

terms of business



for business and for life

AshtonKCJ

Terms of Business

1. Our Aim

We are committed to providing the highest standards of service and expertise and subject ourselves to independent audit on these. This leaflet sets out our Terms of Business.

The individual letter you will receive with this general document defines the extent of the work we have agreed to undertake for you, our assessment of its cost and benefit to you and any specific terms applicable to your matter.

By instructing us, you have authorised us to take the steps we consider appropriate to represent you, including incurring reasonable expenses on your behalf.

If you have already asked us to start work on your behalf, e.g. by giving you initial advice or by acting in an emergency, we will have been doing so on the understanding that, unless otherwise agreed, the terms as set out here apply from the start.

Your continued instructions will amount to acceptance of these Terms of Business regardless whether you have signed and returned a copy of the accompanying letter.

2. Responsibility for your work

We will confirm to you who is to be responsible for your work. This may not be the person who normally advises you because we are grouped together in teams according to specialist expertise, and we want to ensure that your matter is dealt with by people with the right level and area of expertise.

We try hard to avoid changing the people who are handling your work but if this cannot be avoided, we will notify you promptly if necessary.

3. How we carry out your instructions

Where appropriate, we will agree with you a plan for your work as far as possible and keep you informed of progress and when decisions by you are required. This, together with interim billing where appropriate, will give you a more accurate idea of what our work for you is costing and enable us to produce more realistic estimates for the rest of our work for you.

4. Charges

As our time and expertise committed to your matter are the core elements of our service, our charges are usually calculated by reference to hourly rates which take into account the degree of complexity, risk, value and urgency involved and the level of seniority of the lawyers working on your behalf.

We usually calculate our fees on the basis of the time it takes to perform the work during normal office hours.

We may need to act rapidly, drop everything else and continue outside the usual hours of business. The matter may be extraordinarily important, complex or valuable. We may have to spend extended time out of the office or go through extraordinary amounts of documents. These factors may lead us to increase those fees.

Routine letters, faxes, emails and telephone calls are charged in 6 minute units of time, whether written, made or received. We record time in 6 minute units. Longer activities are charged on a time basis as a multiple of such units.

However, we are flexible about our charging policy. We are prepared to consider alternatives to hourly rates, including blended rates, retainers, fixed fees and contingent fees, where permitted. In certain circumstances we also offer Conditional Fee Agreements, also known as 'No win, no fee' arrangements.

We have detailed the charging agreement applicable to your matter in the accompanying letter addressing your specific matter.

At the outset of any matter, we will give you an indication of the likely costs and expenses involved in acting for you. Where appropriate we will confirm the stage at which payments are likely to be required from you. Any figure expressed as an estimate is given only as a guide and should not be regarded as a fixed fee unless agreed as such in writing. We will usually require payments on account of our fees before undertaking work on your behalf.

We will ensure that you are kept properly informed about the level of fees incurred and if any unforeseen or additional work becomes necessary. For a variety of reasons, some matters do not proceed. In these circumstances, we will charge for the work carried out and expenses incurred to the point of conclusion, unless otherwise agreed.

We round up our fees to the nearest multiple of £10.

We are required to charge VAT at the current rate on our charges and on certain payments we make on your behalf. All figures advised or quoted are net of VAT.

5. Expenses and our associated fees

In appointing us to act for you, you are also authorising us to incur such expenses as we consider necessary to the proper conduct of your matter, although we will of course consult you before incurring a significant outlay. We will usually require payment in advance and on account before incurring expenses.

We pass on travel and subsistence expenses as incurred.

We reserve the right to charge for photocopying. Black and white copies are charged at 20p per A4 sheet (40p per A3 sheet) and colour copies at £1.00 per A4 sheet (£1.50 per A3 sheet). The telegraphic transfer of money attracts charges made by our bank for its services and by us to cover our administration costs. We also charge an administration fee on work done by some of our local property search providers. All of these costs will appear as part of our fees to you.

6. Billing frequency

Where appropriate, we will submit interim invoices as work progresses. Where we have agreed a fixed fee with you but the matter has not concluded for reasons outside our control, we may charge you on an interim basis up to the full extent of the fixed fee.

In addition we may, in March of each year, bring our invoicing up to date in respect of all your then unbilled work regardless of the stage that your matter has reached. Unless otherwise stated, monthly or other interim invoices are a final account of our fees for all the work done during the period to which they relate. You agree that we may bring proceedings on interim invoices which are not final bills. There may be a delay invoicing expenses incurred on your behalf pending our receipt of the relevant invoices from third parties and accordingly our invoices may not be a final invoice in relation to such expenses.

7. Limits on fees

You may at any time set a limit on the fees you are prepared to incur and we will then not work beyond that limit without referring to you. We do, however, require you to confirm this to us in writing.

8. Payment and interest on late payment

Our invoices become payable upon delivery. We may charge you interest on any outstanding balance at 2% per calendar month from 14 days after delivery of our invoice.

We will apply any payment to settlement of outstanding interest before settlement of unpaid fees.

We do not accept payments in cash. We will accept payment by credit card; in which case we may apply a 2% surcharge on the sum paid.

In the event that payment is not made, we also reserve the right to cease work at that point on the matter concerned and any other matter in which we act for you, so as not to incur further costs. In litigious matters we would then need to apply for our name to be removed from the court record as representing you, and reserve the right to claim the costs of doing so against you also.

9. Interest on client money

We have a written policy on payment of sums in lieu of interest on money we hold for you which seeks to provide a fair outcome. A copy is available on request. The following are the main points to bear in mind:

- Monies we hold on account of transactions and our costs and expenses in our general Client Account will rarely attract as good a rate of interest for you as you could arrange for yourself;
- No interest will be paid if the amount calculated on the balance of your monies is less than £20;
- Interest earned on monies held on designated Deposit Account by us is subject to tax and will be passed on to you in its entirety.

10. Termination

We may cease to act for you on any matter by giving you reasonable written notice if:

- You fail to give us proper instructions;
- You fail to give us the co-operation which we are reasonably entitled to expect;
- Our continuing to act would be impractical, unethical or unlawful;
- We have a conflict of interest;
- You fail to provide us (or to replenish) sufficient money to be held on account;
- You fail to pay our invoices as and when due for payment; or
- You fail to co-operate with our AML/CTF due diligence requirements.

On termination by either you or us:

- You must pay our charges for work carried out up to the date of termination, and
- We may keep all of the papers which we are entitled to retain until all of our costs, disbursements and interest have been paid.

11. Your Rights to Cancel

If you instruct us in your personal capacity, rather than as the representative of an organisation for example, you have the right to cancel your agreement for us to act on your behalf in certain circumstances.

If we have not met you, the Consumer Protection (Distance Selling) Regulations 2000 apply. If you agreed the terms upon which we should act on your behalf during a visit by us to your home or place of work the Cancellation of Contracts Made in a Consumer's Home or Place of Work Regulations 2008 apply.

In both cases you have a right to cancel our agreement within 7 days of the date you receive these Terms of Business from us. To do so, please write to or fax us at the address shown upon our accompanying letter.

However once we have started work on your file you may be charged if you then cancel your instructions.

12. External communications and confidentiality

We use post, Document Exchange, telephone, fax and email for communication with others concerning your matter. We assume the authority to do so and you should advise us if you have security or other concerns.

Sometimes we ask other companies or people to undertake typing, photocopying and preparation of formal bills on our files to ensure this is done promptly. We require that confidentiality is maintained by these outsourced providers. If you do not want your file to be outsourced, please tell us as soon as possible.

We are subject to quality management standard and other audits. External organisations conduct quality checks on our practice, which may involve examining your file. These external organisations are required to maintain confidentiality in relation to all files.

If you prefer to withhold consent to your file being inspected, work on your file will not be affected in any way. We assume that we do have your consent on this occasion and in relation to all future matters in which we act for you, unless you notify us in writing.

We are bound by strict confidentiality rules and maintain strict confidentiality in regard to your work generally. However a number of regulatory authorities may require us to disclose some details from time to time to them. For example, The Solicitors Regulation Authority and HM Revenue & Customs have the power to inspect our records and we have reporting obligations under the Proceeds of Crime Act 2002. Accreditation for Professional Quality Marks may also involve random inspections of our files.

13. Privacy and Data Protection

We may use your personal data (as defined by the Data Protection Act 1998) for the purpose of client identity verification, the provision of any of our services, the administration of files and records, legal and regulatory compliance and the marketing and promotion of our services, as well as informing you of relevant news and legal developments.

In certain circumstances your personal data may be transferred outside the European Economic Area (EEA) where data protection legislation may not offer the same protection as within the EEA. If you would prefer that we did not transfer your personal data outside of the EEA please write to the partner responsible for your work.

Please note that our work for you may require us to provide information to third parties such as expert witnesses and other professional advisers. We may also disclose your personal data to third parties from which we are buying a business or assets or to which we are selling some or all of our business and assets as part of any due diligence process. Your personal data may subsequently be transferred to such third parties. We may also be under a duty to disclose your personal data as part of our legal obligations.

You have the right to access personal data we hold about you. If you do not wish us to process your personal data for marketing purposes, please advise us in writing as soon as possible.

14. Intellectual property rights

Unless otherwise agreed in writing, we retain the copyright and other intellectual property rights in all written and other material supplied to you concerning matters in which we are instructed. If material prepared by us is passed or disclosed to third parties then you accept liability for the payment of a proper professional charge for the use of such documentation together with all expenses or losses incurred in enforcing our intellectual property rights.

15. Storage of files and documents

We keep files on the understanding that we can destroy them 7 years after conclusion of the matter except for those papers that you ask to be returned to you. We will not destroy documents you ask us to deposit in safe custody.

We will keep all documents and any items which you deposit with us for safe keeping available for inspection upon reasonable notice. They will be returned to you on request unless they are the subject

of an undertaking or obligation to a third party, or they are being retained pending payment of any outstanding costs. Subject to any restriction imposed by law, we do not accept liability for the loss of, or for damage to, items held in our custody, or any further losses which might arise as a consequence of an item being lost or damaged.

We look after deeds, wills and other important documents free of charge, but we have no duty of care to give advice in relation to those documents.

Holding documents for you or having knowledge of your circumstances will not constitute a retainer to advise you on changes or prospective changes in the law or how the law applies or may apply in your circumstances when it changes.

16. Scope of liability

Our advice is particular to your individual circumstances. We do not accept liability to any person or organisation to whom our advice is not addressed, except where its very nature raises a legal duty of care in favour of a third party. The provisions of the Contracts (Rights of Third Parties) Act 1999 are to that extent excluded.

The scope of our work will not include advising on the business implications of any matter or on financial, accounting or actuarial issues, the adequacy of any insurance arrangements or the value or physical condition of any asset.

We insure against the risk of being unintentionally negligent. If you require information about this insurance and the level of cover, please contact our Compliance Officer for Legal Practice (see below). The liability of Ashton KCJ and any individual partner, consultant, employee and other agents of Ashton KCJ (and any service company owned or controlled by or on behalf of Ashton KCJ) in any circumstances whatsoever, whether in contract, tort, under statute or otherwise, and howsoever caused (including but not limited to our negligence or non-performance), for loss or damage arising from or in connection with the services provided in any one or series of related matters shall be limited to the extent of our Professional Indemnity Insurance from time to time except where the rule of law overrides this term.

Please note that where we recognise more than one person as our client in relation to a single matter then each agrees, (a) the limit of liability will be divided between them; (b) the clients are responsible for agreeing the division of the limit of liability between them; (c) the clients are under no obligation to inform Ashton KCJ of the division; (d) if, for whatever reason no such division is agreed between the clients then none of them shall dispute the validity or enforceability of the limit of liability on the grounds that no such division was agreed between them.

We will use reasonable skill and care in the conduct of our work for you. Where we make an assessment, either expressly or by implication, of the likely level of risk associated with different potential courses of action, you accept that such assessment is made relying only upon the information and documents then available to us and cannot therefore be definitive. Accordingly, such an assessment should only be used as one element in the making of any practical or commercial decision. It is for you to decide whether to accept all or any risk.

Ashton KCJ as an entity will conduct the work for you and you agree that you will not bring any claim whether in contract, tort, under statute or otherwise against any servant or agent of Ashton KCJ including (without limitation) any individual partner, consultant, employee or other agent of Ashton KCJ. The partners, consultants, employees and other agents of Ashton KCJ shall be entitled to rely on the terms of these Terms of Business insofar as they admit any liability. If you accept or have accepted any express exclusion or limitation of liability from any of your other professional advisors, our total

liability to you arising out of our work will not exceed the net aggregate amount for which we would otherwise have been liable after deducting any amount which you or we would have been entitled to recover from such advisor as a matter of law, whether pursuant to statute or otherwise, but are prevented from doing so as a result of such exclusion or limitation of liability.

We shall not be liable for :

- Any loss, damage, cost or expense arising from any breach by you of your agreement with us or any act or omission of any other person; or
- Any advice or document subject to the laws of a jurisdiction outside of England and Wales; or
- Any advice or opinion given to you by any third party (whether or not nominated or recommended by us); or
- Any indirect or consequential loss or damage or any loss of profit, income production or accruals arising in any circumstances whatsoever, whether in contract, tort, under statute or otherwise, and howsoever caused (including but not limited to our negligence or non-performance).

Nothing in these Terms of Business exempts us from liability arising from our fraud or reckless disregard of our professional obligations, from our negligence resulting in death or personal injury; or where, in the case of a contentious business agreement, law or regulation prohibits the exclusion of such liability.

If anything under this heading is not acceptable to you, you must raise this matter with us immediately.

17. Governing Law

The Law of England and Wales will govern our professional and contractual relationship with you notwithstanding that you may be based, or our services are provided to you elsewhere. These Terms of Business are available in English and French.

18. Insurance mediation activity, professional regulations and Compliance Officer

This firm is authorised and regulated by the Solicitors Regulation Authority (whose website is at www.sra.org.uk) under Recognised Body Number 45826. The Legal Ombudsman (whose website is at www.legalombudsman.org.uk) deals with complaints against lawyers. If you are unhappy with any advice or other aspect of the service (other than insurance related advice) you receive from us, you should raise your concerns with either of those bodies.

Our Compliance Officer for Legal Practice is Tom Cook (who can be contacted at Fairstead House, 7 Bury Road, Thetford IP24 3PL, telephone: 01842 752401, email: tom.cook@ashtonkcj.co.uk) with whom you should raise any concerns in the first instance.

We are also authorised and regulated by the Financial Services Authority for insurance mediation activity, which is broadly the advising on, selling and administration of insurance contracts. Our FSA Register number is 123305, and details of our registration can be found by visiting the FSA's website at www.fsa.gov.uk/register or by contacting the FSA on 0845 606 1234. If you wish to register a complaint in connection with insurance related advice, please contact our Compliance Officer for Financial Services Authority related activities in writing or by phone at the address/telephone number noted below. If you cannot settle your complaint with us, you may be entitled to refer it to the Financial Ombudsman Service.

Our Compliance Officer for Financial Services Authority related activities is Ian Reed (who can be contacted at Waterfront House, Wherry Quay, Ipswich, Suffolk IP4 1AS, telephone: 01473 232425, e-mail: ian.reed@ashtonkcj.co.uk) with whom you should raise any concerns in the first instance.