

## **TERMS AND CONDITIONS**

This document explains the basis on which we will carry out all the work necessary in relation to your criminal proceedings.

### **People Responsible for Your Work**

The individual member of the firm whose name appears at the top right of the attached letter is the person responsible for your case. They will carry out most of the work on your case but may, on occasion, be assisted by another solicitor, paralegal or police station representative at the firm. If your case progresses to the Crown Court, the solicitor who has conduct of your case in the Magistrates Court will retain conduct of your case in the Crown Court. They will also be assisted by one of the firm's paralegals in preparing the case for the Crown Court proceedings.

James Gray and Ross Wagstaff are the partners in the firm. They are both specialists in the field of criminal law. The partners work unsupervised on a day-to-day basis although our internal quality system means that their work is supervised on a periodic basis by the other partner.

Consultant Solicitors, Assistant Solicitors, Paralegals and Police Station Representatives within the firm are all specialists in the field of criminal law and are supervised under the same internal quality system by the partners.

If you need to telephone please ask to speak to the person whose name appears at the head of the letter. If they are unavailable another member of our staff will be happy to take any message for you. We try hard to avoid changing the people who are dealing with your work but if this cannot be avoided we will notify you promptly as to who will be handling your work in the future and why such change has proved necessary.

The individual referred to will explain to you the issues raised in your case and keep you fully informed of progress. He or she will also advise you whether the likely outcome of your case will justify the likely charges and expenses and risk involved from time to time as necessary.

We appreciate that as well as the question of cost (which is dealt with below) one of the other major concerns that you will have is the time that your case will take. Regrettably, in the field of criminal law this aspect of the case is not always within our control. There are various third parties such as the Police, Crown Prosecution Service, Courts, Probation Service etc who will influence the way in which your case proceeds. If the matter proceeds smoothly, however, the person referred to above will be able to provide you with specific information as to an estimated completion date for the full case or estimated completion dates for each particular stage involved.

### **Charges and Expenses**

In relation to the question of cost our charges are based on the time we spend dealing with a case. Time spent on your case will include meetings with you and perhaps others; any time spent travelling; considering, preparing and working on papers; correspondence; advocacy; and making and receiving telephone calls. When providing a quote in relation to our fees will be consider the amount of time we anticipate spending on your case and will also take into account a number of factors which include the complexity of the issues involved, the speed at which the action must be taken and the expertise or specialist knowledge that the case requires. The fees we quote will generally be provided on a fixed fee basis unless otherwise specified. The quote provided will make clear what that fee includes including the stages of the proceedings it will cover. You will be provided with that quote in writing.

It is our practice to ask for payments on account to cover our fees. Those payments must be made before we will carry out any work on your case. We may require payment of any fixed fee in full or in part before we represent you or carry out any work on your case. We reserve the right to withdraw from representing you during an ongoing case if fees are not paid in accordance with the quote provided.

### **Billing Arrangements**

Bills may be issued on an interim basis during an ongoing case and at the conclusion of proceedings. When bills are issued payment is due within 28 days of receipt of the bill and we regret to say that we are entitled under Law Society rules to charge you interest on any such bill which remains outstanding beyond the period specified if you do not pay our bill within this time. Interest will be charged on a daily basis at the rate of 5% above Barclays Bank lending rate. If you have any query about any such interim bill you should contact the individual dealing with your case straightaway.

### **Payments to Others During Court Proceedings - Prosecution Costs, Victim Surcharge and Criminal Courts Charge**

You should note that in addition to your legal costs, in the event of any conviction during court proceedings, you will be required to make a number of other payments. The court will be asked to order that you pay the prosecution costs of the case coming to court. The amount of prosecution costs vary depending on whether your case is heard in the Magistrates Court or Crown Court and also depending on whether you plead guilty or are convicted after trial. The prosecution costs will be much lower where a guilty plea is entered early in the proceedings. The prosecution costs will generally be much higher when a guilty plea is entered late in the proceedings and in the event of a conviction after trial.

The court is also required to impose a Court Surcharge in the event of conviction. The amount of the Court Surcharge varies depending on the outcome of your case.

### **Costs Orders against Others**

In relation to private costs there is also one further issue of which you need to be aware. This is the limited situation where costs may be paid not by you but by a third party. By this we mean when Costs Orders are made by the Court against either the Court, the Police/Crown Prosecution Service or Central Funds. We are bound to say that Costs Orders against the first two named bodies are rare and would rely upon serious acts of negligence/delay on the parts of the bodies concerned. Defence Costs Orders payable from central funds are more common. Central funds are a separate source of funding managed by the

Ministry of Justice. Should your case be discontinued/withdrawn or in certain other limited circumstances you may find that the Court is prepared to make a Defence Costs Order that central funds meets some or all of your costs. You should note that costs from central funds will only be paid at legal aid rates and whilst the amount paid may be sufficient to cover any costs incurred by us in representing you, should that payment only cover part of your costs any balance will be due from yourself. Undoubtedly, the person dealing with your case will advise you regarding this. Please note however that even if costs are ordered in this way you will still have to pay our bill in full before the sum incurred is reimbursed to us through a Defence Costs Order. This is because a receipted invoice will need to be produced to the Court. Of course, when we are reimbursed we shall in turn reimburse your outlay to us.

It is important that you are aware that whilst Defence Costs Orders are available in the Magistrates Court, they are only available in the Crown Court in certain circumstances. The Crown Court does have the power to make a Defence Costs Order in relation to a successful appeal against conviction. The Crown Court does also have the power to make a Defence Costs Order in the event that you are found not guilty. However your costs will only be paid by central funds where a fully completed legal aid application was submitted but refused on the basis of your financial circumstances. The court will issue a refusal notice in these circumstances which must be produced with any claim for defence costs to be paid from central funds. You should again note that costs payable from central funds in relation to Crown Court cases are limited to legal aid rates and if the amount paid from central funds does not cover all of your costs any remaining balance will be due from yourself.

## **Legal Aid**

Clearly discussing costs on a private basis with you takes into account the fact that we have discussed with you whether legal aid is available for this particular case and whether you qualify for it. You will no doubt recall that in your particular case legal aid is not available due to the ineligibility of this offence itself (based on the seriousness of the case) or due to your own financial circumstances. Should your financial circumstances change then you need to notify us at once and the question of public funding can be reconsidered. If you are charged with a more serious offence or in due course the present offence becomes aggravated in any way the person dealing with your case will advise on an application for legal aid

## **Documentation**

After completion of the work for you we are entitled to keep all your papers and documents while there is any money owing to us for our charges and expenses. Once such money is paid in full we will keep our file of papers (except for any of your papers, which you ask to be returned to you) for no more than 6 years. We keep the file on the understanding that we have the authority to destroy it 6 years after the date of the final bill we send to you in this matter. We will obviously not destroy documentation without prior reference to you.

If we have to retrieve papers or documents from storage in relation to continuing or new instructions from you we will not normally charge for such retrieval. However, we may make a charge based on time spent producing stored papers/documents to you or another at your request. We may also charge for reading correspondence or other work necessary to comply with the present instructions given by you or on your behalf.

## **Confidentiality**

As solicitors we are under a professional and legal obligation to keep the affairs of our clients confidential and to ensure that all members of our staff do likewise. Certain confidential information can never be revealed without your consent. It is "privileged" against disclosure that is covered by what is known as legal professional privilege. Not everything that solicitors have a duty to keep confidential is covered by legal professional privilege. Confidential communication for the purpose of seeking legal advice from us is covered by legal professional privilege. Confidential communication made during criminal proceedings for the giving of advice or obtaining of evidence is also covered by legal professional privilege.

When we represent you in criminal proceedings we become a participant in that case. We are required to comply with certain rules made by the court. Those rules may require us to provide the courts with certain information relevant to your case. The rules do not require us to reveal to the court anything you have told us if it is privileged, unless you tell us that we can. We are however under a duty to the court to provide information which is not privileged and which enables the court to actively manage your case. There is now a duty upon solicitors to identify the real issues in a case at an early stage. This may well involve telling the court what your defence is in general terms. We are not required to disclose any confidential discussions we may have had with you, but the rules require us to assist the court in the management of your case. You are still entitled to competent and independent legal representation and our duty is to promote and protect your best interests by all proper and lawful means

## **What happens to your data (our Privacy Notice)**

You will no doubt be aware that since 25 May 2018 there have been strict rules about the handling of personal data. The work we are doing on your behalf (as well as the funding requirements in cases where you have been granted legal Aid) mean we do request data from you and need to retain it. Therefore this Privacy Notice sets out how this data will be handled; the standards you can expect from us: and, your rights in relation to it.

Like most professionals from whom you seek assistance we collect data from you to assist that purpose. As such we are classified as a Data Controller under the legislation which is in force.

We collect and process personal data for the exercise of our function as your legal representatives. If you are being assisted by public funding however you need to be aware that we are obliged to share this data with the Legal Aid Agency. While we do not utilise your data in any marketing exercise you need to be aware that to fulfil its statutory function to provide public funding to individuals sometimes the Legal Aid Agency uses contact information to ask customers if they would like to complete a customer service survey to measure customer satisfaction with their services and to inform areas for improvement.

## **About personal information**

Personal data is information about you as an individual. It can be your name, address or telephone number. It can also include the information that you have provided in any Legal Aid Agency form such as your financial circumstances and information relating to any current or previous legal proceedings concerning you.

We know how important it is to protect clients' privacy and to comply with data protection laws. We will safeguard your personal data and will only disclose it where it is lawful to do so, or with your consent.

#### Types of personal data we process

We only process personal data that is relevant for the services we are providing to you. The personal data which you have provided in any form or other record we retain will be used for the purposes set out below.

#### Purpose of processing and the lawful basis for the process

The purpose of us collecting and processing the personal data which you have provided on any record or form is for the purposes of providing you with legal representation and where relevant to obtaining legal aid for you. We will only ever use this personal data in the following ways:

- In the conduct of the specific legal matter on which you have instructed us
- Where appropriate in making any application for legal aid; deciding whether you are eligible for legal aid; and, whether you are required to make a contribution towards the costs of this legal aid;
- In conducting periodic quality audits on our files to ensure that decisions have been made correctly and accurately; and
- In producing statistics and information on our processes to enable us to improve our services to you and other clients in the future.

If we could not collect this personal information from you, we would not be able to represent you appropriately or carry out the other necessary functions referred to above.

At times (especially where public funding is involved) we also collect 'special categories of personal data' for the purposes of monitoring equality. This is a legal contractual requirement for us in our dealings with the Legal Aid Agency and some other public bodies under the Equality Act 2010. Such special categories of personal data obtained for this equality monitoring will be treated with the strictest confidence and any information published will not identify you or anyone else associated with you.

#### Who the information may be shared with

In order to represent you efficiently (but for no other purpose and bearing in mind confidentiality at all times) we may sometimes need to share the personal information we process with other organisations. When this is necessary, we will comply with all aspects of the relevant data protection laws. The organisations we may share your personal information include:

- The Legal Aid Agency – for any legal aid application
- HM Courts and Tribunals Service (HMCTS) – to request details of your court proceedings or past proceedings
- Department of Work and Pensions (DWP) – for proof of your benefit only

You can contact our Data Protection Officer for further information on the organisations we may share your personal information with.

#### Retention period for information collected

Your personal information will not be retained for any longer than is necessary for the lawful purposes for which it has been collected and processed. This is to ensure that your personal information does not become inaccurate, out of date or irrelevant.

You can also contact our Data Protection Officer for a copy of our retention policies.

While we retain your personal data, we will ensure that it is kept securely and protected from loss, misuse or unauthorised access and disclosure. Once the retention period has been reached, your personal data will be permanently and securely deleted and destroyed.

#### Access to personal information

You can find out if we hold any personal data about you by making a 'subject access request'. If you wish to make a subject access request please contact us at 23 Thorne Road Doncaster DN1 2RP

#### When we ask you for personal data

We promise to inform you why we need your personal data and ask only for the personal data we need and not collect information that is irrelevant or excessive. When we collect your personal data, we have responsibilities, and you have rights, these include:

- That you can withdraw consent at any time, where relevant;
- That you can lodge a complaint with the supervisory authority;
- That we will protect and ensure that no unauthorised person has access to it;
- That your personal data is shared with other organisations only for legitimate purposes;
- That we don't keep it longer than is necessary;
- That we will not make your personal data available for commercial use without your consent; and
- That we will consider your request to correct, stop processing or erase your personal data.

You can get more details on:

- Our instructions to staff on how to collect, use or delete your personal information;
- How we check that the information we hold is accurate and up-to-date; and
- How to make a complaint.

For more information about the above issues, please contact us at the above address

When we ask you for information, we will comply with the law. If you consider that your information has been handled incorrectly, you can contact the Information Commissioner for independent advice about data protection. You can contact the Information Commissioner at:

Information Commissioner's Office  
 Wycliffe House  
 Water Lane  
 Wilmslow  
 Cheshire SK9 5AF  
 Tel: 0303 123

### **Termination**

Obviously, the fact that you have instructed us does not in any way bind you to our firm or the individual dealing with your case. You may terminate your instructions to us in writing at any time but as stated above we will still be entitled to keep all your papers and documents while there is money owing to us for our charges and expenses.

In some circumstances you may consider we ought to stop acting for you, for example, if you cannot give clear or proper instructions on how we are to proceed or if it is clear that you have lost confidence in how we are carrying out your work. Alternatively, we may decide to stop acting for you but we may only do so with good reason. For example, if you do not pay an interim bill or comply with our request for a payment on account or should some conflict arise between you and another defendant/witness/third party in the case which means that our professional rules prohibit us from taking your matter any further forward. Should this be the case we will obviously give you reasonable notice of our intention to cease acting for you.

In simple terms if you or we decide that we will no longer act for you you will still need to pay our charges on the hourly basis referred to in the attached document and any charges for expenses as set out earlier.

### **Complaints**

We are confident of providing a high quality service to you in all respects. If, however, you have any queries or concerns about our work for you please raise them in the first instance with the person dealing with your case. If that does not resolve the problem to your satisfaction or you prefer not to speak to the individual concerned then please contact our Complaints Partner, James Gray, who deals with any complaints in relation to matters dealt with by the Firm. In the event that a complaint involves James Gray then Ross Wagstaff will be the nominated Complaints Partner. You can also request a copy of our Complaints Procedure. All Solicitors are committed to attempting to resolve problems that may arise with their services. It is therefore important that you immediately raise any concerns you may have with us. We value you and would not wish to think that you have any reason to be unhappy with us.

If we are unable to resolve your complaint then you can have the complaint independently looked at by the Legal Ombudsman. The Legal Ombudsman investigates complaints about service issues with lawyers. The Legal Ombudsman expects complaints to be made to them within one year of the date of the act or omission about which you are concerned or within one year of you realising there was a concern. You must also refer your concerns to the Legal Ombudsman within six months of our final response to you.

The Legal Ombudsman's contact details are:  
 Telephone: 0300 555 0333  
 Website: [www.legalombudsman.org.uk](http://www.legalombudsman.org.uk)  
 Post: Legal Ombudsman, PO Box 6167, Slough, SL1 0EH

### **Money Laundering Regulations**

For the protection of all our clients we operate a money laundering reporting procedure. In certain circumstances information will be revealed by us to the appropriate authorities in relation to any suspicion of money laundering. It is therefore the firm's policy not to accept cash payments in excess of £500.

Additionally, and in common with many other professional establishments, it is the firm's policy to request identification information from all clients at the beginning of a matter and before any financial transaction occurs. Please would you therefore provide the information requested as soon as possible if you have not already done so.

### **Conclusion**

We obviously ask you to consider carefully the contents of this letter and the documentation attached and to raise any difficulties you have regarding the same with the person dealing with your case without further delay. Please appreciate that your continuing instructions in this matter will amount to your acceptance of the terms and conditions of business. Even so, we enclose a copy of this letter and we ask you to please sign and date the same and return it to us immediately. We can then be confident that you understand the basis on which we will act for you.

We hope that by sending this letter we have addressed your immediate queries about the day-to-day handling of your work and our terms of business. If you still have any queries please do not hesitate to contact the person named as dealing with your case.

**This is an important document. Please keep it in a safe place for future reference.**

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