

# Brooke-Taylor Solicitors Limited - Terms of Business

## 1.0 Introduction

These terms set out the basis on which we act for clients and will apply to all matters for which we have instructions. Variations to these terms will be in writing and may result from our discussions either when you instruct us or during the course of any matter. Variations may also result following changes to legislation or the regulations laid down by the Solicitors Regulation Authority which regulates the professional conduct of solicitors.

Where instructions are taken in new matters, an engagement letter will be issued to you enclosing this document and detailing any special terms.

We do not act on your behalf until we hold a copy of these terms signed by you; we have all relevant documents in our possession and have had the opportunity to study them; you have, if requested, attended at our offices for any necessary initial interview and made a payment on account of costs if required; we have written to you to say that we accept your instructions.

## 2.0 Our Responsibility

Our legal work is dealt with by lawyers who may be (1) directors (who are always solicitors), (2) solicitors, who may be associates, assistants or practising consultants, (3) qualified legal executives, (4) non-qualified, experienced staff or (5) trainee solicitors or trainee legal executives acting with supervision.

We will confirm in writing who is dealing with the relevant matter, and, if that person is unavailable, how messages may be left for him or her.

The professional rules relating to solicitors' firms, including the Code of Conduct, can be accessed on the website of the Solicitors Regulation Authority at [www.sra.org.uk/code-of-conduct.page](http://www.sra.org.uk/code-of-conduct.page).

## 3.0 Instructions

We will be happy to have an initial telephone discussion or short meeting with you, of up to 15 minutes. There will be no charge for this if the matter does not proceed. If the telephone call or meeting exceeds 15 minutes, we reserve the right to make a charge in accordance with our usual fees.

Instructions may be given to us in writing or verbally. We may ask you to confirm verbal instructions in writing. Any amendments to your instructions should be notified to us immediately they arise. We can only act on the information and instructions you provide. Please do not assume that we know all about your circumstances – we would always rather have too much information rather than too little.

Your continuing instructions in any matter in which we are engaged will amount to acceptance of these terms and conditions of business and the applicable charging rates.

There are certain circumstances in which we would regard you as being in breach of your obligations under this agreement and may find ourselves unable to act on your behalf any further. If that happens then we will be entitled to terminate your instructions and to inform any court concerned. Examples would include:- failure to pay an interim bill or to make a payment on account of costs or disbursements when requested to do so; failing to give instructions so that we do not have the information we need to carry on your case; changing address without telling us; refusing to accept our advice on points which we consider essential for the prudent management of your affairs; making persistent or unreasonable demands including those which would be in breach of our professional code of conduct on members of staff; conflicts of interest arising in the course of your case. This action which we would be very unwilling to take and normally we will warn you when

## **Brooke-Taylor Solicitors Limited - Terms of Business**

there is a problem and give reasonable notice. In the event of termination, we will be entitled to issue a final account for our fees up to the date of termination.

### **4.0 Methods of communication**

We will communicate with you by whatever means we consider most appropriate which may include communications by email. Whilst we take reasonable steps to try to identify any software viruses, any document or attachments may contain viruses that our antivirus software has failed to identify. Clients should therefore carry out their own virus checks before opening any documents. Brooke-Taylor do not accept any liability for damage caused by computer viruses emanating from any attachment or other document supplied by e-mail, computer disk or similar method or format. If there is a reason why you do not wish us to communicate by a particular method eg for reasons of confidentiality, please let us know. Under the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, we reserve the right to monitor e-mail correspondence and may also record telephone conversations.

### **5.0 Conflict of interest**

We shall try to establish prior to acting for you that there is no conflict between your business and the interest of any other client. As you will realise, we could not act for two clients if their interests were in conflict. We shall alert you to any such conflict that becomes apparent during a transaction. In this event, we would refer at least one of the clients involved, if not both, to another solicitor. This is a rule of professional conduct which applies to all solicitors for the benefit and protection of clients.

### **6.0 Mortgage Lenders**

Please note that on almost all residential purchases involving mortgages and most commercial purchases involving mortgages we act for you and also for the mortgage company. We therefore have a duty to the mortgage company as well as to you. We have a duty to the mortgage company to disclose any information which may be material to their decision to lend money. In signing these terms of business, you are consenting to the Company advising the Lender of any relevant information arising during the transaction.

### **7.0 Advice Given**

Any advice provided by us is solely for the client's benefit and information. We shall not be under any obligation to update any advice in relation to any matter occurring after the advice has been issued in its final form. Should you wish to pass any advice to a third party based upon what we have said, we shall not accept any liability to that third party unless we have previously agreed this in writing.

Unless expressly agreed to the contrary, the scope of our work for you will not include tax advice.

Depending on the matter, we may, with your consent, need to introduce you to other professional consultants. Any advice given by them will be their responsibility to you directly and not ours.

### **8.0 Fees and charges**

The overriding principle upon which we base our charges is for the total charge to represent the value for the work carried out and time spent working on it. We operate a computer-based time recording system to identify the amount of time spent on a matter. A standard charge-out rate will apply, but this is not fixed and is subject to variation in either direction dependent upon the complexity and value element of the work. Where hourly rates apply, the current charge-out rate of the lawyer dealing with the matter will be set out in the engagement letter. Chargeable time covers all time spent on your affairs which may include attendances on you and others: any time spent in travelling; considering, preparing and working on correspondence; making and receiving telephone

## **Brooke-Taylor's Solicitors Limited - Terms of Business**

calls. As well as our fees, we will ask you to pay for any expenses incurred on your behalf. This would include items such as counsel's fees and fees that we have to pay on your behalf to third parties. Such expenses are called 'disbursements' (see Point 9 below).

In some litigation cases, the Court may allow a higher charging rate and we reserve the right to charge that rate where this applies. This will be applied in accordance with the policy from time to time of the Court in which the litigation is taking place.

A charge is only made for time spent by trainee solicitors where the work carried out has been for the benefit of the client and was not merely for training purposes.

In appropriate cases, we will carry out work on a fixed fee basis. This fixed fee will be for time spent and excludes disbursements and VAT. If, with your agreement, we carry out work in excess of that specified in the engagement letter, our fees for that additional work will be charged at our then applicable standard hourly rates.

In certain circumstances, we will also consider carrying out work on a conditional basis where payment of a fee is dependent upon the outcome of a particular matter. The terms of any such fee structure would depend on the circumstances of the individual case. These terms will be recorded in a separate engagement letter.

We are able to provide estimates of the fees that are likely to be incurred for particular items of work or for work up to a particular stage of a transaction or proceedings. It is often difficult to estimate exactly what fees will be incurred as the amount and complexity of work required may be uncertain. Therefore, estimates will normally provide a range of fees within which it is estimated that the fee incurred will likely fall. Should any unanticipated matter arise so as to affect the estimated fee, you will be notified before any additional cost is incurred. An estimate does not amount to contractual commitment on our part to carry out the work for the fee stated.

Clients should understand that if for any reason the matter is not completed then the client will be invoiced for an amount based on the amount of time spent working on the matter and any disbursements incurred.

We make a charge for sending money through the banking system. The charge that we make to clients is to cover the amount that we pay to the bank for the service and our administration time.

### **9.0 Disbursements**

Disbursements are payments made by us to other parties or persons on your behalf. Some are subject to VAT at the appropriate rate. These will appear on our invoices, or payment may be requested separately. We will require payment on account prior to or immediately after incurring certain disbursements, for example, Stamp Duty Land Tax, Land Registry fees, court fees, Counsel's fees etc, and we are under no obligation to pay these unless we receive money to do so. If we are holding money in a client account, we may use such money to cover disbursements.

### **10.0 Tax Issues and Stamp Duty**

We do not advise on taxation law. This is an extremely complicated and ever changing area and not within our expertise. If we identify tax issues then we will advise you to consult an appropriate specialist. This also applies to questions of Stamp Duty on high value or complicated land transactions. There is a complex system of rules and reliefs.

## **Brooke-Taylor Solicitors Limited - Terms of Business**

### **11.0 Time for paying the bill**

The bills are payable in full upon receipt.

In matters likely to be completed in a reasonably short time, the invoice will be delivered as the case is completed or approaches completion as appropriate. However, in longer-running matters the firm will deliver interim accounts on a monthly basis (unless otherwise agreed) which may either represent the work done to a given date, or be generally on account. Where sufficient funds are held on your behalf, amounts due to us will be deducted from such funds unless otherwise agreed.

If a bill is unpaid after 28 days, we have a right to suspend work on the matter to which the bill relates. We also have the right to cease to act on any other matter for you and may apply, where appropriate, to be taken off the record as solicitor for the matter. However, we would tell you before we took such a step.

Third Party bills occur when someone other than you have agreed to be responsible for the fees incurred although the work will have been carried out on your behalf. You are still responsible for paying our bills in full when you receive them, even where the third party may be liable to reimburse you for any sums included in the bill.

In litigation cases, the court may order your opponent to make a contribution towards your costs. If so, the precise amount of the contribution is usually assessed by the court which may take several months. The amount assessed does not usually equal the total amount of a successful party's own legal costs. Payment of the entire invoice remains your responsibility even if the other party is ordered to make such a contribution. We would be happy to receive your instructions to recover any contribution from the other party, but you are responsible for the costs of recovery.

In all cases, you may set a limit on fees to be incurred. This can however create risks, as this may prevent a case being completed or essential work being carried out. If you impose an unrealistic limit or are not prepared to remove a limit without which we cannot do a full and professional job, or complete or progress the matter, we reserve the right to treat this as a termination of the retainer by you.

Bills are payable within 28 days. If bills owed by private clients are outstanding for a longer period then we may charge interest from the date of the invoice at 4% over the base lending rate set by the Bank of England from time to time. Overdue bills owed by business clients will be charged administration fees and interest as provided in the Late Payment of Commercial Debts (Interest) Act 1998.

### **12.0 Risks of Litigation**

Anyone embarking on litigation should remember that they may be ordered to pay some or all of the legal costs of any opposing party. Courts now regularly make interim orders for costs against parties to litigation if they fail to meet deadlines. It is therefore very important that you co-operate in providing all necessary information and instructions at all stages.

You should also recognise that even where you are successful in litigation, your opponent may not be able to afford to pay anything towards your legal costs. Where an opponent has the benefit of public funding (formerly called Legal Aid), an order for costs in your favour is unlikely even in wholly successful litigation.

### **13.0 Assisted cases**

In some instances, you may be assisted by public funding, legal expense insurers, or another body, such as a trade union. In that event the general terms relating to fees set out in this document will

## Brooke-Taylor Solicitors Limited - Terms of Business

be overridden by the terms on which the assistance is given. These terms will be explained in the engagement letter or at the time the assistance is obtained.

### 14.0 Lien

Until payment is received for all outstanding bills and for unbilled work in progress, we may exercise a lien or charge over certain property belonging to the client which has come into our possession in the course of our engagement. The property over which the lien operates includes share certificates, deeds and documents, company records, money in client account and our file of papers.

### 15.0 Interest Payments

In accordance with the SRA Accounts Rules 2011 we are obliged to ensure that any money held is available for the purpose for which it is provided and is therefore required to be placed in an instant access account. For this reason, any interest that will be paid on the funds held, when appropriate, is unlikely to be as high as that obtainable by you, the client, depositing the funds yourself.

In the event that interest is payable it will be calculated and any sum above £20 (to take into account administration costs) paid at the rate from time to time payable on Royal Bank of Scotland Plc's business deposit accounts when calculated. The period for which interest will be paid will normally run from the date(s) on which cleared funds are received by us until the date(s) of issue of any cheque(s) in payment.

Where you obtain mortgage borrowing from a lender, we will request the lender to arrange that the mortgage monies are sent via the CHAPS system prior to the completion date to ensure that cleared funds are available in time for completion, which normally means the working day before completion. You should note that the lender will charge interest from the date of issue of funds.

### 16.0 Commissions

Any commissions paid to us by insurance companies or other third parties as a result of investments or business placed on your behalf will be passed onto you or set against our charges with your prior agreement. Each payment due to you will be subject to a deduction of £20 in respect of administration fees.

### 17.0 Supervision of Files

We operate a system of supervising all files. Unless otherwise notified, the supervisor will depend upon the type of work and will be as follows:

Litigation	Tim Oaks	Family	Rosemary Wood
Property	Claire Broadhurst	Private Client	Rosemary Wood

We monitor the professional standard of our work and it may be necessary for a small number of our files to be audited confidentially by external examiners to ensure we maintain our quality systems. Please let us know if you object to your file being submitted for such audits. Unless you notify us otherwise, we shall assume that you have no objection. Our work for you will not be affected, whether or not you allow us to make your file available for audit.

### 18.0 Service Standards

Our aim is to provide all our clients with a comprehensive and efficient legal service. If you feel that this is not being achieved, you should initially contact the lawyer dealing with the matter to discuss the matter and resolve any problems. If this procedure does not resolve the problem, we have a formal procedure to deal with any concerns that may arise, and you should contact Mr. Tim Oaks.

## Brooke-Taylor Solicitors Limited - Terms of Business

The firm has a Complaints Procedure document, which is available on request from our office, and which would be sent to you should you make a complaint. Your right to complain might relate to the way in which your matter is being handled, or about a bill that we issue. In the case of a complaint about a bill, there might also be a right to object to the bill by applying to the court for an assessment of the bill under Part III of the Solicitors Act 1974. However, we would point out that if all or part of a bill remains unpaid, we may be entitled to charge interest, such entitlement being mentioned above.

We have eight weeks to consider your complaint. If you remain dissatisfied at the end of our complaints process, you would then be at liberty to contact the Legal Ombudsman, an organisation which investigates complaints about poor service from lawyers. The Legal Ombudsman can investigate complaints up to six years from the date of the problem happening or within three years of when you found out about the problem. If you wish to refer your complaint to the Legal Ombudsman, this must be done within six months of our final response to your complaint.

If you would like more information about the Legal Ombudsman, their contact details are as follows:

- Visit [www.legalombudsman.org.uk](http://www.legalombudsman.org.uk)
- Call 0300 555 0333 between 8.30am to 5.30pm (calls to 03 numbers will cost no more than calls to national geographic numbers (starting 01 or 02) from both mobiles and landlines. Calls are recorded and may be used for training and monitoring purposes.)
- For minicom call 0300 555 1777
- e-mail [enquiries@legalombudsman.org.uk](mailto:enquiries@legalombudsman.org.uk)
- Postal address: Legal Ombudsman, PO Box 6806, Wolverhampton, WV1 9WJ

### 19.0 Storage of Papers and Deeds

Following the conclusion of a transaction or case on your behalf, the file will be put into storage. Unless otherwise indicated we will retain your file of papers for six years or such longer period as we deem appropriate in our absolute discretion. The files will then be destroyed confidentially.

We provide a safe custody service to clients in respect of wills, deeds and other securities. We do not normally charge for this service – however, we may make a charge if you ask us to transfer the documents elsewhere. Please ask for details.

### 20.0 Financial Services and Markets Act 2000, and Arranging Insurance

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

We are not authorised by the Financial Conduct Authority. However, we can carry on insurance mediation activity, which is broadly the advising on, selling and administration of insurance contracts. This part of our business, including arrangements for complaints or redress if something goes wrong, is regulated by the Solicitors Regulation Authority.

In the event of our recommending an insurance policy (for example for defective title) we confirm that the market would be researched before any recommendation is made; and that we would

## **Brooke-Taylor Solicitors Limited - Terms of Business**

provide a “demands and needs” statement based on the information provided by you, along with reasons for recommending a policy.

### **21.0 Client Confidentiality and Data Protection Act 1998**

We are registered pursuant to the Data Protection Act 1998 in respect of personal data. Any information acquired by us in connection with matters conducted on behalf of clients which is not already in the public domain is confidential. It will not be communicated to third parties except in accordance with client’s instructions or as required by law. If clients give us authority to work with other professionals such as accountants, valuers, bankers etc, clients are deemed to have authorised us to receive and make disclosure of appropriate information unless we are notified to the contrary.

### **22.0 Consumer Protection (Distance Selling) Regulation 2000**

Where your instructions to us have not been given at a face to face meeting, you would generally have the right to cancel those instructions without cost to you within seven working days pursuant to the Consumer Protection (Distance Selling) Regulation 2000. You could cancel the agreement by delivering or posting a note to our office cancelling your instructions or by sending it by fax or email. You may not however cancel the agreement once we have, with your permission, started to do the work on your behalf. Where you have supplied funds on account of any disbursement to be made on your behalf and that payment has been made by us, the right to cancel the agreement, should it still subsist, will no longer apply.

### **23.0 Money Laundering Regulations 2007**

Under the Proceeds of Crime Act 2002 the business of solicitors is regulated under the Money Laundering Regulations 2007. If in the course of our business with you, we become aware of any financial activity which could be covered by the Regulations then we may report any potential breach to the National Crime Agency. It is for this reason; we are obliged to obtain from all clients an official document bearing a photograph (such as a passport or new style driving licence) together with other evidence such as a utility bill etc. We should also point out that these Regulations do not simply apply to the more direct proceeds of crime such as drug trafficking etc but do apply to all areas where money is obtained as a consequence of a crime such as tax evasion or benefit fraud. If we become aware or suspicious of a reportable offence, then under the Regulations we cannot inform you of our decision to report as to do so would constitute a criminal offence. It is important to point out that this duty to report does not only extend to our clients but also other persons involved with our clients. If we become suspicious of a reportable offence, we cannot continue to act for you until we get appropriate consent from the National Crime Agency.

### **24.0 Insurance and Legal Liability**

We hold professional indemnity insurance and, should you so request, we can provide you with the name and contact details of our professional indemnity insurer, and details of the territorial coverage of the insurance.

The Solicitors Regulation Authority Indemnity Rules require us to insure against claims made against us by clients and others subject to a minimum level of cover of £3 million per claim (or series of claims). Because of this protection for clients we consider that it is fair and reasonable to limit the amount of any liability we may have in any matter to that figure of £3 million, and by accepting these terms you are agreeing to this. If you do not agree to this provision you should contact us. Additional cover may be provided in appropriate cases on payment of an enhanced fee to reflect any increased premium or other costs.

We will not be liable for any claim which you may make against us which is not covered by our policy under the Indemnity Rules nor in respect of any claim which is covered by the policy to the extent that it exceeds the figure of £3 million mentioned above. We will not be liable for any claim in

## Brooke-Taylor Solicitors Limited - Terms of Business

relation to any matters dealt with on your behalf which may be made by any third party against us, and you will indemnify us in the event of any such claim being made against us.

### 25.0 Corporate Clients

Where we have accepted instructions from a Limited Company or any other incorporated body, signature of these Terms of Business by a director or by a number directors acts as a joint and several agreement by the company and the director(s) to ensure that our invoices are paid in full either by the company or the signing director(s) jointly and severally. This agreement takes the form of a joint and several guarantee by them in our favour. No changes in the constitution of this firm will discharge your joint and several liability under this guarantee notwithstanding section 18 of the Partnership Act 1890.

### 26.0 Applicable law

The terms of engagement shall be governed by and be construed in accordance with English law and the parties consent to the exclusive jurisdiction of the English courts in all matters connected with them.

If you continue to instruct us to act in this matter, those instructions will amount to an acceptance on your part of these Terms of Business. Even so, we would be obliged if you would sign, date and return the enclosed copy of this document within the next seven days, so that we can be confident that you understand the basis upon which we will act in this matter.

**This document is important. Please retain your copy in a safe place.**

I confirm I have read, understood and accept these Terms and Conditions of Business.

Signed.....Date..... Our Ref:

Signed.....Date..... Our Ref:

*Brooke-Taylor is the trading name of Brooke-Taylor Solicitors Limited, Registered Office: 4 The Quadrant, Buxton, Derbyshire, SK17 6AW. Registered in England and Wales. Company registration number 7299408.*

*Authorised and regulated by the Solicitors Regulation Authority - registration number 544581.*

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