

# Terms of Business

## 1 Introduction

1.1 This document contains the standard Terms of Business of Lupton Fawcett LLP and should be read in conjunction with the accompanying client care letter which gives information about who will be working for you, the scope of the work to be carried out and the basis of our fees. Where the terms set out in the client care letter differ from these standard Terms of Business, the terms of the letter will apply. If any aspect is not clear, please contact the person dealing with your work.

## 2 Our Aims

2.1 We are committed to providing all our clients with an efficient and effective service. In order to achieve this we believe that it is important to agree in advance the nature of our relationship with you. Please familiarise yourself with these Terms of Business before continuing to instruct us.

## 3 Professional Rules and Practice Guidelines

3.1 The firm is regulated by the Solicitors Regulation Authority ("SRA") We will observe all of the standards and requirements set out in the SRA Handbook and we accept instructions to act for you on that basis.

## 4 Before We Start

4.1 Please note that our contract with you for the provision of legal services is conditional upon successful completion of our anti-money laundering and risk management procedures.

## 5 Our Responsibilities

5.1 During our retainer, we will:

- 5.1.1 Review your matter regularly.
- 5.1.2 Advise you of any changes in the law.
- 5.1.3 Advise you of any circumstances and risks of which we are aware which we consider could affect the outcome of your matter.

## 6 Your Responsibilities - Provision of Information By You

6.1 To enable us to carry out our work it is necessary that:

- 6.1.1 You make all payments due to us on time.
- 6.1.2 You provide full and accurate information necessary for dealing with your work. Where appropriate we may, with your prior approval, approach third parties for additional information or documents. We will rely on the information and documents being true, correct and complete and will not audit the information or those documents.
- 6.1.3 As and when requested you provide instructions to us in a timely and clear manner.
- 6.1.4 If you wish us to accept instructions from any third party on your behalf, you confirm this to us in writing beforehand. We will not accept instructions from any third party without your prior written confirmation.
- 6.1.5 You keep us informed about material changes in your circumstances.
- 6.1.6 You will safeguard and preserve unaltered any paper or electronic document likely to be required for disclosure in litigation matters.

## 7 Service Levels

7.1 At the outset of each matter, we will discuss with you what is to be achieved and what is necessary to achieve it. Any material developments during the course of the matter, delays, or possible deviations from your instructions will always be reported to you, but we will be guided by you as to the extent and detail to which you wish us to report. Lupton Fawcett LLP will not accept any liability arising from your failure to reply completely accurately and in good time to any request for information or confirmation of instructions.

7.2 Our normal business hours are 9am - 5pm Monday to Friday, but should you have specific requirements for assistance outside those hours, we can make arrangements on a matter by matter basis.

## 8 Personnel

8.1 Your relationship with us in connection with the work to which these Terms of Business relate is solely with Lupton Fawcett LLP and not with an individual.

8.2 In our view, a close relationship with clients is essential to achieving the best outcome for them and to this end a specific partner will always be assigned with overall responsibility for your work. In order to obtain the benefit of specialist skills and provide the highest quality service in the most cost effective way for you, the partner responsible may assign tasks to another executive or assistant under his supervision, but will still retain overall responsibility.

8.3 We try hard to avoid changing the staff who may be dealing with your work, but if this becomes unavoidable we will promptly notify you of any changes in personnel.

## 9 Statement of Equality

9.1 Lupton Fawcett LLP operates a policy of equality throughout the firm and does not discriminate against any person on the grounds of sex, race, marital or civil partnership status, sexual orientation, gender reassignment, pregnancy, maternity or paternity, disability, age, religious or other beliefs. A copy of the policy operated by the firm is available on request.

## 10 Money Laundering

10.1 Before starting work on any matter for a new client, we are legally obliged by anti-money laundering legislation to verify the identity of the client. How we do this differs between clients depending on their circumstances. It may be necessary for us to ask you questions about your own identity, place of residence and the source of any relevant funds. We have subscribed to an online identity verification service which will in most cases enable us to satisfy the obligatory identification procedures. There is an administrative charge of £10.00 plus VAT for individuals and £20 plus VAT for businesses. If you are an existing client and we have already established your identity and address we may not require further evidence. Occasionally we may ask you to provide additional original documentation (such as passport, photo driving licence and utility bill) and you agree to do so.

10.2 New clients which are business entities agree to provide on request all and any documentation we may ask for in order to satisfy ourselves as to the legal and beneficial ownership of the entity, its management and control.

10.3 We are professionally and legally obliged to keep your affairs confidential. However, solicitors may be required by statute to make a disclosure to the National Crime Agency where they know or suspect that a transaction may involve money laundering or terrorist financing. If we make a disclosure in relation to your matter, we may not be able to tell you that a disclosure has been made. We may have to stop working on your matter for a period of time and may not be able to tell you why.

10.4 If you have any concerns as to the regularity of your financial affairs we would strongly recommend that you seek appropriate professional advice.

## 11 Estimates

11.1 We will provide estimates of fees and expenses periodically throughout the duration of an instruction, which will be subject to variation according to circumstances that may arise as the matter proceeds. We have no control over many of these circumstances, particularly in matters involving litigation. An estimate cannot, therefore, be regarded as a quotation or fixed cost commitment. You may, if you wish, agree a fees limit with us, and this will not be exceeded without further reference to you.

## 12 Fees

- 12.1 If we have agreed a specific basis of charging, this will, of course, be adhered to.
- 12.2 We aim to charge a fair fee in all the circumstances. Because each individual matter presents its own unique characteristics, our fee may be adjusted upwards or downwards to take account of factors such as the complexity, importance or value of the matter, its urgency or its novelty.
- 12.3 Where hourly rates form the agreed basis of charging, these are reviewed annually on 1 October and may then be subject to change. You will be notified if any such review affects the level of hourly rate applicable to your job. Time is recorded and charged for in multiples of 6 minute units. Each member of our staff has an hourly rate which forms the basis of such fees as set out in the schedule provided to you.
- 12.4 We will not charge you for routine postage, photocopying, telephone call or fax charges. However, we will charge for foreign and conference telephone, fax and video calls, colour and bulk photocopying (more than 50 sheets at any one time).
- 12.5 VAT will be chargeable on all fees and expenses at the standard rate, if applicable.
- 12.6 We will also charge you for other fees and expenses which we incur on your behalf, e.g. court fees, search fees, Land Registry fees, counsels' and experts' fees, travel expenses etc. These are known as disbursements. We will normally ask you to pay these to us before we incur them, or we will use any funds we are holding for you on account of costs to pay them. We will not incur large or unusual disbursements without your agreement.
- 12.7 Except in the case of certain specific disbursements, our fees will be rendered and are payable in pounds sterling. If you wish to pay by any other currency this must be by way of special arrangement with our cashiers' department. If we receive payment in any currency other than pounds sterling we will convert such currency at the exchange rate applicable by Lloyds bank on the date payment is received; any shortfall on conversion and the costs of conversion to or from pounds sterling are payable by you in addition to the amount of our fees or disbursements.
- 12.8 It is possible that you may be entitled to funding to cover your legal fees in respect of this matter. We do not carry out publicly funded work except in a limited type of case involving children. We strongly recommend that you enquire of your insurers, brokers, employers, membership organisation or trade union (as appropriate) to identify if cover is available to you. You agree to make such enquiry and notify us promptly if any form of legal expenses cover is available to you.

## 13 Payment of Costs

- 13.1 Unless otherwise agreed you will be billed monthly on an interim basis with a final bill rendered at the completion of your matter.
- 13.2 It is our normal practice to ask clients to make payments on account of anticipated costs. If this is the case, it is essential for you to meet requests for payment promptly. Money paid in advance will be paid into our clients' account and will then be applied to pay disbursements as they are incurred and our bills when they are delivered. Once the amount paid on account has been used, we will ask you to pay a further sum on account of costs.
- 13.3 We require to be put in funds before any disbursements are incurred by the firm.
- 13.4 We make a charge of £10 plus VAT for the use of Faster Payment and BACS transfers, £20 plus VAT for international Payments and £40 plus VAT in relation to CHAPS payments.
- 13.5 Settlement of our bills is due on presentation and we reserve the right to charge interest at a rate equal to 4% over the base lending rate from time to time of Lloyds bank on bills (or any

unpaid parts thereof) which are one month or more overdue. Interest will be chargeable on a daily basis.

- 13.6 **We reserve the right to discontinue work on all your current matters if any bill is not settled promptly. You agree that this will occur at 45 days unless an alternative arrangement has been agreed in writing.**
- 13.7 In litigation cases, if you do not pay our charges promptly on delivery of our invoices to you, or if you do not put us in funds promptly when requested to do so we may apply to come off the Court record as acting for you. This will incur a cost which will be recoverable from you in addition to all other unpaid sums due.
- 13.8 We can offer the facility of credit/debit card payments as a method for you to settle your bills. The facility will result in a variable transaction fee dependent upon the card used. The actual fee will be provided to you at the time of payment which can be effected by a phone call (or online at [www.luptonfawcett.law](http://www.luptonfawcett.law) and selecting the "pay invoice" option).
- 13.9 We reserve the right to offset unpaid bills and disbursements against any monies received on your behalf. You will be notified in such an event.
- 13.10 On matters where a third party has agreed to pay your legal costs, these still remain your responsibility should the third party fail for any reason to settle the account within our payment terms.

## 14 Financial Arrangements

- 14.1 Our policy is not to accept cash except, by express prior agreement, and then only up to the amount of £1,500.
- 14.2 If you try to avoid this policy by depositing cash directly with our bank, we may charge you for any additional checks we decide are necessary to prove the source of the funds. You agree that we may make disclosures of such deposits to the police or other authorities without informing you.
- 14.3 Where we have to pay money to you, it will be paid by cheque or bank transfer. It will not be paid in cash or to a third party.

## 15 Email Fraud Advice

- 15.1 Electronic payments will only be made to a bank account which has been verbally verified by you at the outset of the matter or immediately prior to the payment being made. Any requests to send funds to an alternative bank account (no matter how urgent), will only be granted once all necessary checks have been made.
- 15.2 We will never email you to advise of changes to our bank account details. If you are in any doubt, you should always ring the person dealing with your transaction to confirm our bank account details before sending any money to us.

## 16 Litigation Matters

- 16.1 In some litigation matters you may in certain circumstances be able to recover costs from another party. This does not alter your liability to pay our fees and charges. You should note that costs ordered in your favour by a court or other authorised body are not paid automatically and may not be paid at all if the paying party is impecunious. Costs orders in a party's favour are rarely a full indemnity and will often cover only half to two thirds of the successful party's costs. If the court orders the other party to pay an amount in respect of your costs then interest can be claimed on the amount awarded from date of the court order. Please be aware that you will also be responsible for paying the charges and expenses of seeking to recover any charges and expenses the court orders another party to pay.
- 16.2 In some circumstances the court may order you to pay the other party's legal charges and expenses. Those charges and expenses are payable in addition to our own. The courts have the power to assess costs of an interim application and to order that the costs of the winning party to an interim

application be paid immediately, as opposed to being deferred until the conclusion of the case. If you become eligible for, or subject to, an award of costs then we will notify you.

- 16.3 You may already have legal expenses insurance sufficient to cover our fees for litigation work on one of your personal or business insurances, and you should check the position by reading the policies, or speaking to your insurance broker. It may also be possible to obtain funding and/or after the event insurance in respect of certain aspects of your case. Should you wish to discuss this then please do not hesitate to raise this with us.

## 17 Payment of monies to third parties

- 17.1 During the course of certain transactional work, you may be called upon to pay costs to the other side, or alternatively, we may be asked to give undertakings that certain costs will be met by you. In all such circumstances, we will require and you agree to forward to us the necessary funds before any such payments can be made, or undertakings given.

## 18 E-mail Communications

- 18.1 We regularly communicate by e-mail. This may include correspondence, documents or other information. Presently this is not encrypted before it is sent. It is possible that confidential information is sent in this format which, therefore, may be intercepted intentionally or by accident and read by a third party. If you do not wish us to send confidential information by e-mail you must advise us in writing.

## 19 Storage and Retention of Papers, Deeds, Wills, Files and Other Documents

- 19.1 If there are outstanding monies owed to the firm by you whether in respect of fees, disbursements or other charges, we reserve the right to keep your papers, deeds, wills, files or other documents until all outstanding payments have been discharged. This is known as a right of lien.
- 19.2 Unless you indicate to the contrary in writing prior to the appropriate time, we will retain a record of your particular matter for a period of six years or such other period we deem appropriate after we have closed it. After that time we reserve the right to destroy your files without further reference to you. This policy does not apply to original documents which will be returned to you, unless we agree to retain these for you, and we reserve the right to charge you an annual fee for this service.
- 19.3 Normally there is no charge for the retrieval of any documents from our archives but there may be circumstances where significant time is spent or cost incurred producing papers at your request, reading correspondence or complying with your instructions. In these cases we reserve the right to make a charge based on the time spent and costs incurred.

## 20 Commissions

- 20.1 If we receive a commission from a third party arising from work we are doing for you we will credit you with that commission unless you have agreed otherwise or unless the amount is less than £20.

## 21 Policy - Payment of Interest on Client Monies

- 21.1 During the course of your matter monies may be held or received on your behalf and retained in our general clients account until monies are properly required or your matter has completed. We will ensure that any monies which you may lodge with us are deposited in a UK regulated bank, and while we will take all reasonable steps to monitor the stability of those banks, we are not liable to you in the event of any banking failure. Accordingly if you have concerns as to the security of any monies lodged with us, please contact the Executive conducting your matter to discuss further.
- 21.2 In accordance with the SRA Accounts Rules 2011 it is our policy to account to our clients for interest on a fair and reasonable basis.

## 21.3 Interest on general clients account:

- 21.3.1 We will endeavour to ensure that the Interest rates earned will be no less than those received on the "instant access savings account" with Lloyds bank if opened by an individual.
- 21.3.2 Monies will be held in an instant access account to facilitate your transaction.
- 21.3.3 Interest will not be paid if the total interest calculated on any one matter is £20.00 or less and when the final interest calculation is carried out, when archiving the file, if the remaining interest due amounts to £5.00 or less, that will not be credited.
- 21.3.4 Interest will be paid to you without any deductions for income tax. As such it is your responsibility to inform the HMRC of the amounts of interest received from us.
- 21.3.5 The rate of interest paid will be governed by our principal bankers Lloyds bank. These rates will fluctuate from time to time as they are determined by the Bank of England base rate.
- 21.3.6 Interest will be calculated on a quarterly basis in March, June, September and December.
- 21.3.7 It is unlikely you will receive as much interest as you might obtain if investing these funds yourself.
- 21.3.8 Separate consideration will be given for substantial values held for a lengthy period of time.
- 21.3.9 Interest that is credited in relation to funds held may be earmarked to be transferred against any outstanding bill balances when credited.

## 21.4 Designated client deposit account

- 21.4.1 Client money may be moved from our general client account to designated client deposit accounts on client request to receive a better rate of interest.
- 21.4.2 Designated client deposit facilities are available on an instant access basis. We will in appropriate circumstances, account to you for all the gross interest earned on that account which will be paid monthly or on closure of the account.

## 21.5 Contracting Out

- 21.5.1 In appropriate circumstances and by way of a written agreement, a different arrangement may be entered in to, for example, taking account of your specific tax position or religious beliefs.

## 22 Incidental Insurance Distribution

- 22.1 This firm is 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 Solicitors Regulation Authority. 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).
- 22.2 This statement relates to those insurance distribution services which are incidental or ancillary to our mainstream professional services.

## 23 Queries and Concerns

- 23.1 Although we make every effort to ensure that you will be completely satisfied with the service we provide, if you have any queries or concerns about our service or about any of our bills or charges please raise them with us as soon as possible.

23.2 Any complaint will be dealt with under our Client Concern Procedure. A copy of our Client Concern Procedure is available on request.

23.3 If you are unhappy about a bill that we raise on your matter we will deal with this as a complaint. You also have the right to apply to the court for an assessment of our bill under Part III of the Solicitors Act 1974. Time limits apply in relation to such an application. You should take separate advice on any such issues.

23.4 If after completing our client concern process you remain dissatisfied with the outcome of your complaint you have the right to complain to the Legal Ombudsman who can be contacted at:

PO Box 6806  
Wolverhampton  
WV1 9WJ

Any complaint should be made within six months of the date of our final appeal decision being made.

## 24 Terminating our Engagement

24.1 Our retainer with you will terminate automatically upon the completion of the work set out in the attached Client Care Letter.

24.2 You have the right to terminate our engagement by notice in writing to us either by post, facsimile or e-mail at any time for any reason.

24.3 We reserve the right to terminate our engagement if there is a failure or unacceptable delay to instruct us, a material change in the circumstances or information on which our original engagement was based or if for any other reason there is a breakdown in confidence between us. We will always seek to give you reasonable notice of our decision but there may be circumstances where it is reasonable for us to give no notice. As mentioned above, we also reserve the right to discontinue work on all your current matters if any bill is not settled promptly.

24.4 If for any reason we cease to act before a matter has been completed, we shall be entitled to charge for all work done up to that point plus any fees or expenses for work necessary to transfer the matter to another advisor.

25 As stated above, if there are outstanding monies owed to the firm by you whether in respect of fees, disbursements or other charges, we reserve the right to keep your papers, deeds, wills, files or other documents until all outstanding payments have been discharged.

## 26 Copyright

26.1 We retain the copyright and all other rights in all documents that we provide to you or to any third party on your behalf. We grant you a non-exclusive licence to use such documents solely for the purpose for which we provide them to you but not further or otherwise.

## 27 Applicable Law and Jurisdiction

27.1 English law will apply to all services provided by us and any dispute arising out of or in connection with them and each party agrees to submit to the exclusive jurisdiction of the English courts.

## 28 Limitation of Liability

28.1 Unless otherwise agreed with you in writing our aggregate liability for work undertaken for you (based on the fees which we have estimated) is limited to a maximum of £3,000,000.00 in total. This limitation will not apply if a loss is due to dishonesty or wilful misconduct on the part of any partner or member of our staff. If we are jointly and severally liable to you with any other party we shall only be liable to pay you the proportion which is reasonably found to be our fault. We shall not be liable to pay you the proportion which is due to the fault of another party.

## 29 Contractual Relationship

29.1 This agreement is made between you and the firm and takes effect from the date of the letter accompanying these Terms. In the context of these Terms "the firm" shall mean Lupton Fawcett LLP for the time being, or the partnership, limited liability partnership or other entity which may succeed it and/or carry on its practice, and to which all obligations, rights, duties and responsibilities under these Terms shall be transferred or assigned. In these Terms references to "we" and "us" shall mean the firm.

29.2 This agreement is personal to you and may not be assigned to, or held on behalf of or for the benefit of any third party, without our written consent.

29.3 For the purpose of Section 1(2) of the Contracts (Rights of Third Parties) Act 1999, it is agreed that no term of our agreement with you shall be enforceable by a third party.

## 30 Data Protection - How We Use Your Information

30.1 Lupton Fawcett LLP will use the information you provide primarily for the provision of legal services to you and for other related purposes including updating and enhancing client records, analysis for management purposes and statutory returns, crime prevention and legal and regulatory compliance. Our use of that information will be subject to your instructions, the General Data Protection Regulations (GDPR) and our duty of confidentiality.

30.2 Please note that our work for you may require us to disclose information to third parties such as expert witnesses and other professional advisers. Where this is necessary we will seek your consent to instruct such parties.

30.3 Our firm also employs the services of three specialist archiving storage companies that work on our behalf to provide safekeeping of our closed files and documents. Any such persons or organisations may only use the information we provide to them to deliver such product or service on our behalf and not for use for any other purpose. Where any such person or organisation performs work on our behalf we will ensure that they have suitable technical and organisational controls in place to safeguard your information against accidental loss or damage and unlawful or unauthorised processing.

30.4 You have a right of access, under data protection legislation, to the personal data that we hold about you. If you wish to be provided with a copy of this information please put your request in writing addressed to our:

Data Protection Officer  
Lupton Fawcett LLP  
Yorkshire House  
East Parade  
Leeds  
LS1 5BD.

30.5 You also have the right to request that we erase the personal information which we hold about you. If we are unable to fully comply with this request, perhaps because we have a legitimate business reason why we must retain this information such as for regulatory compliance or accounting purposes then we will explain our decision to you.

30.6 We may need to check your records now or in future at a credit reference agency. This process will leave a footprint which is available for other organisations to see. If such a check is necessary then we will obtain your permission before instigating this process.

30.7 We may also from time to time use your contact details to provide you with information relating to our services, seminars and newsletters. Should you not wish to receive our marketing materials you can confirm this to be the case when completing the receipt attached to our engagement letter or by writing to our Head of Marketing at the address shown at section 30.3

30.8 If you consider at any time that the information that we hold about you is incorrect then you should promptly notify us and we will correct any inaccuracy.

30.9 You have the right to make a complaint to the Information Commissioner's Office if you are concerned about how our firm has processed your personal data or you are unhappy about our firm's information rights practices. In first instance you should contact the ICO helpline on telephone 0303 123 1113.

### 31 **File Audit**

Lupton Fawcett LLP is a quality driven law practice and is accredited with a number of quality marks such as ISO9001, Cyber Essentials Plus and the Law Society's quality schemes Lexcel and Conveyancing Quality Scheme ("CQS"). In order to maintain our accreditation of these quality marks we are subject to periodic independent assessment. Files are selected at random. No copies of or notes from your file will be permitted to be taken without your specific consent and, prior to inspection, an external auditor will be required to sign an agreement to maintain confidentiality. If you are unwilling to allow your papers relating to your legal matter(s) to be subject to independent review then you should let us know by writing to our Data Protection Officer at the address shown in section 30.4.

31.1 We reserve the right to disclose our files to regulatory bodies in the exercise of their powers.

### 32 **Professional Indemnity Insurance**

32.1 We maintain professional Indemnity Insurance covering our actions as lawyers in England and Wales with Aviva Insurance (Limited, who can be contacted at:

Aviva Insurance Limited  
Pitheavlis  
Perth  
PH2 0NH

### 33 **Conclusion**

33.1 If you continue to instruct us in this matter it will amount to your acceptance of these Terms of Business. Even so, we ask you to please confirm that you agree to them by signing and returning the form headed Confirmation of Receipt of Client Care letter and Terms of Business which is attached as the final page of this document. We can then be confident that you understand the basis on which we will act for you. Please then retain your copy and keep it in a safe place. It is an important document.