

**TERMS OF BUSINESS**

**1. INTRODUCTION**

These Terms of Business together with our accompanying Client Care Letter constitute the contract between us and the basis on which we will act on your behalf in the matter on which you have consulted us. References to 'us', 'our', 'we' and 'Company' mean Ellis-Fermor & Negus Limited.

**2. PEOPLE RESPONSIBLE FOR YOUR WORK**

The Directors of the Company are ultimately responsible for all work done for clients. The accompanying letter confirms who will have day to day supervision of your matter. In order to give an economical as well as an efficient service different tasks in your matter may be handled by lawyers within our Company other than the person with primary responsibility for the file. Routine tasks may be delegated to someone more junior whereas complex points may need to be referred to someone more senior. Where more than one area of law is involved the person dealing with the file may need to consult with a colleague who has different specialised knowledge.

**3. SERVICE LEVELS**

We will update you regularly with progress on your matter and will explain to you the legal work required as your matter progresses. We will update you on the likely timescales for each stage of your matter and of any change in circumstances or risks that could affect the outcome of your matter. If there is a material change of circumstances we will advise you whether the anticipated outcomes still justify the likely costs and risks.

You will provide us with clear, timely and accurate instructions and any information or documents we require promptly on request. You will ensure that such information is accurate and is not misleading and safeguard any documents likely to be required during the course of your matter.

**4. OUR CHARGES**

Unless we agree differently in writing, it is important that you understand that you will be responsible for paying our charges. The accompanying letter will set out an estimate of our charges unless we have agreed a fixed fee with you or as otherwise stated in para 6 below. Where no fixed fee has been agreed our charges will be calculated on the hourly rates set out in the table below.

Our charges are primarily based on the time spent dealing with your matter. This will include meetings with you and perhaps others, travelling and all time spent considering, preparing and working on papers, correspondence, making and

receiving telephone calls, drafting and reading letters and e-mails. We record the time spent working on each matter on our computer system so that we can charge accurately for that time based on units of 1/10<sup>th</sup> of an hour. Routine letters and e-mails that we write and routine telephone calls that we make and receive will be charged as units of 1/10<sup>th</sup> of an hour. Other letters, e-mails and telephone calls will be charged on a timed basis.

In addition to the time spent, we take into account a number of other factors which include the complexity of the issues, the speed at which action must be taken, the expertise or specialist knowledge that the matter requires, and if appropriate, the value of the property or subject matter involved. If the matter turns out to be more demanding than we envisage at present, we shall notify you and indicate if this will result in our charging a higher value element in addition to the charge out rate referred to below or at a rate which is higher than our normal rates.

In estate administration matters, in addition to the time spent in certain instances we are entitled to include in our charges an element to reflect the value of the estate being administered which will be a percentage of the value of the estate. If this is applicable in your case the accompanying letter will specifically mention this. The percentages applied are as follows: -

1% of the gross estate (excluding the value of the deceased's residence)

0.5% of the gross value of the deceased's residence

These percentages will be increased to 1.5% and 0.75% respectively where the partners in this firm are appointed executors or trustees.

In litigation matters, unless we agree otherwise, for example by entering in to a Conditional Fee Agreement, you will have to pay all or costs even if they are greater than those which may be recovered from another party to the proceedings.

In some circumstances you may have to pay the legal costs of a third party. If so, we will discuss this with you before making any commitment on your behalf. Any estimate or agreement on charges we make with you does not include such third party legal costs.

Our normal hourly rates are:

Grade of Fee Earner	Hourly rate*
Director	£231

Solicitors/Legal Executives with more than 4 years post qualification experience:	
Commercial	£201
Commercial Conveyancing	£201
Family	£194
Family (Long Eaton)	£180
Litigation	£201
Probate	£194
Other Solicitors/ Legal Executives	£177
Trainee Solicitors/ Paralegals/Legal Clerks	£127
Residential Conveyancing (Smartmove)	£177 (£172)

\*These rates are reviewed annually on 1<sup>st</sup> April each year.

Our charges are subject to VAT being added at the rate applicable when the work is done. Currently VAT is 20%.

You may set an upper limit on our charges for which you are liable without further authority. We will not normally exceed an agreed amount without first obtaining your consent.

#### 5. EXPENSES AND DISBURSEMENTS

Unless we agree differently in writing you will be responsible for any payments we make on your behalf to third parties in connection with your matter (“disbursements”) including VAT if applicable. In the case of large disbursements we usually expect payment in advance from you. Cleared funds must be made available to us before we can make any payments on your behalf. We are not obliged to make any payment for you, nor incur any liability, until you let us have the money to cover it.

We are professionally bound to pay barrister’s fees once a barrister has been instructed on your behalf. We will obtain your prior agreement to the instruction of a barrister or any other third parties and we will ask you to make payments in advance to us to meet fees associated with their involvement.

#### 6. ESTIMATES AND COST

Unless we have agreed a fixed fee with you, our accompanying letter sets out such estimate as we can give of the time that your matter is likely to take and our charges and the expenses you are likely to have to pay us on the information available so far. However it is always difficult to predict these matters with accuracy particularly where Court proceedings are or might be involved. Wherever possible we will adhere to the estimate but there are cases where the matter is more complicated or time consuming than is normal and in such cases we reserve the right to charge an additional amount based on the actual time spent on your matter.

We will endeavour to update our estimate approximately every 6 months. If you wish to have an up to date estimate please ask the

lawyer handling your matter - you are welcome to do this at any time.

#### 7. LEGAL AID

We are not able to offer Legal Aid.

#### 8. BILLING ARRANGMENTS/PAYMENT

Unless there is specific written agreement to the contrary, our charges are payable whether or not a case or transaction is successfully concluded. Even if your matter is not carried through to completion you must pay our charges for the work already carried out. VAT is payable on that amount and you will also be billed for any disbursements incurred.

In conveyancing matters, payment of our charges including VAT and any unpaid disbursements (in addition to any payment required in connection with the transaction itself) is due in cleared funds before the contractual completion date.

On matters where we send a final bill after completion of the work, payment is due to us within 14 days of our sending you a final bill. If you have a query about any bill which we send to you, you should contact us straight away. If you prefer, or if the amount of work required on your case is substantial or over an extended period of time, we may render interim bills periodically whilst the matter is in progress. Should an interim bill not be paid promptly (and in any event within 14 days), we reserve the right to suspend work until all amounts due are cleared

Any regular monthly payments you make to us will be applied to your account to clear amounts billed to you. We will always use any amounts received to clear the oldest bill.

We are entitled to retain any money, papers or other property belonging to you which properly came into our possession pending payment of our costs, whether or not the property is acquired in connection with the matter for which the costs were incurred. This is known as a “general lien”. We are not entitled to sell property held under a lien but we are entitled to hold property, other than money, even if the value of it greatly exceeds the amount due to us in respect of costs.

**If there is a problem with your bill:** You are entitled to complain about your bill if you think there is something wrong. There may also be a right to object to the bill by making a complaint to the Legal Ombudsman and/or by applying to the court for an assessment of the bill under Part III of the Solicitors Act 1974 (see paragraph 20 below).

**Late Payments:** In addition to the sum payable under our account you will be charged daily interest at 8% p.a. on the outstanding sum from 30 days after the date of a bill.

**Credit Card/Debit Card:** There are no charges for Credit or Debit Card payments. There are

some limits on card payments and we can give you those details on request

**Cash:** We will only accept cash paid at our offices or into our bank account of up to £1,000. If you deposit cash directly with our bank we may decide to charge you for any additional checks we decide are necessary to prove the source of funds.

**Bank Transfers:** If you want to send money to us through the banking system or on-line we will provide our bank details on request. **We do not notify changes to important business information such as bank account details by email. If you receive any communications suggesting that our bank account details have changed, please inform us immediately.**

You may be asked to disclose the details of the source of any funds paid to us and failure to do so may mean we are unable to continue to act for you or a delay in completing your work.

Where we have to pay money to you, it will be paid by bank transfer or cheque. We will not make payments in cash or to a third party.

#### **9. MONEY HELD ON YOUR BEHALF**

We may ask you to pay one or more sums on account of any likely expenses, disbursements, costs and/or completion money during the course of your matter. Such sums may be inclusive of any VAT that may be chargeable. These sums will be held in your name in a General Client Account with Barclays Bank Plc. The Financial Services Compensation Scheme ("FSCS") usually protects the first £85,000 deposited in the event of a banking failure. This limit applies to each individual client and if you hold other personal money with this bank, the FSCS limit remains in total. Some deposit-taking institutions have several brands and you are advised to check with your particular institution or the Financial Conduct Authority for further information. By agreeing to these Terms of Business you consent to the disclosure of your personal details to the FSCS in the event of a banking failure.

Any payments you make to us can be utilised to pay our invoices for our charges or expenses/disbursements after we have advised you of the charges, expenses /disbursements in question and we would not usually give separate notification of the application of the monies involved in this way. If our invoiced amounts at the end of the matter are less than the sums we are holding on account we will refund the balance to you.

Any money we receive from you or on your behalf in connection with any matter shall be at your risk until applied by us in accordance with your instructions and/or the terms of our retainer, in accordance with any undertaking given by us in your matter, or against any costs, fees, expenses/disbursements or VAT due from you.

We will account for a fair sum in lieu of interest on money held in our General Client Account. This will not necessarily reflect the highest interest obtainable. Further details are available on request.

#### **10. COOLING OFF PERIOD**

If you are a Consumer within the meaning of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 then you may have a statutory right to cancel your agreement within us. If so then we will send you a Notice setting out your rights to cancel. You will have the right to cancel your contract with us within 14 days of first instructing us. You must inform us of your intention to cancel your instructions before the end of the cancellation period and we recommend that you do this in writing either by post or email. If you have asked us to begin work on your matter within the cancellation period you must pay our charges and disbursements for the work we have completed up to the date of the termination of instructions as set out above.

The Regulations also say that we should complete our work within 30 days of the day after you asked us to begin work for you, unless otherwise agreed. In this respect, subject to any contrary term in our Client Care Letter, our agreement with you is on the basis that we shall not be required to meet the 30 day deadline, given our services generally require more time to complete. Your acceptance of these Terms constitutes agreement that we will not complete our work for you within 30 days.

#### **11. TERMINATING INSTRUCTIONS**

You can ask us to stop working for you at any time. We are entitled to keep all your papers and documents while money is owing to us. We will only withdraw from acting for you with good reason and on giving you what notice we reasonably can.

We have a right to cancel this contract on giving immediate written notice if:

- our own interests conflict with yours, or
- a conflict of interests arises between you and any of our other clients in relation to the same or related matters, or there is a significant risk that this might happen, or
- Any instructions you give us conflict with our professional duties or obligations as solicitors or as officers of the court.

If instructions are terminated by either of us you must pay our charges and disbursements up to the date of termination as set out above.

#### **12. CLIENT VERIFICATION AND BACKGROUND CHECK**

The Money Laundering Regulations require solicitors to obtain satisfactory evidence of the identity of their clients and, where there is a beneficial owner who is not the client, the beneficial owner. This is because solicitors who deal with money and property on behalf of their

clients can be targeted by criminals attempting to launder money. To comply with the law we need to obtain evidence of your identity as soon as possible. Our usual practice is to ask to see your original passport or photo driving licence and a recent utility bill or bank statement and to carry out an online identification check through a referencing agency of our choosing.

If it is not practicable for us to meet you at an early stage of the work we are handling for you we may ask you to obtain certified copy documents and send them to us in the post. If you cannot provide us with the specific identification requested please contact us as soon as possible to discuss other ways to verify your identity. Should you fail to provide this we may have to stop acting for you.

Where we carry out an online identification check any information generated will be maintained on our files for which we have robust security. These checks will only be used to confirm the identity of the persons providing it. The data will be stored for as long as required by law or compliance purposes only which in most cases will be our usual file retention period of six years from the date of the file being archived and possibly longer if litigation has arisen or may be pending and the checks have or may become relevant in proceedings.

### **13. MONEY LAUNDERING AND TERRORIST FINANCING**

The Proceeds of Crime Act 2002 ("the Act") creates a number of offences relating to the proceeds of crime including, for example, monies (however low in value) saved as a result of tax evasion or benefit fraud, whether that money has been saved or spent.

If you have any concerns about irregularities in your financial position, or that of other parties involved in the matter you may wish to seek specialist accountancy advice to correct those irregularities before proceeding. Please be aware that accountants are also required to comply with the provisions of the Act. If financial irregularities are not corrected before you consult us and/or you do not tell us the correct position about your financial affairs, then if we become aware of such irregularities during the course of the case, it is a requirement of the Act that the irregularities are disclosed to the National Crime Agency ("NCA").

We are professionally and legally obliged to keep your affairs confidential. However solicitors may be required by law to disclose information to the NCA where they know or suspect that a transaction may involve the proceeds of crime, money laundering or terrorist financing. If we make a disclosure in relation to your matter, we may not be able to tell you that a disclosure has been made. We may have to stop working on your matter for a period of time and may not be able to tell you why. By accepting these Terms of Business you forego your right to client confidentiality in relation to any information we

give to the NCA. If any lawyers engaged in your case spend time in addressing issues arising from the Act, that time will be charged in the same manner as any other work undertaken in relation to your case.

### **14. MORTGAGE FRAUD**

Where we are also acting for your proposed lender in a transaction we have a duty to reveal to your lender all relevant facts about the purchase and mortgage. This includes any differences between your mortgage application and information we receive during the transaction and any cash back payments or discount schemes that the seller is giving you. If you tell us things that you do not want the Lenders to know and they are relevant to the Lenders, we may have to stop acting for the Lenders and possibly also for you.

### **15. STORAGE OF DOCUMENTS**

After completing the work we will be entitled to keep all your papers and documents while there is still money owed to us for fees and expenses. We will keep your paper and/or electronic matter file for a minimum of 6 years from the date of the final bill except for those documents that you ask to be returned to you. There may be occasions when it is necessary to keep archived matter files for longer periods. We will confirm the retention period applicable to your particular matter on request. We keep archived matter files on the understanding that we can destroy them after 6 years from the date of the final bill.

Original Wills, deeds and other documents you ask us to deposit are retained in safe custody. We do not charge for Will storage but reserve the right to charge £50 per matter for any other important documents or deeds which you ask us to save on your behalf. We do not normally make a charge for retrieving stored papers or deeds in response to new instructions to act for you. If you require us to retrieve documents for some other purpose we reserve the right to make a charge. If we are also acting for your lender or another client in the same matter, for example your spouse/partner or business partner, we may not be able to release our file without the consent of such organisation or person. We may transfer paper files held in storage to electronic or digital form. If this happens and we are subsequently asked to retrieve it we will supply you with a reconstituted paper file or one in electronic/digital form.

### **16. AUDITING AND VETTING OF FILES**

External firms or organisations may conduct audit or quality checks on our practice to ensure compliance with mandatory requirements such as regulatory standards and/or voluntary standards such as Lexcel by which this practice is certified. Outside auditors are required to maintain confidentiality in relation to your files.

### **17. ELECTRONIC COMMUNICATION**

We may communicate with you and anyone else involved in your matter by conventional

(unencrypted) e-mail. You acknowledge that conventional email may present security risks in certain circumstances and you shall be taken to have accepted those risks unless you tell us not to use that means of communication. If you would like us to use encrypted email for communication purposes you should notify us in writing. We will endeavour to do so, but this shall also be subject to us making the necessary arrangements with you and any other recipients.

Email communications will be dealt with by us in the same timeframe as post unless your lawyer assesses the nature of the e-mail to be urgent. In order to protect the integrity and security of our IT systems, we may prohibit the receipt and opening of certain types of electronic files by our staff and you should note that our internal IT procedures may also impose a delay on our ability to open and deal with certain types of electronic files.

We are not responsible for and cannot accept liability for any loss or damage of any nature caused by or resulting from the use of email or other electronic forms of communication.

### **18. UNDERTAKINGS**

Nothing is to be regarded as an undertaking by us unless we have expressly stated that it is an undertaking and the undertaking has been signed by a Solicitor of the Company.

### **19. ENVIRONMENTAL SEARCHES**

We have no expertise in understanding or in the interpretation of the results of environmental searches. These often contain technical and/or scientific information and you may need to consult a surveyor, engineer or appropriately qualified firm or individual concerning anything which is unclear to you from such a search.

### **20. COMPLAINTS**

We are committed to high quality legal advice and client care. If you are unhappy about any aspect of the service you have received or about the bill, please raise them in the first place with the lawyer dealing with your matter. If that does not resolve the problem to your satisfaction please contact the Client Care Director, Simon Hale, who is based at our Beeston Office. We have a procedure in place which details how we handle complaints which is available at: [www.ellis-fermor.co.uk/contact-us/our-complaints-policy/](http://www.ellis-fermor.co.uk/contact-us/our-complaints-policy/) or on request. If you are not satisfied with our handling of your complaint you may be able to ask the Legal Ombudsman at: PO Box 6806, Wolverhampton, WV1 9WJ, telephone: 0300 555 0333 or email: [enquiries@legalombudsman.org.uk](mailto:enquiries@legalombudsman.org.uk) to consider the complaint. However the Legal Ombudsman may be unable to deal with complaints from some larger organisations. Normally, you will need to bring a complaint to the Legal Ombudsman within six months of receiving a final written response from us about your complaint.

### **21. REGULATORY MATTERS**

We are authorised and regulated by the Solicitor's Regulation Authority ("SRA") and are expected to observe the SRA Code of Conduct 2011 which can be found at [www.sra.org.uk/handbook](http://www.sra.org.uk/handbook).

The Law Society is a designated professional body for the purposes of the Financial Services and Markets Act 2000 but responsibility for regulation and complaints handling has been separated from the Law Society's representative functions. The SRA is the independent regulatory body of the Law Society and the Legal Ombudsman is the independent complaints handling body.

**Financial Services:** We are 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 members of the Law Society. We can provide these investment services if they are an incidental part of the professional services we have been engaged to provide. If we think it is appropriate we may recommend you obtain advice from a third party financial planner or advisor. However we are not in any way liable for any advice they may give you or for their charges.

**General Insurance:** We are not authorised by the Financial Conduct Authority ("FCA"). However, we are included on the register maintained by the FCA so that we can carry on insurance distribution activity which is broadly the advising on, selling and administration of insurance contracts. This part of our business is regulated by the SRA and arrangements for complaints or redress if something goes wrong are subject to the jurisdiction of the Legal Ombudsman. The register can be accessed via the FCA's website at [www.fca.org.uk/firms/financial-services-register](http://www.fca.org.uk/firms/financial-services-register). Please note however that if we arrange any insurance we do not do so on the basis of making a full assessment of the needs and benefits.

If it is necessary during the course of a conveyancing transaction for any defective title or other indemnity insurance to be put in place we source such policies from across the market but do not carry out a whole of market review. We are not contractually obliged to arrange an individual policy with any particular company and we receive no commission for doing so. If you are unhappy about any insurance mediation advice we have given you then you should follow our complaints procedure.

### **22. DATA PROTECTION**

- Whilst we are acting for you we will collect certain personal information which will be held securely on our files and our database. We use the personal information we collect primarily for the provision of legal services to you and for related purposes

including: Updating and enhancing client records

- Analysis to help us manage our practice
- Statutory returns
- Legal and regulatory compliance
- Processing payments from you
- For our own marketing purposes by post, phone and electronic means

Our use of your personal information is subject to your instructions, our duty of confidentiality, and other legal duties and data protection law. Our detailed Privacy Notice can be found on our website at [www.ellis-fermor.co.uk/privacynotice](http://www.ellis-fermor.co.uk/privacynotice) and is available at any of our offices on request. By agreeing to our Terms of Business and the accompanying letter of engagement you agree to the collection and processing of your personal information.

Our work may require us to share your personal information with third parties, for example, referencing or fraud prevention agencies, expert witnesses, other professional advisors or service providers, or in connection with your Lender's or your Insurer's own requirements in conveyancing matters. Except in certain circumstances you have a right of access to the personal information that we hold about you. You should contact us should you need to access such information or require any further details about how your personal information is used by us.

You can ask us to stop sending you marketing information at any time.

### **23. LIMIT OF OUR LIABILITY**

It is an express term of our contract with you that our liability to you or any other person entitled to claim against us for any reason arising out of our acting for you in this matter (including without limitation negligence, breach of contract, tort, statute or otherwise) is limited to the higher level of £5,000,000 and the minimum level of insurance cover that we are obliged to maintain under the SRA Indemnity Insurance Rules relevant to our work for you.

By agreeing to these Terms of Business and the accompanying letter of engagement you are accepting (for yourself and on behalf of any other person whose interests you are representing) that our liability is limited to this figure for each claim and in aggregate for related or connected claims. You also thereby agree that if a notification under the terms of our insurance policy is made, information about you may be seen by our insurers, your files may therefore be seen by an assessor or another person unconnected with the firm in the future, unless you notify us that you do not agree to this.

Further information with regard to Professional Indemnity Insurance can be made available to you at any of our offices upon request. If you wish to have a higher limit of liability for your matter then this will only apply if agreed by one of our Directors in writing and on your payment of

an agreed contribution to our insurance costs for that higher limit. Where you are not dealing with us as a consumer we shall not be liable for indirect or consequential loss or for loss of profits. Nothing in these terms shall exclude or limit our liability for death or personal injury caused by our negligence, for fraud or for any other matter in respect of which it is unlawful for us to exclude or limit our liability.

Ellis-Fermor & Negus Limited is a company registered in England and Wales trading as Ellis-Fermor & Negus. Reg No: 07853015 VAT No: 295378606

A list of Directors is available for inspection at our registered office: 5 Market Place, Ripley, Derbyshire DE5 3BS.

Authorised and regulated by the Solicitor's Regulation Authority Reg No: 567496