

## GENERAL LITIGATION TERMS OF BUSINESS OF FRASER DAWBARNs LLP

We set out below the terms that relate to our agreement to act on your behalf. Please read them carefully before signing one copy and returning them to us.

### 1. Status

Fraser Dawbarns LLP (“the Firm”) is a Limited Liability Partnership which is registered at the Law Society number OC353893 and authorised and regulated by the Solicitors Regulation Authority.

### 2. Fees - If You Win

- (a) This paragraph applies to situations where either you commence court proceedings against your opponent and you are successful with your claim against your opponent or if you are successful in defending court proceedings brought by your opponent. In these situations if the court makes an order for costs in your favour the general rule is that the greater part of your costs and expenses will be met at the end of the day by your opponent if they have the money to pay them. If your opponent does not have the money to pay your legal costs and disbursements unfortunately you will be obliged to pay them. The same rules will apply if the case is settled in your favour without court proceedings having to be issued provided that it is a term of the settlement that your opponent should pay your legal costs.
- (b) If either your opponent is ordered by the court to pay your legal costs and disbursements or prior to the issue of court proceedings your opponent agrees to pay your legal costs and disbursements, your opponent will only be required to make a contribution towards those costs. Unfortunately you will be obliged to pay the balance of your costs and disbursements. We will give credit for any costs recovered from your opponent against any costs and disbursements you have already paid or are obliged to pay.
- (c) Please note that courts increasingly are making orders that reflect the issues in the case. For example if the case went to trial and there were 5 issues to be decided and you won on 3 of those issues but lost on 2 of those issues the court could order your opponent to pay 60% of your legal costs and you to pay 40% of the opponent’s legal costs. Therefore even if you won your case you may have to pay some of your opponent’s legal costs.

### 3. Fees - If you Lose

- (a) You will no doubt appreciate that if you lose your case after court proceedings have started the court is likely to order you to pay your opponents legal costs and disbursements. In addition you will be obliged to pay our legal costs and disbursements.
- (b) As stated above courts increasingly are making orders that reflect the issues in the case. For example if the case went to trial and there were 5 issues to be decided and you won on 2 of those issues but lost on 3 of those issues the court could order your opponent to pay 40% of your legal costs and you to pay 60% of the opponent’s legal costs. Therefore even if you lost your case your opponent may have to pay some of your legal costs.
- (c) It will not be possible to give a precise estimate for your opponent’s costs until costs budgets are exchanged should your case be in the multitrack and progress to that stage. However it is likely that your opponent’s costs would be similar to the costs you incur with this firm and could be more, particularly if your opponent is Claimant. Whenever we provide you with an estimate as to your own costs this should be regarded as an indication also of your opponent’s likely costs in the event that a costs order is made requiring you to pay your opponent’s costs.

### 4. Interlocutory Hearings

- (a) If court proceedings are issued and at any time either you or your opponent issue an application before the trial takes place for a hearing during which the court is asked to decide any issue or point this hearing is known as an “Interlocutory Hearing”.

- (b) If you lose the Interlocutory Hearing it is likely that the court will order you to pay your opponents legal costs of the Interlocutory Hearing within 14 days of the date of that hearing.
- (c) If you win the Interlocutory Hearing it is likely that the court will order your opponent to pay your legal costs of the Interlocutory Hearing within 14 days of the date of that hearing.

## 5. Insurance for Opponents Costs, Your Costs and Your disbursements

- (a) It may be possible either now or at a later stage for you to take out an insurance policy, which will pay your costs and disbursements and/or your opponent's legal costs and disbursements if you lose your case after issuing court proceedings.
- (b) Some insurance policies will not cover any costs that your opponent has incurred prior to the date on which you took out the insurance. If either now or at a later date you are unable to take out an insurance policy that will cover any costs that your opponent has incurred prior to the date on which you took out the insurance policy you personally will be obliged to pay the costs and disbursements that your Opponent incurred before the policy was taken out.
- (c) Your Opponent will start to incur legal costs and disbursements as soon as they have been notified of your claim.
- (d) You should also be aware that the later you seek insurance cover the more expensive the insurance cover is likely to be. If you would like us to act on your behalf to obtain written quotations for insurance now or at any time in the future please do not hesitate to call us. When deciding whether to take out insurance now or later you should balance the fact that if you took out insurance now you would have to pay a premium against the fact that your opponent may admit liability or may make an acceptable offer to settle your case in which case if you had paid the insurance premium it would have been an unnecessary expense.

## 6. Legal Expenses Insurance

- (a) If you have Legal Expenses Insurance, it may be the case that those insurers will be willing to pay for you to receive legal advice in respect of this matter.
- (b) If you consider that you do have Legal Expenses Cover we should be grateful if you would send us a copy of your insurance policy together with the full terms and conditions of the insurance policy. We will then be able to advise you whether you have legal expenses cover under the policy.
- (c) If you do have legal expenses cover our charges will be calculated at the rate set out below for the work that we do for you up to the point at which the insurance company agrees to pay our costs for you. Unfortunately even if you have legal expenses insurance cover you will remain primarily liable for the legal costs that you incur (i.e. if the insurance company does not pay our costs we shall look to you for payment of our costs).

## 7. Charging Rate & Terms of Business

- (a) Our charge rate is set so as to cover our overheads. Unfortunately, our overheads are huge. Our charges will be calculated mainly by reference to the time spent by me and by other solicitors and executive staff dealing with this matter. This includes advising, attending on you and others, drafting letters and emails, reading letters and emails, drafting attendance notes, dealing with papers, correspondence, telephone calls (including incoming calls from you), research, travelling and waiting time, drafting and preparation of any costs estimates, detailed costs estimates, schedules and bills.
- (b) From time to time we may arrange for some of the work to be carried out by people not directly employed by us (for example a costs draftsmen). Such work will be charged to you at the hourly rate which would have been charged if we had done the work ourselves.
- (c) Our charge rates are reviewed annually in April and you will be charged at the revised rate from the date it takes effect. We will be happy to supply you with the up to date rates whenever you want. Currently our charging rates are as follows:

<b>Fee Earner</b>	<b>Hourly Rate Excluding VAT</b>	<b>Hourly Rate Including VAT</b>
Member Solicitor - Grade A	£290 + VAT	£348.00
Senior Associate Solicitor , Associate Solicitor , Senior Associate Clerk/in house costs draftsman, CILEX and Assistant Solicitor with over 4 years	£260 + VAT	£312.00

post qualification experience - Grades A and B		
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Charge rates continued...

Fee Earner	Hourly Rate Excluding VAT	Hourly Rate Including VAT
Assistant Solicitor and CILEX with less than 4 years experience - Grade C	£210 + VAT	£252.00
Trainee/other legal assistants and paralegals - Grades D and E	£190 + VAT	£228.00

(d) The following shall be charged at one tenth of the above charging rates:

- (i) Each telephone call or under 6 minutes made or received
- (ii) Each letter or email taking less than 6 minutes to draft.

(e) In respect of each letter or email received for which no response is required they are charged at one twentieth of the above charging rates.

(f) We shall deliver bills to you at regular intervals for the work carried out during the conduct of the case. This assists our cash flow and enables you to budget for costs. We sure you will understand that in the event of a payment not being made we must reserve the right to decline to act any further and that the full amount of the work done up to date will be charged to you.

## 8. Standing Order

We shall be entitled at any stage to request you to pay any sums by way of standing order. If we have or at any time do ask you to pay sums to us on account of our costs by standing order it is important to bear in mind that our costs may be more or less than the amounts that you pay us by way of standing order. If our costs and disbursements are more we shall be entitled to ask you to pay the balance. If our final costs and disbursements are less than the sums that we have received from you we will send the balance to you. You agree to us using the sums paid by standing order to pay our costs and the disbursements that we incur on your behalf. In addition the amount of the standing order does not limit the sum that we can ask you to pay in any particular month. We reserve the right at any time to require you to pay to us sums over and above the amount that you have agreed to pay us by standing order. For example we are entitled to ask you to pay sums over and above the standing order payments that we have received from you to pay any of our bills, to pay any disbursements or to pay any other sums required from you on account of our costs and disbursements. We reserve the right to cease acting for you if any of the standing order or other payments are not paid.

## 9. Complaints Procedure

If you have any questions, queries or concerns about our work for you or about the bill for our charges, please take them up first with the individual dealing with your matter. If that does not resolve the problem to your satisfaction or you would prefer not to speak to that individual, then please take it up with the head of the relevant department of the Firm. The identity of the department heads is available from our website at [www.fraserdawbarns.com](http://www.fraserdawbarns.com), or from any office of the firm.

If your complaint is still not resolved you may refer the matter to the firm's Client Relation Manager, David Osborne who may be contacted at 21 Tuesday Market Place, King's Lynn, Norfolk. PE30 1JW or by email ([davidosborne@fraserdawbarns.com](mailto:davidosborne@fraserdawbarns.com)) (telephone 01553-666-610). We will make every effort to resolve any complaints raised with us through our internal complaints procedure. If you are not satisfied with our handling of your complaint you can ask the Legal Ombudsman, PO Box 6806, Wolverhampton, WV1 9WJ, about your complaint. Any complaint to the [Legal Ombudsman](#) must usually be made within 6 months of the date of our final written response on your complaint but for further information, you should contact the Legal Ombudsman on 0300 555 0333 or at [enquiries@legalombudsman.org.uk](mailto:enquiries@legalombudsman.org.uk).

The following time limits also apply to referring your complaint to the Legal Ombudsman:

1. If the act or omission giving rise to your complaint ("the act or omission") was more than six years ago or took place before 6 October 2010 you must refer your complaint to the Legal Ombudsman within three years of when you should reasonably have known you had cause for complaint ("date of knowledge") and your date of knowledge must have been after 5 October 2010
2. If the act or omission was after 5 October 2010 you must refer your complaint to the Legal Ombudsman within six years of the act or omission

The Solicitors Code of Conduct can be found on the Solicitors Regulation Authority website at [www.sra.org](http://www.sra.org)

If you would like to see our written complaints procedure we will provide you with a copy of it upon request.

It is important to appreciate that if a complaint is made to us we still may be entitled to charge interest on any of our bills that remain unpaid.

The Legal Ombudsman may not deal with a complaint about a bill if the client has applied to the court for assessment of that bill.

## 10. Equality and Diversity

This firm is committed to promoting equality and diversity in all of its dealings with clients, third parties and employees and has a written equality and diversity policy.

## 11. Money Laundering

### *Proof of Identity*

(a) The law now requires solicitors to obtain satisfactory evidence of the identity of their clients, and sometimes people related to them. This is because solicitors who deal with money and property on behalf of their client can be used by criminals wishing to launder money. In order to comply with the law on money laundering, we will request evidence of your identity. If you cannot provide the specific identification requested, please contact us as soon as possible to discuss other ways to verify your identity.

### *Confidentiality*

(b) We are under a professional and legal obligation to keep your affairs confidential. However solicitors may be required by statute to make a disclosure to the National Crime Agency in certain situations 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.

### *Cash*

(c) The policy at Fraser Dawbarns LLP in relation to cash is that payments in cash exceeding £1,000 in total are not accepted.

(d) If you try to circumvent this policy by depositing cash direct with our bank, we may charge you for any additional checks we decide are necessary to prove the source of the funds.

(e) 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.

### *Electronic and On-line Data*

(f) As part of the identification process, we will need to carry out identity checks using electronic and on-line data. Your instructions to us constitute confirmation of your agreement to this.

### *Investigations*

(g) We will charge you if we are required to carry out any work as a result of any money laundering activities relating to you or persons connected to you and/or any allegation of such activities and/or any investigation by the anti-money laundering authorities.

## 12. Data Protection

(a) We use the information you provide primarily for the provision of legal services to you and for related purposes, including updating and enhancing client records, practice management, statutory returns, and legal and regulatory compliance.

(b) Our use of that information is subject to your instructions, the Data Protection Act 2018 and GDPR (General Data Protection Regulations) and our duty of confidentiality. Please note that our work for you may require us to give information to third parties such as expert witnesses and other professional advisers. You have a right of access under data protection legislation to certain personal data that we hold about you. For further information please refer to the firm's Privacy Notice

### 13. Financial Services – Investment & Insurance

- (a) We are not authorised under the Financial Services & Markets Act 2000, nor are we regulated by the Financial Conduct Authority, but we are able, in certain circumstances, to offer a limited range of investment services to the client because we are members of the Law Society of England and Wales. We can provide these investment services if they are an incidental part of the professional services we have been engaged to provide. If while we are acting for you, you need advice on investments, we may have to refer you to someone who is authorised to provide the service.
- (b) Fraser Dawbarns LLP 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 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. The register can be accessed by the Financial Conduct Authority website at [www.fca.org.uk/firms/financial-services-register](http://www.fca.org.uk/firms/financial-services-register)
- (c) The Law Society of England and Wales is a designated professional body for the purposes of the Financial Services & Markets Act 2000. The Solicitors Regulation Authority is the independent regulatory body of the Law Society. The Legal Ombudsman is the independent complaints handling body responsible for handling complaints against solicitors (see details above). If you are unhappy with any investment advice you receive from us or with any insurance advice you receive from us, you should raise your concerns with either of those bodies.

### 14. Interest and Commissions

In the event that Fraser Dawbarns LLP receives any commissions arising from work carried out on your behalf, whether attributable to investment or insurance activities or otherwise, we will credit your account with the amount of those commissions.

At the end of your matter, we will credit your account in respect of any interest earned if we hold monies on client account for longer than two months and the amount of interest is more than £20. If however, we hold money on client account as stakeholder for another we must account for interest to the recipient of the stakeholder funds. For example, if you pay a deposit when buying a property to be held by us as stakeholder for your seller we would have to account for interest earned to your seller and not yourself.

### 15. Termination

- (a) You may terminate your instructions to us in writing at any time, which will be effective when we receive it, but we can keep all your papers and documents whilst there is still money owed to us for fees and expenses.
- (b) We will decide to stop acting for you only with good reason, e.g. if you do not pay a bill, a sum on account of costs, there is a conflict of interest, or if you require us to act unreasonably (which for example in a litigation matter includes (but is not limited to) asking us to run arguments that we consider will not succeed or which are not properly arguable) or act in a manner which conflicts with a protocol.
- (c) If you or we decide that we should stop acting for you, you will pay our charges up to the point at which you or we are notified.

### 16. Storage of Papers and Deeds

- (a) At the conclusion of your matter we will keep your file of papers in storage for no less than 1 year. After that, storage is on the clear understanding that we have the right to destroy your file of papers after such period as we consider reasonable.
- (b) At the conclusion of your matter we will retain electronic data for no less than one year. After that period retention of electronic data on our servers or otherwise is on the clear understanding that we have the right to permanently delete any such electronic data after such period as we consider reasonable.
- (c) We do not normally make a charge for retrieving stored papers or deeds in response to continuing or new instructions to act for you. We may make a charge based on the time we spend on reading papers, writing letters or other work necessary to comply with these instructions. These charges will be made at the hourly charging rates which are current at the time of your request.

- (d) We may make a charge for retrieving stored papers or deeds where there are no new or continuing instructions to act for you, or where you ask us to provide information to you or a third party. These charges will be made at the hourly charging rates which are current at the time of your request.

## 17. Outsourcing and Assessment

- (a) We may be required to produce and disclose all or part of your file to assessors, auditors and similar bodies for the purposes of audit or quality checks. These bodies are required to maintain confidentiality in relation to your files.
- (b) We reserve the right to outsource work for work to be carried out by people not directly employed by us. Outsourcing of work and auditing and inspection of files has implications for the confidentiality of your matter. If you have any objection, please let us know without delay. Please note that in the event of such objection, it may be necessary for us to terminate our retainer.

## 18. Terms relevant to fee paying clients

Hourly rates are reviewed annually, and we will notify you of any adjustment which will affect the hourly rate charged in relation to your matter.

## 19. Billing Arrangements for fee paying clients

In certain situations you may be entitled to apply to the court for an assessment of our bill under part III of the Solicitors Act 1974.

### *Interim Bills*

- (a) As and when we feel appropriate as the matter progresses we shall send you bills for the work that we have carried out for you. We reserve the right to cease acting for you if any of our interim bills are not paid.

### *Time for Payment and Interest*

- (b) Payment of all bills is due within 28 days of our sending it to you. If it is unpaid, we will charge interest on the bill at 8% per year on a daily basis from the date on which payment of our bill is due.

### *Lien*

- (c) In the event that any bill is unpaid, we are entitled to retain your papers, documents and property until payment in full has been received.

### *Payments on Account*

- (d) The day to day running costs that a solicitor incurs in running a matter (such as search fees, court fees, experts fees, travelling expenses etc) are known as disbursements.
- (e) We shall ask you for payments on account of our costs and the disbursements we incur on your behalf as the matter proceeds. In the event of a payment on account not being made we reserve the right to decline to act any further. In that event, we will send a bill for all work done to date.

### *Credit Card Payments*

- (f) You may pay a sum on account of costs, any sum due to us for costs VAT and disbursements by credit card or debit card. We are unable to accept card payments for any other purpose. We may not be able to take a credit card payment for Stamp Duty land Tax and Land Registry fees. Please note that we do not accept payment by American Express.

## 20. Joint Clients

Where we are acting on behalf of one or more clients by signing this agreement you agree to us taking instructions from one of you on behalf of all of the joint clients unless you advise us to the contrary.

## 21. Partnerships & Limited Companies

Where we have been instructed by one or more directors of a limited company to act on behalf of the limited company or by one or more partners to act on behalf of a partnership of which they are members:

- (a) The director(s) or partner(s) (as applicable) warrant that they have the authority of the limited company or partnership (as applicable) to instruct us and
- (b) The director(s) or partner(s) (as applicable) warrant that the limited company or partnership (as applicable) is not insolvent and has the funds to pay our costs and disbursements as they fall due

**22. Emails**

Any emails sent by us to you (or to others on your behalf) are likely to contain potentially sensitive information about you and/or your matter. Please note that those emails and their enclosures will be sent in a non-encrypted format and as such will be vulnerable to being opened and read by those with the technology and expertise to do so. By instructing us to act for you, you agree to us sending emails about your matter in a non-encrypted manner, unless you advise us in writing to the contrary.

**23. VAT Number**

Our VAT number is 750873712

**24. Professional Indemnity Insurance**

We maintain professional indemnity insurance in relation to the services that we provide. Our insurers are the International Insurance Company of Hannover of 60 Fenchurch Street, London, EC3M 4AD. The territorial coverage of our insurance is England & Wales.

**25. Applicable Law**

Any dispute or legal issue arising from our terms of business will be determined by the law of England and Wales, and considered exclusively by the English and Welsh courts

**26. Agreement**

- (a) The terms of this letter do not constitute, what the Courts call a “contentious business agreement” (which could have the effect of restricting your rights to challenge the costs) - and if you are not satisfied at the conclusion of the matter you have a right to ask the Court to decide on the amount of costs.
- (b) As confirmation that you agree to the above terms and that you would like us to act on your behalf we should be grateful if you would sign a copy of these terms and return them to us
- (c) We retain the right to cease work for you until we have received a signed copy of these terms from you

**27. Assignment of Retainer**

By instructing us to act for you, you agree that we may assign your retainer to any successor practice of this firm, including any Limited Liability Partnership or Limited Company to which all or part of the firm’s business is transferred.

**28. Liability of Members and Employees**

You also agree that no member or employee of any Limited Liability Partnership or Limited Company to which your retainer may be transferred shall be liable for any tortious act or omission in relation to your retainer.

Please could you complete the details in the applicable box below and then sign, date and return the signed copy to us.

<p><b>For Business Clients</b></p> <p>I ..... <i>[please insert your full name in block letters]</i> on behalf of ..... <i>[please insert your businesses name in block letters]</i> (“<b>the Business</b>”) agree to the terms as to charging. I confirm that I have authority on behalf of the Business to enter into this agreement on behalf of the Business and that the Business has the funds to pay your fees.</p> <p>Signed: ..... Dated: .....</p>
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<p><b>For Non Business Clients</b></p> <p>I ..... <i>[please insert your full name in block letters]</i> agree to the terms as to charging.</p> <p>Signed: ..... Dated: .....</p> <p>I ..... <i>[please insert your full name in block letters]</i> agree to the terms as to charging.</p>
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