website or in printed promotional material. Where we do so, we may also use your logo for these purposes and you consent to us using your logo by your acceptance of these terms.
- We may disclose and rely on any relevant information and documents if a third party or regulatory body intimates or brings a claim or complaint against us, or in relation to an application to any court for a 'wasted costs order' against us. This is so that full information is available to the court or regulatory body.
- We will disclose if we are under a legal obligation to do so, as for example in the circumstances described in paragraph 28 (Money Laundering) or in case of insolvency.
- You consent to our supplying your details to the Financial Services Compensation Scheme in the event of a banking failure.
- Whether or not you intimate or bring a claim or complaint against us, or in the circumstances of the preceding sub-paragraphs, we may disclose relevant information and documents to our professional indemnity insurers and their and our advisers.

## 21. LIMITATIONS ON OUR RETAINER

We have the capacity to offer tax advice in relation to a full range of commercial and personal matters. But we will not provide advice on the tax consequences of transactions or the mitigation of tax unless we have specifically agreed to do so, and until we have agreed, in particular, the scope of that advice and the fees payable in respect of it.

We practise English law (including EU law as applicable in England.) We do not hold ourselves out as able to advise you on the laws of any other legal system, unless we have specifically agreed to do so. Any information we provide to you relating to such laws will be of a general nature and based purely on our non-expert general knowledge. You

should rely only on advice from a lawyer suitably qualified in that other legal system.

## 22. INVESTMENT ACTIVITY

The following information is provided in accordance with the Solicitors' Financial Services (Conduct of Business) Rules 2001 (as amended). The Law Society is a designated professional body under the Financial Services and Markets Act 2000 and we may therefore carry on certain regulated activities without being regulated by the Financial Conduct Authority ("FCA"). We are authorised and regulated by the Solicitors Regulation Authority ("SRA"), not by the FCA. We can and do undertake certain activities in relation to investments which are limited in scope and incidental to our legal services, or which may reasonably be regarded as a necessary part of our legal services.

This part of our practice, including arrangements for complaints or redress if something goes wrong, is regulated by the SRA. If for any reason we are unable to resolve a problem between you and us relating to such activities, you may use the complaints and redress mechanisms provided through the SRA and the Legal Ombudsman.

We are included on the Register of Exempt Professional Firms maintained by the FCA so that we can carry on insurance mediation activity which is, broadly, advising on, arranging and administration of insurance contracts. The register can be accessed via the FCA website at [www.fca.org.uk](http://www.fca.org.uk). As we are an exempt professional firm, you should be aware that where we are involved in the provision to you of investment services within the scope of the exemption:

- you do not have a right to refer any complaint to the Financial Ombudsman Service; and
- you do not have a right to seek compensation from the Financial Services Compensation Scheme in the event of our default.
- No communication from us is intended to be, or should be interpreted as, an invitation or inducement (direct or indirect) to any person to engage in investment activity.

## 23. SUCCESSOR FIRM

If there are any changes in the members of Howard Kennedy LLP, or if we merge with another practice, or transfer our business to another entity, another limited liability partnership, or a company (any of which are called a "Successor Firm") then our engagement with you will not be terminated as a result. You agree that the Successor Firm will be automatically appointed by you so that continuity of service can be provided to you. Both the Successor Firm and you may rely on our Engagement Letter and Terms of Business as setting out the continuing terms of our engagement. If that appointment requires some confirming

action by you, then you will take any steps necessary to enable continuity of service, for example, by the appointment of the Successor Firm to act for you on the record in litigation. This paragraph does not in any way limit your termination rights as set out in paragraph 16 (Suspension and Termination).

## **24. TERMS PARTICULARLY APPLICABLE TO LITIGATION MATTERS**

This paragraph relates to litigation matters, where proceedings are started in any court. In those cases this paragraph overrides any other provision of these Terms. The use of the word "court" in these Terms includes where applicable any tribunal, arbitrator or mediator.

Wherever reasonably possible we will try to obtain your instructions on any key decisions. But there may be occasions (for example case management conferences convened by the court) when the rules of court oblige us to attend and to be in a position to make decisions on the future management of the case. You authorise us to take such decisions on your behalf if you are not present to give us instructions.

You authorise us to make and sign Statements of Truth on your behalf where these are required by the court, if we believe we have sufficient information with which to do so, and you agree promptly to draw our attention to any errors.

We may ask you to enter into a binding agreement relating to our charging rates. This will be dealt with separately when we accept instructions or before the proceedings begin. It will not affect your right to be satisfied that the time has been properly spent nor your right to query whether the work was done by a person with the appropriate level of expertise.

Before we prepare the detailed instructions to a barrister for any substantial hearing in the course of a case, we will ask for payment of the estimated cost of the hearing including (but not limited to) the barrister's fees (please see paragraph 3 above). Whenever reasonably possible, we will request this at least four weeks before the hearing date, but that length of notice may not be possible in urgent cases, or where the cost is difficult to estimate. You should ensure in advance that you are in a position to make this payment. We may also require further funds if it becomes apparent that the hearing may take longer than seemed likely, and those further payments may have to be made at very short notice, particularly to cover the barrister's fees. "Hearing" includes a trial or any other hearing before a court.

If any bill remains unpaid in a litigation matter for more than 14 days, as well as suspending our work or terminating our engagement under paragraph 16 we may apply to be removed from the court record. We will try to notify you of the application but you irrevocably consent to our being removed from the court record in such a case. You will remain liable for our costs whatever the outcome of the

litigation, and whether or not it proves possible to make a recovery of funds from the other party.

If you are entitled to recover our costs from your opponent, interest on those costs will run as from the date on which the order for payment of our costs is made, so you will be able to recover interest from that date if you have paid our bills. To the extent that any of our bills remain unpaid, we are entitled to retain this interest.

## **25. COPYRIGHT**

If we draft documents for you including (but not limited to) agreements, contractual provisions, precedents, letters of advice, reports, and legal opinions (any of which are referred to in this paragraph as "the Material"), the copyright in our contribution to the Material belongs to us. If you have paid all our fees for the matter in which it was drafted, you are granted a licence to use the Material for the purpose for which it was drafted (as communicated by you to us) and to copy it for record purposes.

If you request that we use documents that have been written by a third party (for example other solicitors from other firms), you agree to indemnify Howard Kennedy LLP against any copyright claims the author may bring.

## **26. THIRD PARTIES**

In these Terms "advice" means any advice, reports or other services we provide. Unless we expressly agree in writing, our advice is for your own benefit only, and we are not liable to anyone else in relation to that advice (including any undisclosed principal) or to anyone to whom you pass or transmit it, nor are you entitled to assign the benefit to a third party. If you disclose any of our advice to a third party, you will make it clear to them that we accept no responsibility for it to them.

No benefits under our contract with you, nor legal responsibilities arising from our advice, are enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person other than you as our client, except as provided by paragraphs 15 and 23.

## **27. DATA PROTECTION**

We are registered with the Information Commissioner as a Data Controller. We must comply with UK data protection legislation and we undertake to process personal data in a lawful and fair manner. So that we can provide services as set out in our Engagement Letter, we will process personal data, which may include sensitive data. Processing personal data may include making credit and money laundering checks and storing the results. But your personal data will not be held for longer than we consider necessary for the purposes for which it is processed. The words "data", "personal data", "processing", and "sensitive personal data" used in this paragraph have the meanings given to them in relevant UK data legislation.

As a data subject you have the right to object to direct marketing and you may withhold (or at any future time withdraw) your consent for this purpose by contacting us in writing at our main office address (given below) or by following the opt-out instructions provided on our marketing communications.

Your personal data will be processed in accordance with our GDPR Provisions document, which can be found on our website. We may disclose your personal data to others, but only in the circumstances set out in our GDPR Provisions document, or if they are your own advisers as explained in paragraph 20.

As part of these Terms you are giving positive consent for yourself and for those individuals whose personal data you may provide to us, such as your employees:-

- for us to obtain, store and process information about you in connection with the provision of our services;
- for us to use the information we hold about you to contact you from time to time including by post, fax, e-mail, SMS or telephone to bring to your attention additional services or products which may be of benefit to you;
- for us to use your personal data in order to conduct appropriate anti-fraud checks. We may also disclose it to a credit reference agency (this may leave a soft footprint but will not affect your credit rating) or fraud prevention agency, which may keep a record of that information;
- for us to use your personal data in order to process any payments from you (which may include passing personal data to any payment provider we use);
- for our own internal purposes in connection with risk management matters and resolving disputes;
- for producing statistics and other information relating to our business, without identifying you personally; and
- so that we can monitor telephone calls and electronic communications for the purpose of ensuring compliance with our legal and regulatory obligations and internal policies.

References to "you" and "your" in the above list apply also to those individuals whose personal data you may provide to us.

Under current UK data legislation, as a data subject you have rights which you may choose to exercise, such as making a Data Subject Access Request or to ask us to delete data about

you. Further information about these rights are contained within our GDPR Provisions Policy found on our website.

## **28. MONEY LAUNDERING**

We wish to draw your attention to our obligations under the UK money laundering legislation.

Under this legislation we are obligated to identify who you are (individual, company or otherwise) before we undertake a transaction. We ask that you assist us in fulfilling our obligations. If we are unable to sufficiently identify you we may not be able to act at all or may have to cease acting. If identification details (such as name and address) change during the course of our acting for you, you must inform us.

Please be aware that if the information you provide to us does not correspond with the information held on the companies house people with significant control register, we are obligated to inform companies house of this discrepancy. Where a discrepancy exists which necessitates a report to companies house we will endeavour to notify you.

If during the course of our professional work, we know or suspect or have reasonable grounds for knowing or suspecting that an individual or entity is engaged in money laundering, we are obliged to report that suspicion to the National Crime Agency. If we fail to make a report, we will be committing an offence. The legislation also makes it an offence for us to disclose to anyone (including you) that we have made a report, if to do so might impede an investigation. These obligations are a statutory exception to our professional and legal duties to keep the affairs of clients confidential. "Money laundering" is defined in the Proceeds of Crime Act 2002. It can apply to using or dealing with the proceeds of almost any unlawful activities, in the UK or abroad, including the evasion of tax.

As required under anti-money laundering regulation personal identification data used to verify identity must be retained by us for the entire duration of a client relationship with the firm and for 5 years thereafter. By instructing us you consent to our retention of such data beyond this time and to destroy it in line with our physical and electronic file destruction policy as outlined in paragraph 17.

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

## **29. DAC6**

The 6<sup>th</sup> Directive on Administrative Cooperation, referred to as DAC6, requires certain cross-border arrangements to be reported by intermediaries (this may include us) or in some cases taxpayers, to HMRC from 1 July 2020. The main aims

of the Directive are to provide tax authorities with an early warning mechanism on new risks of tax avoidance and to allow them to identify taxpayers using such arrangement, thereby enabling them to carry out audits more effectively. Although targeted principally at tax avoidance arrangements, there may be a requirement to report certain arrangements that do not have a tax avoidance motive. Prior to the Directive, such cross-border arrangements did not need to be reported under EU legislation, although it may have been necessary to notify them under UK legislation. Depending on the transaction at hand we or you may have an obligation to report the transaction to HMRC. Where we identify that there is a cross-border element to your arrangements, we will be required to carry out an assessment as to whether there is a reporting obligation. If we identify a reporting obligation, we will inform you of this. We may also charge for our time in making this assessment and any subsequent report and this will be set out in our engagement letter with you.

### **30. STATUS OF THESE TERMS**

These Terms replace any previous terms of business which apply to our engagement, and unless varied or replaced they will apply to any future instructions which we carry out on your behalf. If there is any conflict between these Terms and our Engagement Letter, what we say in the Engagement letter will prevail.

### **31. INVALIDITY**

If any part of these Terms is held to be invalid or unenforceable, the remainder of these Terms will continue in full force and effect.

### **32. GOVERNING LAW AND JURISDICTION**

Our relationship with you is governed by English law and you irrevocably submit to the exclusive jurisdiction of the English courts to settle all disputes or claims which may arise from our relationship with you (including these Terms) and to grant any remedies or relief. But if we have to bring proceedings against you we may do so in any jurisdiction. In the case of a client who is established, or who holds assets, outside the jurisdiction of the English courts, we reserve the right to register any English judgment in the local jurisdiction in order to enforce the judgment.

### **33. PROFESSIONAL REGULATION AND COMPLAINTS**

We are authorised and regulated by the SRA. Our SRA number is 557188.

We wish to provide you with high quality legal advice and client care in all respects. If you have any questions or concerns, please speak to your client partner or to the particular partner who is in charge of the work.

The person with overall responsibility for managing complaints is Rebecca Atkinson, Director of Risk &

Compliance supervised by our Compliance Officer for Legal Practice and Partner, Kate Woodgate. Rebecca is assisted by the Risk & Compliance team. We ask that you communicate your complaint to us in writing setting out your particular concerns. This helps us to understand your complaint and respond to it. If you want to raise a complaint under this procedure please email Rebecca Atkinson at [Rebecca.Atkinson@howardkennedy.com](mailto:Rebecca.Atkinson@howardkennedy.com). Alternatively you can write to the lawyer with conduct of your matter or the supervising Partner and request your complaint be forwarded to Rebecca Atkinson.

It is important to raise your questions or concerns with us as soon as possible.

If you remain dissatisfied with our level of service, or our handling of your complaint, or we have not resolved it to your satisfaction within eight weeks of your complaint to us, you can ask the Legal Ombudsman to consider the complaint. Generally you must do that within six months from the date of our final written response to your complaint. The Legal Ombudsman is the independent service set up to resolve complaints about legal services. Their office is PO Box 6806, Wolverhampton, WV1 9WJ (Tel: 0300 555 0333).

You have to make a formal complaint to us first, and give us the opportunity to deal with it before using the Legal Ombudsman. Ordinarily you must refer a complaint to the Legal Ombudsman:

- within six years from our act or omission about which you are complaining;
- or within three years from when you should reasonably have known there was cause for complaint without taking advice from a third party;

whichever is later.

You may also have the right to object to a bill by applying to the court for an assessment of the bill under Part III of the Solicitors Act 1974.

### **34. PARAGRAPH HEADINGS**

The paragraph headings are for easy reference and do not affect the meaning of these Terms.

### **35. MEANING OF "IN WRITING"**

In these Terms the expressions "in writing" and "written" refer to a communication on paper or able to be printed on paper, including a fax or email message.

### **36. ACCEPTANCE OF THESE TERMS**

If you continue to instruct us after receiving these Terms you will have accepted that these Terms apply to our engagement by you, whether or not you have signed an acceptance.

## GENERAL NOTES ATTACHED TO OUR TERMS OF BUSINESS

These General Notes do not form part of our contract with you, but we hope they give you useful information about our work for you.

### A. Our responsibilities

Our responsibilities are:

- to advise you in a clear and understandable way;
- to advise and act at affordable cost;
- to resolve matters on the best terms we can;
- to keep you properly informed;
- to work for you without avoidable delay.

Where appropriate we will agree with you a strategy for dealing with our work for you. We will review this strategy at intervals, and discuss with you any changes to it.

If at any time you feel that we are not fulfilling these responsibilities please tell us. Speak to the partner in charge of your case or to your client partner.

### B. Disbursements and specific expenses

In addition to our own fees you will have to pay our specific expenses and our disbursements, as explained in our Terms of Business. These all vary according to the nature of the work done, and we will identify these items in our bills to you. We give examples of specific expenses and disbursements in paragraph 1 of our Terms. If the payments are of a routine nature or inherent in the nature of the work we are doing for you, such as printing, photocopying, special postage, translation fees, couriers or court fees we will not seek advance approval before incurring these items, but we will do so if the item is both substantial and one which you might choose not to incur, such as barristers' fees. VAT is payable on most disbursements and specific expenses, but not on court fees.

In litigation matters you are likely to have to pay certain court fees as part of the disbursements, such as fees for issuing proceedings, applications to the court, the listing of hearings and to have the costs assessed. These fees are fixed by the Government, vary from one type of case to another, and may be some thousands of pounds.

### C. Our fees

We may include in our fees a value element based on the amount or value of any money or property involved or the importance of the matter. This might be the case, for example, in property transactions, in the administration of estates and in commercial transactions. This value element (if applicable) will be mentioned in our Engagement Letter, or discussed with you in advance. It will never be greater than the scales approved by the Law Society or the courts, where applicable.

### D. Estimates of costs

Our estimates and quotations are generally based on your initial description of the matter and on any documentation that you may have given us to look at. However the work may be more complicated or protracted by factors that we could not reasonably have expected from your initial instructions. For example:

- the matter may be more complex than your initial instructions suggested;
- the initial documentation may not have given us a complete picture;
- unforeseen issues of fact or law may become apparent as a matter progresses;
- you may be asking us to undertake work which was not comprised in our initial estimate or quotation;
- in litigation matters, the other party may approach the dispute in a way you or we did not anticipate, or they may conduct themselves in such a way as to increase the amount of work we have to do.
-

For these and similar reasons our estimates and quotations may need to be revised as our work progresses.

## **E. Frequency of billing**

As with all businesses, we have to meet our own expenses and maintain a cash-flow, so we will deliver bills at regular intervals. We aim to be transparent and open about billing, and we can supply a printout showing the time which has been spent on the work. Our aim is to provide you with sufficient information to manage the service we provide in an efficient and easy manner.

Our Terms explain our right to suspend or terminate our work for you or to remove ourselves from the court record, particularly if our bills are not paid. While these measures may seem somewhat uncompromising, they are designed to make sure that you are fully aware of our requirements so as to avoid any disruption in the conduct of your case. Litigation, particularly, is inevitably expensive and can move at a very fast pace, and our experience is that both solicitors and clients benefit by the application of strict ground rules of this kind.

## **F. Payments on account**

It is not sensible for you to build up a liability for substantial costs over a lengthy period. You need to keep your legal costs under manageable control and not be taken by surprise. We also have to know that you can meet our costs as they are incurred, as we do not want you to incur expense that you cannot afford. We will not ask you to fund the matter a long way ahead, but equally we do not want to have to ask you for money too often. We may therefore ask you for payments to cover our costs to the next significant stage. You might consider setting up a regular standing order payment for matters which may go on for some time, and which require regular funding.

We are required by law to observe complex rules relating to money that we hold. Money paid 'on account' stays in our client account until we deliver a bill or pay a disbursement on your behalf.

When we put your payments on account towards your bill, we will send you a receipted bill. It is important that you understand that your total legal costs may be greater than your payments on account.

## **G. Litigation matters**

If you instruct us in a litigation matter you need to be aware of the following:

### **Statements of Truth**

Most court documents setting out details of a case now have to be verified by a 'Statement of Truth.' Usually we will ask you to sign this. However, sometimes where we have the pertinent information it is more appropriate for this to be signed by the solicitor conducting your case. However, the solicitor signing it is confirming your belief of the truth of the facts stated, not his or her own belief. If an inaccurate statement is made by you or on your behalf, both you and the maker become subject to punishment by a fine or imprisonment. You authorise us to make and sign statements on your behalf where we believe we have sufficient information with which to do so, and you agree to draw our attention promptly to any errors.

### **Costs and Funding**

You should tell us about any legal expenses insurance or other insurance that you may have, or if you belong to an organisation which might cover either our costs or your potential liability for the other party's costs. Sometimes this is a feature of household insurance or membership of a trade or professional organisation.

If you do not have insurance cover against costs liability you may wish to consider obtaining it, even if a dispute has already arisen. Please raise this, and other methods of funding, with your client partner or the particular partner who is in charge of the work, who will be happy to discuss these aspects with you.

You have to meet our costs as they arise, and after the case you will then hope to recoup from your opponent whatever the court awards you, if he or she has sufficient assets. Where a party is successful in litigation, the usual rule of the courts is to order that the losing party must contribute to the successful party's costs. (This rule does not apply in family law cases, Employment Tribunal

proceedings, or County Court small claims.) So you should also note that if you are unsuccessful in the litigation, you are likely to be ordered to contribute to the costs of the other party, in addition to having to pay our costs.

If you succeed and obtain an order for costs in your favour, we will try to recover those costs on your behalf. But you will still be liable to pay our costs, including the costs of trying to enforce the costs order. There may be reasons, such as financial difficulties, why your opponent does not pay the costs which they have been ordered to pay, and when you decide whether to start (or defend) court proceedings you should consider well in advance whether your opponent has sufficient means to meet your claim and any costs awarded.

If another party obtains public funding at any stage it is unlikely that you will recover our costs against them even if you are successful. If this happens we will discuss the implications with you.

If costs cannot be agreed between the parties, then they go through a process of review by the court called 'assessment'. Even if you are successful, it is unlikely that you will recover the whole of our costs on an assessment, but you should be entitled to recover a proportion. The process is quite complex and we will provide you with further information at your request.

## H. Our banking arrangements

We will ensure that all client monies are placed with a clearing bank which is authorised by the FCA and the Prudential Regulation Authority ("PRA") to accept deposits, and are held at a branch or Head Office in England and Wales unless we are specifically instructed in writing by our client to hold the money elsewhere.

The Law Society has recommended that in the current economic climate the following information be supplied by all solicitors to their clients:

Our principal bankers are Barclays Bank PLC, but parts of our client account funds, not specific to any particular client, are deposited from time to time with other UK banks regulated by the FCA and the PRA, including (currently) Santander, Allied Irish Bank (GB), Arbuthnot Latham & Co Ltd, Bank of Ireland and Clydesdale Bank plc.

It is considered by the Law Society that it is unlikely that solicitors are liable for losses to client account funds resulting from a banking failure. Clients who are eligible for it would have to rely on claims under the Financial Services Compensation Scheme ("FSCS") which has a limit of £75,000 per eligible client per bank. So if you hold personal money at the same bank as funds of yours held in our client account, that would form part of your claim under the FSCS. Some deposit-taking institutions trade under several names, and for those the FSCS limit remains an aggregate of £85,000. You should check with your banks, the FCA, PRA or a financial adviser for more information.

## I. Interest

Our policy on payment of interest on client funds complies with the SRA Accounts Rules 2011.

The SRA state "Clients are unlikely to receive as much interest as might have been obtained had they held and invested the money themselves."

## J. Our limitation of liability

Like most other organisations providing professional services we have to consider limiting risk, both for the protection of the whole body of our clients as well as the protection of our firm. As solicitors we are permitted to limit our liability to our clients if:

- we do not limit at all our liability for death or personal injury resulting from our negligence;
- the limit is reasonable; and
- the limit is at or above the minimum level of insurance cover (currently £3 million) that we are obliged to carry under the SRA Indemnity Insurance Rules 2011.

Our own level of insurance cover is very substantially in excess of that minimum, and we believe the amount of £10 million at which our liability has been limited under paragraph 15 is reasonable.

## **K. International networks**

Our firm is a member of a number of international networks, which are associations of legal practices and lawyers around the world. Their members are not engaged in the joint practice of law and do not share fees among themselves. We also have extensive contacts with specialist law firms working in all the leading jurisdictions abroad. These networks and contacts give us and our clients access to competent legal resources in other jurisdictions, and advice on foreign law and specialised areas of practice, so that our clients' needs for legal services can be handled efficiently virtually anywhere. We will only use the services of other lawyers in these networks in connection with services provided to you with your express knowledge and consent, but we want you to be aware of the networks and their possible benefits to you.

Further information about these international networks and contacts can be obtained from our website or by asking the lawyer who is dealing with your affairs.

## **L. Equality and diversity**

We are committed to promoting equality and diversity in all our dealings with clients, third parties and employees. Please contact us if you would like a copy of our equality and diversity policy.

## **M. Our insurance**

We maintain professional indemnity insurance in accordance with the rules of the SRA. Details of the insurers and the territorial coverage of the policy is available for inspection at our offices.

Our registered office address is at

No.1 London Bridge

London, SE1 9BG

T: +44 (0)20 3755 6000

Howard Kennedy is the trading name of Howard Kennedy LLP  
which is a limited liability partnership number OC361417

A list of members of Howard Kennedy LLP is available for inspection at our main office.  
We are authorised and regulated by The Solicitors Regulation Authority, SRA number 557188  
March 2020